Journal

of the

Sydney Society for Scottish History

CONTENTS

FOREWORD

Matthew Glozier
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Iᴛ is a particular joy to me to host our regular monthly meetings at Sydney Grammar School; a place redolent with happy memories and associations with our founder-President, the late Malcolm Broun, OAM, QC. Our lectures are attended by a small band of hardy regulars whose happy company justifies the old-fashioned endeavour of a face-to-face colloquium delivered in real time, as opposed to the increasing trend to deliver content on-line in a virtual atmosphere. If this were, however, the sole function of our Society, I should despair of the limited audience for the fine efforts delivered to us. For this reason I see the Journal as a key element in the ongoing relevance and importance of the Sydney Society for Scottish History. In both hard-copy format, and available electronically, the Journal reaches an international audience and continues to be a respected output of Australian academic investigation of the Scottish past. I am deeply indebted to the editorial team without whose efforts the Journal would lack the polish, sophistication and physical attractiveness brought to it by their editorial skill. Several of these editors laboured to peer-review articles and Carole M. Cusack performed the substantial and time-consuming task of proof-reading and correcting drafts. I thank Professor Anders Ahlqvist for his hard work in producing the proofs of the volume. The illustrations throughout this edition of the Journal are a particular delight. So too is the inclusion in this edition of articles by a number of long-term supporters of the Society: Dr David Caldwell, Professor Carole M. Cusack, and Sybil Jack. Their papers are well balanced by the inclusion of articles by three newer supporters of the Society: Graham Hannaford, Sue Rosen and Stephen Szabo.

I am thrilled to see the Society secure from David Caldwell his agreement to include a fine article on early-modern siege-craft, as it relates to one of Scotland's best loved and most recognisable icon: Edinburgh Castle. Not only does Dr Caldwell add an original contribution to the on-going historiography of the 'military revolution', whereby developments in gunpowder technology directly informed developments in bastion architecture; he also presents a thrilling narrative of a desperate struggle between two

opposing groups, the outcome of which has dictated the course of Scottish history to this day. As always, Dr Caldwell presents a meticulously researched thesis, which benefits from a career's worth of investigation into the historical records in unison with a lived, hands-on experience, with many of Scotland's historic monuments.

Professor Carole M. Cusack presents a stimulating article that dwells on beliefs and their impact on Scottish cultural beliefs and practices both long before, and long after, the siege of Edinburgh Castle. Professor Cusack presents a compelling argument that draws together observations of an archaeological, cultural and historical nature. The outcome is a very interesting and original contribution to our appreciation of the ongoing importance, and repurposing, of ancient religious sites.

Graham Hannaford presents us with insights gained during the research and writing of his Master's thesis, with an investigation of the impact of the Poor Law. He pursues a fascinating study of legislation from a number of different perspectives. Upper-level policy-makers are considered, as is the longer-term influence of Calvinistic religious traditions in terms of the ongoing impact of moral judgements on human choices and persistent intolerance of rival faiths. Finally, there is a consideration of the impact of the Law on ordinary people, with some unexpectedly positive conclusions drawn.

I bow to yet another learned contribution by Sybil Jack, who first introduced me to the Sydney Society for Scottish History in 1994. Here we are presented, authoritatively and usefully, with a decidedly 'Celtic' argument in favour of the broader influences on *Magna Carta*, from the world beyond England. The depth and breadth of Sybil's knowledge and scholarship are amply reflected in the footnote references attached to this article. It is both a useful overview of the existing scholarship and an original contribution that extends the historiography.

Sue Rosen presented a version of her paper on Macquarie as builder at during Scottish Week 2017, to much interest and acclaim. I am very pleased she has agreed to its inclusion in this edition of the Journal. Sue brings to this research a rich vein of knowledge drawn from her practice as a professional consulting historian with Sue Rosen Associates. This is reflected in her approach to constructing her argument, where the sources (rather like the finished buildings) are best viewed, rather than read. More than any of the other articles in this Journal, the inclusion of illustrations in

this article form an important component of the argument itself. In so doing, Sue presents a most interesting insight in to the ambitions and frustrations of government building projects in the early Colony.

Finally, Stephen Szabo presents a second instalment of his developing series focussed on nineteenth-century Australian manifestations of Scottish culture (particularly emphasizing heraldry). Having laboured for decades to research and collect examples of Australian arms and their use, arguably no-one knows this topic as well as Stephen. It is, therefore, particularly pleasing that he has agreed to speak to our Society twice on this issue, each time resulting in a fine article that constitutes a genuine original contribution to our knowledge on this little-regarded subject. Previously, Stephen presented a survey of Australian-based Scottish armigers. This time he highlights a single character. By taking use through Napier's story, we learn much about identity and cultural tolerance in nineteenth-century colonial Australia. In particular, it becomes apparent that migration was not a one-way movement outwards from Scotland. The downright (and gloriously) eccentric Napier highlights the intriguing interaction between Scotland and its global diaspora, a point (I am sure) on which Stephen will continue to build in future lectures.

It was our intention to produce this edition of the Journal in time for the annual Governor Macquarie's Birthday Dinner on 3 February 2018. We have achieved this desired result, but only due to the very hard work of a committed group of Australian-based scholars passionate about Scottish history.

I take this opportunity to recommend heartily Volume 17 of the Journal of the Sydney Society for Scottish History.

EDINBURGH CASTLE UNDER SIEGE 1559–1573

David H. Caldwell
National Museums of Scotland

IN a previous volume of this journal the author reviewed the information on sieges of Edinburgh Castle from 1093 to 1547. In the latter year many contemporaries would have believed that recent events had shown that the castle was impregnable, and its capture was not viewed as an appropriate objective by the English, then hoping to hold large parts of Scotland and cow the Scots into submission. Nor were serious efforts taken to win the castle in the fighting in 1559 and 1560 which saw the end of the French supported administration of Mary of Guise and the establishment of the Reformed Church. The 'long siege' of 1571–73 is the main subject matter of this article, one of the great sieges of British history. Its conclusion marked a significant turning point in the reign of the young King James VI, helping to create the political conditions in which he eventually united the British Isles by succeeding to the throne of England. It also showed that even an impregnable fortress like Edinburgh could not withstand effective bombardment by large guns.

1559

In 1559 Edinburgh Castle was held by John Lord Erskine (later Earl of Mar) who, despite his Protestant sympathies, refused to give access to the castle to the Lords of the Congregation during their stay in Edinburgh. He argued that he had been appointed by Parliament and only that body could require him to relinquish his control. On their departure in November the Queen Regent, Mary of Guise and her French supporters, fared no better in trying to win over Erskine, and instead took some steps to win it by force. Faggots (gabions) were erected by the French, and Erskine called on support from his friends who brought an ensign (presumably an experienced soldier) and a gunner. When they were attempting to gain entry via the 'Low Postern' (? The gate adjacent to the Well-house Tower) they were spotted by the French who took the gunner prisoner. A party issued from the castle and in the ensuing melee, fought from

the blockhouse (spur) as far as the Butter Tron (the Weigh House at the top of the Lawnmarket), they managed to free their man.[1]

1560

Despite giving shelter to Mary of Guise from 1 April 1560 until her death a few weeks later on 11 June, the keeper of the castle, Lord Erskine, attempted to maintain his neutrality. There is no evidence of defections from the castle to one side or the other. The fees of all 14 of the royal gunners based in the castle continued to be paid and they received an 'extraordinary' payment—what we would nowadays recognise as 'subsistence'—for staying within the castle.[2]

In April Lord Grey of Wilton, the English commander then supervising the siege of Leith, was of the opinion that Edinburgh Castle was winnable, but was expressly forbidden to attempt it, presumably not just because such a course would be a distraction from the job at Leith, which was proving difficult enough, but also because of the political embarrassment of having to deal with the queen dowager should the enterprise be successful.[3] Meanwhile on 29 April Mary of Guise wrote to her confederates that she had victualled the castle as best as she could and had caused improvements to be made to the defences of the gate in the Spur. It

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[1] John Knox's *History*, D. Laing (ed.), *The Works of John Knox*, 6 vols (Edinburgh: Bannatyne Club, 1841–64), Vol. 2, p. 2; A. Clifford (ed.), *The State Papers and Letters of Sir Ralph Sadler, Knight-Banneret*, 3 vols (Edinburgh: Constable, 1809), Vol. 2, p. 157.

[2] *TA = Accounts of the Lord High Treasurer of Scotland*, (ed.) T. Dickson, J. B. Paul et al. (Edinburgh, 1877–). [J. B. Paul (ed.) Vol. 7 (1538–1541), (Edinburgh: H.M. Gen. Reg. House); J. B. Paul (ed.), Vol. 10 (1551–1559); J. B. Paul (ed.), Vol. 11 (1559–1566)], x, 332; xi, 6, 27–35, 55, 67, etc.

[3] *Cal Scot Papers* 1 = J. Bain (ed.) *Calendar of State Papers relating to Scotland and Mary, Queen of Scots,* Vol. 1 (1547–1563), (Edinburgh: H.M. Gen. Reg. House, 1898) pp. 388, 391.

is clear that the English had free access to the town of Edinburgh at this time.[4]

1571–73

Despite their decisive victory at Langside on 13 May 1568 and the flight of Queen Mary to England, the cause of the Protestant lords and the young King James was by no means secure.[5] The lords defeated at Langside who had fled into England soon returned and Huntly was active in support of the queen in the north-east. In 1570, however, the supporters of James VI connived at the English harrying the lands and destroying the houses of many of the borderers who had been the cause of much trouble in England and were also supporters of Queen Mary.[6] An English army under Sir William Drury, Marshal and Deputy Governor of Berwick, and accompanied by the Earl of Lennox and other Protestant lords, went on to ravage the lands of the Hamiltons, the main supporters of the queen, destroying Hamilton Castle (Cadzow) and Palace, and Kinneil House near Linlithgow, all belonging to the head of the family, the Duke of Chatelherault, and several other Hamilton houses as well.[7]

The English help at this time was undoubtedly crucial in establishing the supporters of James VI and Protestantism in Scotland. They were led by a succession of regents:

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[4] *Cal Scot Papers* 1, pp. 389, 398.

[5] K. Thompson, 'All things to All Men: Mary Queen of Scots and the Scottish Civil Wars 1568–73', *Journal of the Sydney Society for Scottish History*, Vol. 9 (2001), pp. 1–74, at p. 71.

[6] G. Buchanan, *The History of Scotland*, J. Aikman (trans.), (Glasgow and Edinburgh, 1827–9), Vol. 2, p. 585; W. K. Boyd (ed.), *Calendar of State Papers relating to Scotland and Mary, Queen of Scots,* Vol. 3 (1569–71), (Edinburgh: H. M. Gen. Reg. House, 1903) Vol. 3, Nos 186, 188, 197.

[7] *Cal Scot Papers* 3, 264.

> James Stewart, Earl of Moray (the queen's half-brother)—murdered by the Hamiltons, 23 January 1570/1
>
> Mathew Stewart, Earl of Lennox, killed by Kirkcaldy's men from Edinburgh Castle, 4 September 1571
>
> John Erskine, Earl of Mar, died 28 October 1572
>
> James Douglas, Earl of Morton

Lennox had taken cannons from Stirling Castle in 1570 to add strength to the English artillery. He even got equipment and powder from Edinburgh Castle for them, but already the captain of the castle, Sir William Kirkcaldy of Grange, was inclined to favour the cause of Queen Mary, and in future James VI's supporters were to receive no artillery or support from that quarter. Kirkcaldy was a staunch protestant, had earlier sided against Queen Mary, receiving her surrender at Carberry on 15 June 1567, and had been appointed captain of Edinburgh Castle in September of that year by the Regent Moray. He was now to turn himself into the main supporter of the exiled queen and the focus of opposition to the new regim that ruled in the name of James VI with English support. He was totally opposed to the appointment of the Earl of Lennox in 1571 as regent (after the murder of Moray) and resented English intervention in Scotland. He also had a considerable reputation as a soldier, which appears to have been well deserved.[8]

The long siege of 1571–3 is at the heart of a complicated period in Scottish history when civil war raged and the country's future, under James VI rather than his mother Mary, as a Protestant ally of England, was finally thrashed out. As with any internecine struggle, the changing allegiances and friendships of the main players are often difficult to fathom, or even to keep track of, and can sometimes be seen to cut across more political and religious considerations. Kirkcaldy of Grange, either the main villain or hero

[8] E. Bonner, 'Kirkcaldy, Sir William, of Grange (*c*. 1520–1573)', *Oxford Dictionary of National Biography* (Oxford: Oxford University Press, 2004). At: http://www.oxforddnb.com/ view/article/15660. Accessed 5 February 2014.

of the siege depending on one's viewpoint, was certainly at enmity with two of the regents, Lennox and Morton, but John Knox, Minister of St Giles and the main spiritual and moral force behind the supporters of King James, yet seems to have retained a liking for Kirkcaldy and a hope that he would see the errors of his ways.

Figure 1: Bird's-eye view of the siege of May 1573 from Holinshed's *Chronicles*. The prominent, three-tiered structure above the Spur is David's Tower. The Constable's Tower is to its right, the Fore Wall Battery between the two.

There are a plethora of sources and descriptions of this siege, including a recent book by Harry Potter.[9] The main contemporary sources include journals kept by Scots, principally those referenced here as the *Diurnal* (author unknown) and *Bannatyne's Memorials*, kept by Richard Bannatyne, secretary to John Knox. The *Calendar of State Papers relating to Scotland and Mary, Queen of Scots* (volumes 3 and 4)

[9] H. Potter, *Edinburgh Under Siege: 1571–1573* (Stroud: Tempus, 2003).

contains a great wealth of contemporary English and Scottish reports and correspondence on the subject.

A good deal is known about the castle Kirkcaldy had to defend in the years from 1570 to 1573. There is an illustration of the siege in Holinshed's *Chronicles*[10] and there is also a description of the castle made in January 1572/3 by two Englishmen, Rowland Johnson and John Fleming, sent to assess how it might be captured (paraphrased and modernised):

> The Castle stands upon a high rock outcrop 600 feet (152m) long and 400 feet (112m) broad. On the fore part to the east, next to the town, is the hall [actually the Palace], 80 feet (20m) long, and next to it Davy's Tower. From it a curtain wall with 6 cannons [The Fore Wall Battery], or similar pieces placed in gun loops, overlook the main street. Behind them, 16 feet (4m) higher up, is another tier of ordnance, and at the north end stands the Constable's Tower. In the bottom of it is the way into the castle with 40 steps.
>
> On the east side there is a spur or bulwark, positioned in front of the rock that is crowned by the curtain wall. The spur is flanked on both sides, and on the south side is the gate to the castle. The Spur is 20 feet (5m) high, vamured [faced] with turf and baskets [of earth], and furnished with ordnance.
>
> The curtain wall on this side is at least 24 feet (6m) high, and the rock on which it stands at least 30 feet (7.5m) high. Davy's Tower is over 60 feet (15m) high, the Constable's Tower is about 50 feet (13m).[11]

Part of this ruined spur or blockhouse, originally built in 1547–48 to protect the castle from attack from the east, has recently been located in excavations under the castle Esplanade showing that, at least by the time of its final destruction in 1649, it was defined by a 2m thick stone wall. Its exterior, raked, surface was faced with

[10] G. Ewart and D. Gallagher, *Fortress of the Kingdom: Archaeology and Research at Edinburgh Castle*, Archaeology Report 7 (Edinburgh: Historic Scotland, 2014), figure 2.5, here reproduced as Figure 1.

[11] D. Laing (ed.), *The Bannatyne Miscellany*, 3 vols (Edinburgh: Bannatyne Club, 1836), Vol. 2, pp. 70–71.

ashlar work.[12] In 1571 it appears to have been considerably higher than the ground before it. This is suggested by a statement in a contemporary account that a workman who fell over it in April of that year, while filling gabions with earth, died as a result of the fall.[13] Mary of Guise had a 'flank' (tower or bastion) made beside the entrance in 1560[14] and Kirkcaldy of Grange did further work in the early 1570s to prepare it for the great siege including the digging of a 'sewche' (ditch) and 'pairing awain the greine grasse, and making all thingis smwthe and sliddrie from clymming of the wallis'.[15] It seems that the ground between the spur and the Lawnmarket, that is, the area now occupied by the Esplanade, was turned into a glacis, a gently sloping cleared area which provided no cover to an attacker. Great quantities of earth and turf were taken into the castle to deaden the blows of enemy artillery and, early in 1573, the Englishman, Nicholas Errington, reported to his government that the garrison had cut off the fore-part of the spur, which was formerly of timber and boards, and had now replaced it by a high wall of stone and lime.[16] This may refer to a parapet round its top.

The spur was not just a walled enclosure. It is important to grasp that it was rather a great earthwork, the stone walls being merely to retain the great bulk of earth within and give greater stability. Its solid, platform-like nature is made clear by Holinshed's view (illustr. 1, above). It was meant to give bulk and depth to the castle defences and to be a platform on which to position guns. It pointed aggressively down towards the town, providing but one of three or four platforms at different levels on which guns could be mounted.

[12] Chris Tabraham, Ian Suddaby and Tim Neighbour, 'The Spur and Esplanade', in Ewart and Gallagher, *Fortress of the Kingdom*, pp. 98–109.

[13] *Memorials of Transactions in Scotland AD MD LXIX–AD MD LXXIII* By Richard Bannatyne (Edinburgh: Bannatyne Club, 1836), p. 112.

[14] *Cal Scot Papers* 1, No 762.

[15] *Bannatyne's Memorials*, p. 112.

[16] W. K. Boyd (ed.), *Calendar of State Papers relating to Scotland and Mary, Queen of Scots,* Vol. 4 (1571–74) (Edinburgh: H. M. Gen. Reg. House, 1903), No 598

Here, it should be noted that it is difficult to square the description by Johnson and Fleming, given above, with the architectural and archaeological evidence. The latter shows that behind the Spur was a casemate with a large gunloop pointing down the High Street, the mouth of which has been exposed since 1912 in the face of the later Half Moon Battery. This is probably the 'goun holl' mentioned in building accounts of 1546.[17] Above the casemate was the Forewall Battery, as identified in the Englishmen's account, but their further tier of guns can only be identified with artillery mounted on the roof of the 14th-century David's Tower, modified for that purpose.[18]

An inventory of artillery and munitions in the castle in March 1566/7 gives some idea of how the castle was defended then, and probably with little difference a few years later during the siege.[19] On the forewall there were four new French cannons and two grose culverins, all mounted on carriages. On top of David's Tower there was a carriage-mounted moyen. On the hill at the back of the munition house (Hawk Hill) were two bastards, and below the hill two cannons. At either end of the chapel (St Mary's Church) were two cannons and two moyens, and at the postern, at the western end of the rock, there was a saker and a falcon. Between the butts (that is, what was later known as the Butts battery?) there was a double cannon, a culverin, a saker, two moyens and a double falcon, and, finally, at the gunhouse gable (near present site of Argyle Battery?) there was a grose culverin and a moyen. There is no mention of guns in the blockhouse, possibly because they were only positioned there when the castle was under threat.

The following table, using information extrapolated from various early Scottish sources, gives the possible specifications of the types of guns just listed.[20]

[17] *TA* 7, p. 463.

[18] Ewart and Gallagher, *Fortress of the Kingdom*, pp. 44–5.

[19] T. Thomson (ed.), *Wardrobe Inventories. A Collection of Inventories and other Records of the Royal Wardrobe and Jewel House* (Edinburgh, 1815), pp. 165–77.

[20] The original work is presented in the writer's dissertation: D. H. Caldwell, *Guns in Scotland. The Manufacture and Use of Guns and their Influence on Warfare from*

Gun type	Calibre, inches (mm)	Range, yards (metres)
Double cannon	8 (203)	1500 (1371.6)
Cannon	6.25 (159)	1700 (1554.48)
Grose culverin	4.67 (118)	2000 (1828.8)
Culverin	4.5 (114)	1800 (1645.92)
Saker	3.5 (89)	1500 (1371.6)
Moyen	2.75 (70)	1300 (1188.72)
Double falcon	3.1 (79)	
Falcon	2.33 (59)	1100 (1005.84)

These guns were looked after by a gunnery establishment led by the Comptroller of the Artillery, John Chisholm, and including several specialists—gunners, wrights, smiths and a founder. The gunners and other craftsmen were civil servants and, as could be expected, until this time there is no evidence that they were ever disloyal to the government. In the early 1570s, however, a period is reached in which there was open conflict between the rival political parties supporting either a succession of regents for the young king James or else his mother, Queen Mary. Since Edinburgh Castle was held by William Kirkcaldy of Grange for the Marians, the latter party not only had access to most of the royal artillery but also control of the gunnery establishment itself. Also, in April 1571 Kirkcaldy

confiscated the town of Edinburgh's artillery and took it to the castle to prevent it being used against him.[21]

In March 1572/3, the Regent Mar had attracted six gunners from the royal establishment to his cause, the rest having 'maid defectioun fra oure sovereigne lord, his obedience and service, and forsworne their faith and allegeance aucht to his hienes and adjoinit thameselfis with the tratouris and rebellis of Edinburgh Castell and toun'.[22] The case of two of the most senior gunners, Harry Balfour and James Hector, is instructive. They were engaged in a feud with each other which had gone all the way to the Privy Council for a settlement in February 1567/8. It was decided in favour of Balfour though Hector claimed he had worked deceitfully on the Regent Moray to get his pay rise.[23] It ostensibly related to money and promotions but we might suppose that politics were also involved. In any case, Hector left the castle to became adviser to the burgh of Edinburgh on the ordering of their guns and munitions while Balfour was given the additional privilege of making his residence within the castle.[24] He died there on 11 September 1572 as the result of a wound in the head received a number of days beforehand when hit by a flying splinter from the portcullis when it accidentally crashed to the ground.[25]

Chisholm, the comptroller of the artillery, had also taken the part of the Marians, and was sent by them to France in the winter of

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[21] *A Diurnal of Remarkable Occurrents that have passed within the Country of Scotland since the Death of King James the Fourth till the Year M.D.LXXV* (Edinburgh: Bannatyne Club, 1833), p. 209.

[22] *RSS* = M. Livingstone et al. (eds), *Registrum Secreti Sigilli Regum Scotorum*, (Edinburgh 1908–) [D. H. Fleming and J. Beveridge (eds) *The Register of the Privy Seal of Scotland*, Vol. 3 (1542–1548), 6], No. 1530.

[23] *RSS* 3: no 2640; 5: 829, 930, 1363, 2231, 2357; *RPC* = J. H. Burton et al. (eds), *The Register of the Privy Council of Scotland* (Edinburgh 1877–) [Vol. 1 (1545–1569, ed. J. H. Burton], pp. 395–6.

[24] C. B. B. Watson (ed.), *Edinburgh Burgesses. Roll of Edinburgh Burgesses and Guild-Brethren 1406–1700* (Edinburgh: Scottish Record Society, 1929), p. 243.

[25] *RSS* 6, Nos 159, 173; *Bannatyne's Memorials*, p. 264.

1570/1 to get money and munitions, but when he returned that June or at the beginning of July to Queensferry, he was captured by Lord Lindsay and taken off to the regent's camp at Leith. On him he had about 6,000 francs and in the ship he returned in were 12 barrels of serpentine powder (for priming guns), 100 bullets for cannon, 300 for smaller pieces, 300 calivers (firearms), 300 morions (helmets) and 200 pikes.[26]

1571

Mary's supporters were also holding the royal castle of Dumbarton and had several not inconsiderable strongholds of their own including the Hamiltons' castle of Hamilton (Cadzow, despite its 'destruction' in the preceding year) and Draffen (Craignethan). Dumbarton Castle was captured by government forces at the beginning of April 1571 as the result of a daring escalade of the castle rock in the early hours of the morning by Thomas Crawfurd of Jordanhill with a small band of wageours (mercenaries).[27] That left Edinburgh, castle and town, as the major centre of opposition to the regent and all attention could now be focused on trying to capture both.

Kirkcaldy of Grange was far too vigilant to allow himself to be caught in the same way as Dumbarton, though Crawfurd does, in fact, seem to have been involved in an attempt to force a way into the town in August 1571—by then firmly in control of the Marians—by means of a stratagem which recalls the deeds of the Knight of Liddesdale in 1341. Some of Crawfurd's men attempted to have the Netherbow Gate opened by pretending to be mealmen while others waited in hiding to make a rush on it.[28]

[26] *Cal Scot Papers* 3: no 627, 638, 695, 828, 831; *Miscellaneous Papers Principally Illustrative of Events in the Reign of Queen Mary and King James VI* (Glasgow: Maitland Club, 1834), pp. 59, 65.

[27] *Diurnal*, pp. 202–3.

[28] *Cal Scot Papers* 3, No 892.

It was observed in August 1570 that Kirkcaldy was already preparing the castle for troubles to come. He was encouraging others to come and join him and at one stage he bought up all the butter and cheese in the market and had the bakers baking him biscuit night and day.[29] He was also refortifying the castle, improving the town defences with earthwork fortifications, blocking up the gates and installing a garrison in the steeple of St Giles. At the beginning of May 1571 it was reported that he was making a 'barrace' (fortification) above the Butter Tron and another 'at the strade of the Wester boll' (an earthwork defence outside the West Port).[30] It was reported in October 1571, after a long period of fighting, that there was a trench within the town walls and all the vennels connecting with the High Street had been cut.[31] These were measures to stop the whole town being immediately overrun should the enemy manage to make a breech in the walls.

Kirkcaldy had got money and supplies from France.[32] There was also a large body of nobles in Edinburgh who supported him, including Huntly, Herries and Ferniehurst. In total, to defend the town and castle he had 600 men divided into six companies.[33]

In May, only a few weeks after the taking of Dumbarton Castle, the Regent Lennox came to Edinburgh with three guns which he planted in an earthwork fortification on Calton Hill with the intention of battering the northeast quarter of the town. This fortification is shown (by then in ruins) as a rectangular structure with a round bastion at each corner on Gordon of Rothiemay's 1647 view of the town.[34] From here Lennox's men shot into the lower part of the town, especially at 'dirtie blokhouses' (earthwork

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[29] *Cal Scot Papers* 3, No 422.

[30] *Bannatyne Memorials*, pp. 114, 117.

[31] *Cal Scot Papers* 3, p. 8 [No 13].

[32] *Bannatyne's Memorials*, pp. 112–20; *Diurnal*, pp. 202ff., 212; *Cal Scot Papers* 4, No 68.

[33] *Cal Scot Papers* 3, p. 9 [No 13].

[34] *RCAMS The City of Edinburgh* (Edinburgh, 1951), p. 37, fig. 150.

defences erected by Kirkcaldy to defend the Netherbow Port?), and Leith Wynd outside the walls. They also occupied a house there. In response, Kirkcaldy blocked up the Netherbow Port with turf and stone and had a double cannon brought down from the castle to the Blackfriars Yard to dislodge the regent's men from their positions. An attempt was made to surprise the fort on Calton Hill without any success.[35] The regent's initiatives, however, had withered by the end of the month when he wrote to Queen Elizabeth of England that he was not able to sustain wageours on the money available to him and there were no battery pieces except those in the castle. He asked for eight cannons, four culverins and two bastards with sufficient powder, bullets, instruments of war and pioneers, with 1000 footmen, 300 horsemen and money, over and above, to pay the wages of Scottish foot and horse.[36]

Substantial English help did not materialise and a new attempt was made in the autumn by the Regent Mar. He gathered together 10 battering pieces, including two from Dumbarton, two from Stirling, one from Dundee, two from Broughty Craig and the rest from Dunbar and other places.[37] Two guns were placed on Salisbury Crags on 10 October but one of them broke that day.[38] Others were positioned in an entrenchment before the West Port but with no more result than before. These guns were removed to the east side of the Pleasance to fire at the wall on the south side of the town on 17 and 18 October but as fast as the wall was knocked down it was rebuilt by those within and no assault was attempted. The guns positioned by Kirkcaldy at St Giles and on the Kirk of

[35] *Diurnal*, pp. 213–14; *Bannatyne's Memorials,* pp. 123–4.

[36] *Cal Scot Papers* 3, No 767.

[37] *Cal Scot Papers* 3, Nos 911, 914, 956.

[38] There is a small enclosure (R. B. K. Stevenson, 'Farms and Fortifications in the King's Park, Edinburgh', *Proceedings of the Society of Antiquaries of Scotland*, Vol. 81 (1946–8), pp. 165ff., pl. XVIII, No 8) in the Queen's Park, below Salisbury Crags, which might be worth examining to see if it could be earthworks associated with the emplacement of these guns.

Field (on the site of Old College, Edinburgh University)
'contempnet' the regent's guns and his pavilion was even rent by a
shot.[39] After twelve days' effort Mar withdrew his men and guns to
Canongate and Leith. The old demolished fortifications of Leith
were now re-dug to serve as a secure base for the regent and his
supporters.[40]

Thereafter no serious bid was made on Edinburgh for over a
year. Greater efforts were made by the regent to stop provisions
getting through to the town and castle,[41] and the war was taken out
into the country with the supporters of each party destroying each
other's lands. In March 1572 the garrison of the royal castle of
Blackness, further up the Forth, decided to join forces with
Kirkcaldy,[42] and in the following June 1572 he was even bold enough
to send a cannon and a double moyen to batter Merchiston Castle
(the tower now incorporated in Napier College, Edinburgh). The
guns pierced the walls of the castle before the Marians had to return
in haste to Edinburgh with the arrival of some of the regent's men
from their siege of Niddry Castle in West Lothian.[43] Eventually in
July 1572 a truce was patched up, largely thanks to French and
English diplomacy behind the scenes. Kirkcaldy held on to
Edinburgh Castle but the town itself was made free to all.[44]

It was clear to the supporters of the young James VI that they
would only finally daunt their opponents if they rooted Kirkcaldy
out of Edinburgh Castle. It was equally clear that they lacked the
power to do so. The only solution appeared to be once more to call
in English help, and after all it was also in Elizabeth's interest to see
that they succeeded in suppressing the supporters of a woman who
was widely regarded as the rightful queen, not only of Scotland but

[39] *Bannatyne's Memorials*, pp. 192, 194–5; *Diurnal*, pp. 251–2.

[40] *Diurnal*, p. 229.

[41] *Diurnal*, p. 291.

[42] *Cal Scot Papers* 4, p. 195.

[43] *Diurnal*, p. 300.

[44] *Bannatyne's Memorials*, pp. 237–46.

of England as well. Although Queen Elizabeth was reluctant to finance yet another major military enterprise in Scotland it did make sense that she should shore up a sympathetic Protestant regime, and there was the risk, probably actually remote by 1573, that if she did not act the French would rescue the castle.

1573

As noted above, in January 1572/3 Elizabeth had a survey made of the castle of Edinburgh by Rowland Johnson and John Fleming, and they concluded that (paraphrased and modernised):

> No mining can prevail in this rock, but only battery with ordnance, to beat down the walls and prepare the way for an assault. The reason for this is the nature of the rock itself, solid and hard, so that it cannot be hewn by any means that man can devise, in reasonable time; and even if it is successfully mined and powder put in place, it will be impossible to stop a lot of the explosive power of the charge dissipating through fissures in the rock and so preventing a successful outcome.
>
> A battery of 12 pieces of great ordnance—cannons, demy cannons and culverings—will be required, placed on either side of the street by the Spur; six battering pieces to beat Davy's Tower, the curtain wall with their ordnance, and the Constable's Tower, and so to make a breech; and on the south fide where the hall is, the lodging, and the store houses for their munitions and victuals, it will be necessary to place six battering pieces, not only to beat down these buildings, but also to provide cross fire with the 12 guns placed to the east.
>
> Eight demy culverings and sakers are also required to beat the back part of the castle and to dismount the guns mounted there. They can also be moved from place to place to fire at gun loops and such other places as need requires.
>
> The castle may thus be at Her Majesty's commandment within 20 days after the gun batteries are in position.[45]

[45] *Bannatyne Misc* 2, pp. 70–71.

The English expeditionary force, consisting of 1000 soldiers and 300 pioneers under the command of Sir William Drury arrived at the end of April, along with six double cannons, 14 whole culverins, two sakers, two mortars and two bombards.[46] A few other guns were supplied by the Scots, including the Earl of Argyll's cannon, and also four bands of soldiers, amounting to 500 men.[47]

For the course of the siege we are fortunate in not only having detailed contemporary Scottish and English accounts but also Holinshed's bird's-eye view.[48] It is not drawn to scale, exaggerates some features and merely sketches in others. Nor can it be used as a reliable guide, for instance, to the number and positioning of the gun batteries. Nevertheless, it can be regarded as a verisimilitude of the siege, at the point that the Spur was stormed.

The regent, to try and prevent damage from the castle guns firing down the High Street, had piled up three 'traverses' of sod, turf and midden, one near the tollbooth, the other two higher up the street nearer the castle.[49] Two of these appear to be represented on Holinshed's view. Some entrenchments had also been dug around the castle by the Scots. These were considered a sufficient threat by Kirkcaldy in the preceding March that he had fired his guns at a new one being dug to the northwest and made a sally from the Spur

[46] *Bannatyne Misc* 2, p. 80. For the guns compare *Diurnal*, p. 330, a cannon royal, 4 cannons, 9 grose culverins, 4 'pottin pieces' [mortars], 5 small brass pieces and 'ane Scottispeice les nor ane cannoun, quhilk was tane be the Inglismen at the field of Flodane; she wes callit ane of the sevin sistaris'. Six other pieces are said to have arrived on 23 May (*Diurnal*, p. 332).

[47] *Bannatyne Misc* 2, p. 80; *Diurnal*, p. 331. The Earl of Argyll's cannon may well be the large bronze French gun with the insignia of King François I of France which sits outside Inverary Castle. It is not, as often claimed, from the Tobermory Spanish Galleon.

[48] R. Holinshed, *The Laste Volume of the Chronicles of England, Scotlande and Ireland*, with descriptions (London: for Iohn Hunne, 1577), figure between pp. 1868 and 1869, here published as figure 1.

[49] T. Thomson (ed.), D. Calderwood, *The History of the Kirk of Scotland* [8 vols, 1842–49] Vol. 3 (Edinburgh: Wodrow Society, 1848), p. 281.

to clear trenches at the top of the town.[50] These entrenchments were taken over by the English on 25 April, and extended and improved to completely blockade the castle.[51] We are reliant on English sources for the information that, incorporated in this circumvallation, were at least four mounts or gun batteries, three of which were commanded by Sir George Carey (son of Lord Hunsdon, the Warden of the East Marches), Sir Henry Lee (a favourite of the queen) and Sir Thomas Sutton (Master of the Ordnance in the North). The fourth was called the King's Mount and manned by a force of Scots with Scottish guns, under the command of the Regent Morton. Five hundred Scots are said to have joined with the English in the siege operations.[52] A fifth mount, the main battery, commanded by Sir William Drury, protected with gabions, was positioned on the north side of the Castlehill where it could batter the Spur.

All of these mounts are represented on Holinshed's view (Figure 1). The King's Mount is identified, as is Drury's, though the latter is actually shown as two gun batteries, one on either side of the main street, labelled as 'The GENERALS two monts'. The first four mounts appear to be spread from near the Bristo Port on the south side of town, round in an arc westwards and then northwards to about the position of St Cuthbert's (not shown). A church is shown near the King's Mount which may represent the chapel of St Roque which stood on the southwest part of the Burgh Muir, south of Grange Loan.[53]

One of the contemporary Scottish sources provides a different and probably more accurate picture:

> [Drury's Mount] on the Castlehill on the north side of Mr John Thornton's lodging

[50] *Cal Scot Papers* 4, pp. 536–7.

[51] *Diurnal*, p. 324.

[52] *Cal Scot Papers* 4, p. 572.

[53] *RCAMS*, p. 249 [No 213].

> On Lawson's croft—one of the crofts of the Greyfriars
> At the town, and on 'Scottis' crofts
> Above the west side of St Cuthbert's
> At the north side
> At the 'lang gait' (a predecessor of Princes Street) east from no 5, on
> Buccleugh's [land][54]

So the *Diurnal* seems to be indicating a total of six batteries. More research is necessary to identify all these locations but it is likely they were positioned right round the castle (Figure 2), not just to the east, south and west as shown on Holinshed's view. It is probable that no 2 was not too distant from Greyfriars. Much of the land to the south and southwest of the castle in 1573, adjacent to the Burgh Loch (now the Meadows) was sparsely populated, with gardens or crofts providing food for the town, and there, somewhere, would have been no 3. The approximate position of no 4 is clear enough, and nos 5–6 could have been positioned along the edge of the higher ground represented now by Princes Street. The Diurnal describes no 5 as having Scottish guns and no 6 as only mounting three small guns. English sources might therefore have taken less interest in these positions.

Meanwhile, the other side had not neglected to improve the castle's defences, building a rampart across the castle from north to south to defend the built-up area (Crown Square) from battery from the west and improving the Spur facing the town. More earthwork was added to it and the timber and boards of its fore-part were replaced with a wall of stone and lime. Owing, however, to major defections from the nobles supporting the queen—principally the Hamiltons, Huntly and Seton—Kirkcaldy could no longer hope to control or have any influence in the town. Only Maitland of Lethington, Lord Home and John Wishart, the Laird of Pittarrow,

[54] *Diurnal*, p. 332.

remained with him to the end.[55] His whole force was probably by now not much more than 200, many of whom were not soldiers.[56]

Soon after the arrival of the English, their commander, Sir William Drury, set Hubbard the miner to try and undermine the spur but this venture apparently came to naught. The battery of the castle began on Sunday 17 May, attention being directed firstly on David's Tower, no doubt since the guns positioned on top of it could command so many of the English positions. On 21 May, all the besiegers' guns from all sides opened up fire. The south quarter of David's Tower fell, together with some of the fore-wall next to it on 22 May and the east part, and some of the portcullis, two days later. By this time, all the great artillery of the castle had been put out of action or dismounted. At 7 am on 26 May, two assaults were made simultaneously. A force of Scots and English caused a diversion at St Katherine's Gate (i.e., the later West Sally-port) at the west end of the castle while the main English attack was launched upon the spur. The former force was repulsed with the loss of 28 to 30 men killed or wounded, but the assault with ladders on the spur was successful and Drury managed to lodge a force on it. That night Kirkcaldy asked for a parley and the castle was surrendered on 28 May into the hands of the English.[57] The garrison by then consisted of 164 men, 84 women and 10 boys.[58]

The Scottish regents, successively Lennox, Mar and Morton, had made much of their inability to take the castle and their need of English guns and manpower. Putting to one side the issue of whether with more skilled diplomacy it might have been surrendered by Kirkcaldy, it is not clear that he could have held it much longer than May 1573. His supplies and manpower were by then limited and his ability to make sorties to gather in more was

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[55] *Bannatyne Misc* 2, pp. 72ff. [= Holinshed's *Chronicle*]; *Diurnal*: 322, 330–3; *Cal Scot Papers* 4, no 598.

[56] *Cal Scot Papers* 4, no 572.

[57] *Bannatyne Misc* 2, pp. 72ff.; *Diurnal*, pp. 330–3; *Cal Scot Papers* 4, no 649.

[58] Calderwood, *The History of the Kirk of Scotland*, p. 283.

probably very constrained. By March 1573 the water supply in the wells within the castle had failed and he was forced to rely on water from outside, particularly the well (St Margaret's) to the north, below the castle rock. To access it men had to be let down from above on ropes, but it was then poisoned by his enemies, resulting in the death and illness of several in the garrison.[59]

Drury left for England straight after the siege. By prior agreement, although the castle had surrendered to him, he left it intact, though substantially damaged, with all its guns. Morton set about a major rebuild, including the Portcullis Gate and Half-Moon Battery which survive to this day. The spur survived, even if with a considerable amount of remodelling, and the main castle entrance was positioned in its flank. From here, a roadway led to the right round the bottom of the Half Moon Battery through an Inner Barrier Gateway to the Portcullis Gate: a replacement for the Constable's Tower. The capture of Edinburgh Castle marked the end of effective support for Mary in Scotland. Kirkcaldy was tried for treason and executed. Despite one or two scares, no real threat of French or Spanish invasion ever materialised and successive Scottish governments saw fit to maintain and develop good relations with England.

[59] *Cal Scot Papers* 4, p. 536 [No 603]; G. Donaldson (ed.), *The Memoirs of Sir James Melville of Halhill* (London: Folio Society, 1969), p. 99; Calderwood, *The History of the Kirk of Scotland*, p. 282.
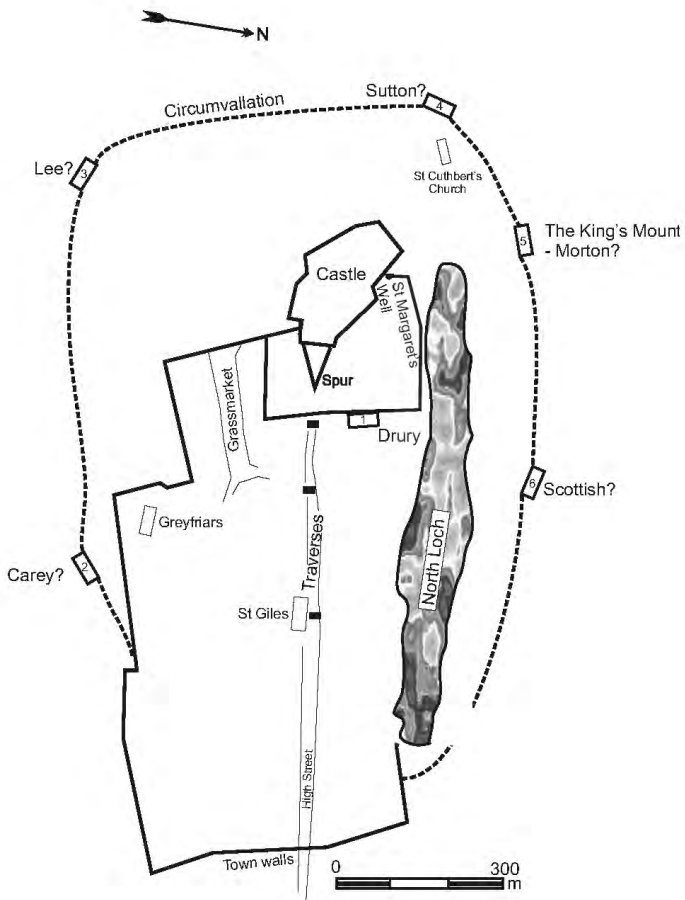
Figure 2: The English and Scottish siege works of May 1573 based on *A Diurnal of Remarkable Occurrents*.

The Cult of St Triduana in Scotland

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Introduction[1]

THE cult of the saints is one of the defining aspects of medieval Christianity. Its roots lie in late antiquity, when Christian reverence for the holy dead, especially those who had been martyred for the faith, combined with elements of the cult of heroes in ancient Greece and Rome, resulted in religious devotion to the saints and martyrs. In Peter Brown's words, the cult of the saints was 'about the joining of Heaven and Earth, and the role, in this joining, of dead human beings'.[2] Both the souls and the bodies of the saints were suffused with God's power, and saints were invoked as protectors of the community, patrons of trades and occupations, and healers of physical and spiritual ailments, as their physical remains could work miracles in this world. The devotional practice of pilgrimage developed as the fame of particular saints grew, and their tombs and reliquaries became sites of cures.[3] By the Middle Ages, the number of saints had grown exponentially, and the genre of hagiography was one of the most popular literary forms. Medieval devotion to the saints was a mixture of approved beliefs

[2] Peter Brown, *The Cult of the Saints: Its Rise and Function in Latin Christianity* (Chicago, IL: University of Chicago Press, 1981), p. 1

[3] Diana Webb, *Medieval European Pilgrimage c.700-c.1500* (Houndmills and New York: Palgrave Macmillan, 2002), pp. 44–77.

and practices, which the Church promoted, and popular and folk beliefs and practices, with significant differences existing between 'popular or local sainthood and official sainthood'.[4] Early medieval hagiography, relic cults, and pilgrimage were often attached to missionary figures who had brought pagan peoples to know Christ, though virgin martyr legends, and pseudo-historical and incipiently nationalist deployment of the life stories of holy figures were also popular.

This article examines the cult of St Triduana, an obscure saint associated with the healing of eye disease, in Scotland. Triduana, a maiden from Colossae, is linked to St Regulus (Rule), a Greek from Patras who allegedly brought the relics of the apostle St Andrew to Scotland in the fourth century. Regulus, guided by an angel in a dream, arrived at St Andrews in Fife, where the apostle's relics were interred and a church built in his honour.[5] The so-called St Andrew sarcophagus, one of the town's most impressive archaeological finds, was unearthed close to St Rule's Tower, which was built in the eleventh century as part of a complex of buildings constructed to house the relics of Andrew, Scotland's patron saint.[6] Modern scholarly opinion, however, attaches little historical validity to the tale of St Andrew's relics being brought to Scotland, focusing more on literary sources and religious devotions that cemented the apostle's role as patron in the imagination of medieval Scots.[7] The story of the altogether less documented Regulus and Triduana appears in Walter Bower's *Scotichronicon*, which dates from the 1440s. This is important, as other authors linked Triduana to the semi-

[4] Andri Vauchez, *Sainthood in the Later Middle Ages* (Cambridge: Cambridge University Press, 2005), p. 535.

[5] David Hugh Farmer, *The Oxford Dictionary of Saints*, 3rd edition (Oxford: Oxford University Press, 1992), p. 424.

[6] Derek W. Hall, 'Pre-Burghal St Andrews: Towards an Archaeological Research Design', *Tayside and Fife Archaeological Journal*, Vol. 1 (1995), p. 23.

[7] Ursula Hall, *St Andrew and Scotland* (St Andrews: St Andrews University Press, 1994).

legendary missionary saint Boniface, also called Curetán or Curitan, as 'one of two virgin abbesses to accompany [him] on his epic mission to Pictland'.[8] It is this connection that appears in Andrew of Wyntoun's fifteenth century Middle Scots chronicle, which is contemporary with the *Scotichronicon*, and is later affirmed in the *Aberdeen Breviary*, compiled by Bishop Elphinstone in 1510.[9] The name Triduana is said to derive from Latin *triduanem ieiunium* (three day fast), and variants of her name at dedicated sites include Tredwell/ Tradwell, and Trøllhaena, (and its diminutive Trolla) in formerly Norse-speaking areas of Scotland. The saint's feast is celebrated on 8 October.

There are eight dedication sites connected with St Triduana. The first four are: the King's Chapel that adjoins the parish church of St Margaret's Restalrig, Edinburgh; St Trolla's Chapel, Kindtradwell, near Brora in Sutherland; the altar at Holy Trinity church in St Andrews which was dedicated to the saints Fergus and Triduana; and St Triduana's church at Rescobie, named in the saint's life as the location of her first nunnery, and where St Trodline's Fair was held in the medieval era. The next two locations are Cairntradlin (the cairn of Triduana) which is 'near the church of Kinellar in Aberdeenshire', and a Banff placename, Cartrilzour.[10] Finally, in Caithness there is a site close to an old chapel and an Iron Age broch that is called Croit Trolla (Trøllhaena's croft),[11] and the Orkney island of Papa Westray has a St Tredwell's Loch, on which a named chapel, which was a pilgrimage destination, was the northernmost site of veneration of the saint. There are other passing

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[8] Olivia Lelong and Julie A. Roberts, 'St Trolla's Chapel, Kintradwell, Sutherland: The Occupants of the Medieval Burial Ground and their Patron Saint', *Scottish Archaeological Journal*, Vol. 25, No. 2 (2003), p. 160.

[9] Thomas J. M. Turpie, *Scottish Saints Cults and Pilgrimage from the Black Death to the Reformation, c. 1349–1560* (PhD, University of Edinburgh, 2011), pp. 27–28.

[10] Lelong and Roberts, 'St Trolla's Chapel', p. 149.

[11] Ralph Richardson, 'Scottish Place-Names and Scottish Saints', *Scottish Geographical Magazine*, Vol. 21, No. 7 (1905), p. 360.

mentions of Triduana in Scottish sources, like the 1518 record of the Hammermen's guild in Dunkeld, which lists the five patrons of the guild as 'St Eloi, St Erasmus, St Serf, St Triduana and St Kessog'.[12]

Many of these dedications are at sites that show evidence of occupation since the Iron Age, including brochs, and the presence of Pictish symbol stones. This likely strengthens her association with Boniface's mission, as Olivia Lelong and Julie A. Roberts conclude that 'these sites would seem to be further examples where local Pictish authorities chose a saint aligned with Rome for newly established chapels and churches as part of the swing towards Christianity in the 7th to 9th centuries'.[13] This observation coheres with the research of Edward J. Cowan on the development of the St Andrew cult in Scotland. He accepts W. F. Skene's mid-nineteenth century argument that the cult of St Andrew was brought to Scotland by the Pictish king Angus mac Fergus (729–761), along with the saint's purported relics, from Hexham in Northumbria.[14] In this view, the legend of Triduana and Rule supports the developing connection between the Scots and the Greeks that is found in the tenth century *Pictish Chronicle*, and the oldest Scottish version of the legend of St Andrew, which dates from the twelfth century.[15]

TRIDUANA, LUCY AND MEDANA

Whether Triduana is associated with the alleged arrival of Rule in 337 or with the mission of Boniface Curitan to the Picts in the seventh century, the narrative of her life after arriving in Scotland involves her living in a community of virgins at Rescobie,

[12] M. A. Hall, 'Of Holy Men and Heroes: The Cult of Saints in Medieval Perthshire', *The Innes Review*, Vol. 56, No. 1 (2005), p. 72.

[13] Lelong and Roberts, 'St Trolla's Chapel', p. 161.

[14] Edward J. Cowan, 'Myth and Identity in Early Medieval Scotland', *The Scottish Historical Review*, Vol. LXIII, No. 176, Part 2 (1984), p. 126.

[15] Cowan, 'Myth and Identity in Early Medieval Scotland', pp. 123, 126.

Forfarshire, where she attracted the attention of Prince Nechtan, who proposed marriage. She fled from him to Dunfallandy in Atholl, but Nechtan pursued her. This hagiographical story is recorded in the *Aberdeen Breviary*. The servant who delivered the proposal told Triduana that the Prince was dazzled by her beautiful eyes. She replied, 'What he asks of me he shall obtain'. She then withdrew 'into a secret place [and] plucked out her eyes, transfixed them on a wooden pin, and held them out to the messenger, saying, 'Accept what your prince desires'.'[16] This cooled Nechtan's ardour, and Triduana moved with her companions Emeria and Potentia to Lestalryk or Restalrig in Lothian, then a village outside of Edinburgh, where she died and was buried.

St Margaret's Church, Restalrig, with the shrine of St Triduana in the foreground. Photographed by Anne Burgess and reproduced under Creative Commons.

[16] John Foster, 'The Legend and Shrine of St Triduana', *British Journal of Opthalmology*, Vol. 37 (1953), p. 763.

Audrey Beth Fitch, discussing female virgin martyr legends, notes that these saints are almost always depicted in iconography with the instruments of their death, like St Catherine and the wheel upon which she was broken, or with the body parts that were specifically mentioned in accounts of their sufferings, like St Apollonia, who 'had her teeth torn out before being killed so was depicted holding her teeth [and] was looked to for assistance with tooth problems'.[17] St Triduana follows this pattern, in that she is invoked in cases of eye disease and is associated with holy wells at which pilgrims sought cures for such afflictions. Holy wells play an important function in folk belief in medieval Catholicism as water, which was associated with baptism and transformation from the 'illness' of non-belief to the 'cure' of faith in Christ. Prior to the coming of Christianity to north and western Europe, water sites were generally named for and linked to pagan goddesses, which makes the connection between female saints and water sources understandable.[18]

   The cult of Triduana is found only in Scotland and some scholars have suggested that the legend that depicts her plucking out her eyes and becoming associated with the cure of eye disease is copied from the myth and cult of the Sicilian St Lucy of Syracuse, the traditional patroness of eye cures who putatively died a martyr in 303 or 304 AD, during the persecution of Diocletian, and whose feast day is celebrated on 13 December.[19] It has long been acknowledged that the *vita* of Lucy (whose name, the feminine

[17] Audrey Beth Fitch, 'Power Through Purity: The Virgin Martyrs and Women's Salvation in Pre-Reformation Scotland', in Elizabeth Ewan and Maureen M. Meikle (eds), *Women in Scotland: c. 1100–c. 1750* (East Linton: Tuckwell Press, 1999), p. 17.

[18] Dominique Beth Wilson, 'Sacred Water: Pilgrimage to and Veneration of Holy Wells by Pagans and Christians in the British Isles', in Pamela O'Neill (ed.), *Exile and Homecoming: Papers From the Fifth Australian Conference of Celtic Studies 2004* (Sydney: Sydney Series in Celtic Studies 8, 2005), pp. 325, 330.

[19] J. Bridge, 'St Lucy', *The Catholic Encyclopedia*, 1910. At: http://www. newadvent.org/cathen/09414a.htm. Accessed 16 November 2017.

version of the Latin male name Lucius, means 'light') is not historically verifiable, and Anthony K. Cassell claims that her link to light is independent of the tale that her eyes were torn out as part of the torture that preceded her death. Cassell argues that Lucy's name connects her with light and sight, just as St Christopher's name marks him as the bearer of Christ. He thinks that 'her 'severed eyes' were merely an *ex-voto* representation, just as ancient Roman and Christian votives often take the form of an isolated—not dismembered—part of the body, an arm, a leg, an ear, a nose, for example, cured by heavenly intercession'.[20] It is true that early accounts from the fifth and sixth centuries make no mention of her eyes, but later accounts make her the object of unwanted romantic attentions from one Paschasius who admired her eyes. She reacted to this in literal obedience to Matthew 18:9, 'and if your eye causes you to stumble, gouge it out and throw it away. It is better for you to enter life with one eye than to have two eyes and be thrown into the fire of hell'.[21] Thus Lucy's eyes are in the same category as Apollonia's teeth and Agatha's severed breasts; merely a recognizable symbol attached to her martyrdom to inspire devotion in the Christian faithful.

St Triduana's *vita* may be modelled on that of Lucy, though Lucy has also been prayed to in cases of 'sore throat, epidemic diseases, dysentery, and any type of haemorrhage'.[22] However, the complexity of Triduana's association with either Rule or Boniface opens up interesting possibilities; Boniface is also linked to St Medana, a young woman born in Ulster who allegedly fled from the attentions of a suitor in a boat that landed in Galloway. James A. Ross has reviewed the life of Medana, noting that her swain

[20] Anthony K. Cassell, 'Santa Lucia as Patroness of Sight: Hagiography, Iconography, and Dante', *Dante Studies*, Vol. CIX (1991), p. 72.

[21] Matthew, Chapter 18, Verse 9, *New International Version*. At: https://www.biblegateway.com/passage/?search=Matthew+18. Accessed 16 November 2017.

[22] Ferdinand L. P. Koch, 'Patron Saints of the Eyes: An Outline', *American Journal of Ophthalmology*, Vol. 28, No. 2 (1945), p. 166.

followed her and 'she took refuge in a tree, where in his presence she plucked out her eyes and cast them on the ground at his feet. A spring of water appeared and she washed the blood from her face'.[23] Thus, her story is basically the same as that of Triduana, though it is possible that she may be historically verifiable. Medana's main shrines were at Edinburgh, Stirling, and Dumbarton, and there were also three in Galloway, including Kirkmaiden-in-Rhinns, which still exists. Additionally, a chapel of 'St Monenna' (a variant of her name) was situated between the Mercat Cross and the abbey at Scone. All these shrines appear to have been associated with wells; the three in Galloway were unusual, in that they were not fed by springs but involved sea-water.

Eye wells are rare, and there are obvious associations of water with the healing of eye disease that include the four interpretations proposed Peter B. G. Binnall. He suggested that: first, cold water is soothing to inflamed eyes; second, that the identification of baptism into the Christian church with sight and paganism with blindness confers holiness on water sites; third, wells may be function as an *oculus dei*, as in the myth of Odin's sacrifice of an eye in order to drink from Mimir's well in Scandinavian myth; and finally, the high incidence of creation through divine tears in various cosmologies including Japanese and Egyptian mythology, suggests water is a powerfully generative substance.[24] While the first of these arguments is irrefutable, though likely to produce only temporary relief, in the case of wells associated with Triduana, it is not possible to confirm any of Binnall's other hypotheses.

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[23] James A Ross, 'A Patron Saint for British Ophthalmologists', *British Journal of Ophthalmology*, Vol. 38 (1954), p. 634.

[24] Peter B. G. Binnall, 'Some Theories Regarding Eye-Wells.' *Folklore* Vol. 56, No. 4 (1945), pp. 363–363. See also 'Eye', in Ami Ronnberg (ed.), *The Book of Symbols: Reflections on Archetypal Images* (Cologne: Taschen, 2010), pp. 352–354.

The Shrine of St Triduana at Restalrig, Edinburgh

The first historically verified account of the shine of St Triduana at Restalrig in Lothian is found in the charters of St Andrews in 1178. St Margaret's church was later distinguished in 1477 when it became the site of a Chapel Royal under the patronage of James III (1452–1488). James III built the two-storey hexagonal chapel beside the parish church as a shrine. The churchyard well was famed for the 'treatment and cure of eye afflictions, and had become a place of pilgrimage, with further royal grants in 1496 and 1527, from James IV and V'.[25] In 1487 Pope Innocent VIII issued a bull that raised the church at Restalrig 'to a Collegiate church with eight Prebendaries under a Dean'.[26] References to the site are made until the mid-sixteenth century, when the poet David Lyndsay (1486-1555), in a poem decrying superstitious practices, confirmed the kirk at Restalrig was still a place of pilgrimage:

> It was too lang for tyll discryfe
> Sanct Francis with his woundes fyfe
> Sanct Tredwells als there may be sene
> Quelk on ane prik hath both hir ene …
> To Sanct Tredwell to mend their eine.[27]

At this point the Scottish Reformation was gathering momentum, and in 1560 the General Assembly of the Presbyterian Church called for 'the kirk at Restalrig as a monyment of idolatrie be raysit and utterly casten down and destroyed'.[28] St Margaret's church was promptly demolished, and the parish church of the area was moved

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[25] Carole M. Cusack and Dominique Beth Wilson, 'Scotland's Sacred Waters: Holy Wells and Healing Springs', *Sydney Society for Scottish History Journal*, Vol. 16 (2016), p. 72.

[26] Foster, 'The Legend and Shrine of St Triduana', p. 764.

[27] Foster, 'The Legend and Shrine of St Triduana', p. 764.

[28] Foster, 'The Legend and Shrine of St Triduana', p. 764.

to South Leith. The lower level of the hexagonal shrine survived the destruction, and was later used by the lairds of Restalrig as a burial chamber.

Helen Brown has studied the reasons for the emergence of Restalrig as a wealthy and popular shrine in the fifteenth century. She notes that Triduana appeared in 'several Scottish liturgical books of the mid to late fifteenth century', with the cult at Restalrig being established in the 1470s but significant by the 1490s.[29] There is some record of the parish church from the twelfth century onward, and from the early fifteenth century the church and village of Restalrig were the barony of the Logan family, whose castle was on Lochend Loch. The interest demonstrated by James III in Restalrig may have included accompanying a papal legate on a pilgrimage there in 1486, as Hector Boece identifies the holy destination as Lestauream (which may be Lestalryk, a variant of Restalrig as noted above) in his *Lives of the Bishops of Aberdeen* (1522).[30] The first important mention of Triduana at the parish church was 1496 when James IV donated 20 shillings for masses to be said before the altar of 'Sanct Triduane'.[31] By 1507 there is a chaplain of St Triduana in residence, and in 1510 the *Aberdeen Breviary* confirms the saint's remains lie at Restalrig. By 1515, during the minority of James V, the care of the saint's relics and altar was the responsibility of a prebendary.

Brown has also reviewed the evidence that connects the Triduana/ Tredwell/ Trøllhaena dedications and concluded that while these sites *may* reflect the cult of a single saint with the power to cure eye disease, 'no real continuity between the cults is visible, and the mere possibility of their common origin is in itself

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[29] Helen Brown, 'St Triduana of Restalrig? Locating a Saint and Her Cult in Late Medieval Lothian and Beyond', in Debra Higgs Strickland (ed.), *Images of Medieval Sanctity: Essays in Honour of Gary Dickson* (Leiden and Boston: Brill, 2007), p. 48.

[30] Brown, 'St Triduana of Restalrig?', p. 50.

[31] Brown, 'St Triduana of Restalrig?', p. 51.

inconclusive'.[32] This sceptical scholarly assessment leans towards disaggregating the two Triduanas (that of Rule and of Boniface respectively) and Trøllhaena; however, as Brown's focus is the principal shrine at Restalrig, she stop short of this radical move. The *Aberdeen Breviary*, with its description of two miracles by which Triduana blessed a blind Englishwoman, seems to be a pivotal, though late, text that Brown examines as a possible source for the reason the shrine became popular and influential. The saint appeared to the Englishwoman in a dream and commanded her to journey to Restalrig, where her blindness was healed. Later when the woman's daughter is injured in a fall, the child 'is restored by virtue of the prayer alone, without pilgrimage to Restalrig'.[33] This pious tale may have increased Triduana's popularity and swelled the number of pilgrims to the church, but is insufficient to function as an 'invention' story that might, for example, justify the discovery or translation of the saint's relics.

In a doctoral dissertation submitted to the University of Edinburgh in 2011, Thomas J. M. Turpie examined the most prominent Scottish saints' pilgrimage from the mid-fourteenth century to the Scottish Reformation. He identifies the main functions of the saints as assistance to the faithful, patronage, and political power. Turpie's focus is those saints that were identified with Scottish national or 'native' interest, and he argues that the *Scotichronicon's* linking of Triduana with Rule was part of 'the wider story of the foundation and development of the see of St Andrews', a possibly nationalist trend that culminates in the *Aberdeen Breviary*.[34] The popularity of Triduana as part of this trend may connect to the high medieval propagation of the myth of the Greek origin of the

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[32] Brown, 'St Triduana of Restalrig?', p. 58.

[33] Iain MacIvor, 'The King's Chapel at Restalrig and St Triduana's Aisle: A Hexagonal Two-Storied Chapel of the Fifteenth Century', *Proceedings of the Society of Antiquaries of Scotland*, Vol. 96 (1962–1963), p. 251.

[34] Turpie, Scottish Saints Cults and Pilgrimage from the Black Death to the Reformation, p. 29.

Scots, which is associated with the legendary introduction of Christianity to Scotland, through the Greek saints Andrew (the country's patron saint), Rule, and Triduana.[35] It is also possible that, as Brown suggests, the similarity of her legend and cult to that of saints like Lucy, Agatha and Catherine, made her 'an eminently recognisable type of saint', one that held a perennial appeal for medieval Christians.[36] At any rate, her cult flourished in the last two centuries before the Reformation swept away such saints' lives, relics, and devotional pilgrimages as superstitions with no scriptural basis.

St Margaret's Well, Holyrood Park. Photographed by G. Laird and reproduced under Creative Commons.

[35] Cowan, 'Myth and Identity in Early Medieval Scotland', p. 123.

[36] Brown, ''St Triduana of Restalrig?', p. 65.

CONCLUSION

Of the eight sites with dedications to Triduana listed above, only two churches are still in existence, and the altar of St Triduana and St Fergus at Holy Trinity St Andrews was destroyed during the Reformation. Thus the only site at which Triduana has a visible presence is Restalrig, where the ruined St Margaret's church was rebuilt in 1836, to a design by the architect William Burn (1789–1870).[37] The lower storey of St Triduana's Chapel, which adjoins the western bay of the parish church, also survived, and was renovated 1907 by Dr Thomas Ross (1839-1930). In 1859 construction of the North British Railway Depot resulted in the removal of 'a second hexagon … the little vaulted house of St Margaret's Well … which was dismantled and re-erected in Queen's Park'.[38] Restalrig's special relationship with Triduana is also evidenced in Giles Gilbert Scott's 1929 Roman Catholic church, which is dedicated to Ninian and Triduana.

During the nineteenth century David Wilson, in *Memorials of Edinburgh* (1891) proposed that St Margaret's Well had originally been dedicated to Triduana, on account of its reputed powers to heal eye disease and even blindness. Thomas Ross, who restored James III's hexagonal structure, originally believed it to be a chapter house, but came to interpret it as a chapel to Triduana constructed over a wellhead, due to the fact that the lower storey flooded. In a major study of the shrine, Iain McIvor identified Ross's informant as Major George Logan Home of Edrom from a 1931 letter to *The Scotsman*, in which Home asserted that 'I then brought the old legend of St Triduana to the notice of the architect … when her body was committed to the tomb a well of pure water sprang up from the ground, which has ever since been renowned

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[37] Anon, 'St Margaret's Parish Church, Restalrig, Edinburgh', *Scotland's Churches Trust*, n.d. At: https://scotlandschurchestrust.org.uk/church/st-margarets-parish-church-restalrig-edinburgh/. Accessed 16 November.

[38] MacIvor, 'The King's Chapel at Restalrig and St Triduana's Aisle', p. 250.

for its healing virtues to the eyes'.[39] McIvor thinks that St
Margaret's wellhead hexagon is a simplified miniature of the James
III chapel and thus of later date, and that it is possible, though not
likely, that the James III chapel is a wellhouse, albeit a badly
designed one. The only comparable example he has found is the
fifteenth century shrine to St Winefride in Holywell, North Wales,
where the lower storey is a wellhouse and the upper storey a
chapel.[40]

Plaque at St Margaret's Well, describing its original siting at Restalrig. Image
reproduced under Wikimedia Commons.

[39] MacIvor, 'The King's Chapel at Restalrig and St Triduana's Aisle', p. 257.

[40] MacIvor, 'The King's Chapel at Restalrig and St Triduana's Aisle', p. 259.

This article has surveyed the cult of St Triduana: in terms of her historical existence, which seems to have no basis in fact; in terms of her connection with the healing of eye disease, which is better supported but generally does not involve the holy wells that other such saints are associated with; and in terms of her popularity as a Scottish 'nationalist' saint in the later decades of the Middle Ages, when her principal shrine and reputed site of her mortal remains, St Margaret's church at Restalrig, received lavish patronage from Kings James III, James IV, and James V, supporting clergy and creating a lively pilgrimage culture for those

Historic Scotland plaque at St Triduana's Chapel, Restalrig. Image reproduced under Wikimedia Commons.

seeking blessings and healing from the saint. In the twenty-first century St Triduana is entirely obscure, and the ecclesiastical buildings at Restalrig little visited, for all their historical and folkloric interest. This is partly due to the retreat of Christianity in British culture, partly to the lack of acceptance of Catholic-style religious practices in Scotland, and partly due to the construction of the North British Railway Depot, which greatly diminished the beauty of the church and its surrounds. The chapel is in the care of Historic Scotland, and few tourists, those pilgrims of the contemporary world, journey to encounter St Triduana.

THE 1845 NEW POOR LAW FOR SCOTLAND
A FUNDAMENTAL CHANGE

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THERE is an old Gaelic proverb (or so I am told) that translates roughly as 'Two things that should not be empty: the stomach of the old and the hand of the child'.[1] The 1845 new Poor Law for Scotland is an attempt to provide for these vulnerable people in Victorian age Scotland—the elderly, children, and the destitute. A piece of legislation is unlikely ever to be sexy but this one, the 1845 Poor Law (Scotland) Act, *An Act for the Amendment and better Administration of the Laws relating to the Relief of the Poor in Scotland* is nonetheless remarkable. It marked the shift in support for the poor in Scotland from being provided as charity to one of assistance supplied as an enforceable right under the direction of the State. It gave the lowest in society rights they had not had before.

The new law was 'followed by other legislative changes …[which] ... gave Scotland a modern system of government with some degree of representation'.[2] It has even been claimed that the establishment of the Edinburgh-based Board of Supervision under the act ensured that 'administrative devolution was bound to grow … [once] ... there was a body to which further powers could be

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[1] M. Newton, *Warriors of the Word: The World of the Scottish Highlanders* (Edinburgh: Birlinn, 2009), p. 157.

[2] These previous poor laws in Scotland, and conditions for paupers before 1845, have been exhaustively studied by Rosalind Mitchison who is acknowledged as the pre-eminent authority on the old poor laws in Scotland. Her *Old Poor Law in Scotland* involved the study of the records of over 300 parishes and is generally taken as the outstanding work in this field. See R. Mitchison, *The Old Poor Law in Scotland: The Experience of Poverty 1574–1845* (Edinburgh: Edinburgh University Press, 2000), p. 215.

added'.[3] While it would be misleading to claim that this single piece of legislation is the birth certificate for the present Scottish Parliament, it certainly forms an important part of its DNA. The act was developed in the wake of new poor laws for England (1834) and Ireland (1838) but differs markedly in its approach. What is usually called the 'old poor law in Scotland' was in reality a compendium of laws passed over the years, to which the 1845 law added.

But why was a new law thought necessary when there already existed poor laws dating back centuries? Those who were promoting it produced heartrending accounts of conditions for paupers before this new poor law came into being and which were continued long after. Typical is Rev. Archibald Clerk, minister of the parish of Kilmallie (which is centred on the town of Fort William, in Inverness-shire). Rev. Clerk was commenting on his previous parish, that of Duirinish on Skye. While he was casting his mind back some forty-odd years, he said he had to hand reports he had contributed to the 1841 *Statistical Account of Scotland* and which served to prompt his memory. He had also had first hand experience of the new poor law, having been a member of the Kilmallie Parochial Board at its creation under the terms of the new poor law. He said that

> The dwelling-houses were dark, damp, and very filthy. The main door led into the byre, where the cattle—some of them tied in a very primitive manner, others running at large—were kept. There was no drain to carry off the liquid. All the manure was allowed to accumulate for four or five months, until it was carried out to be laid on the land. It sometimes rose close to a height of two feet above the level of the next apartment, the kitchen, which often formed the only one for the family. On descending to this apartment very little furniture was to be seen. The seats generally consisted of two or three stools made of wood; round stones, and pieces of dried turf. There were two openings in the wall. In these I have occasionally seen panes of glass. Generally, however, one of them was stuffed with straw or ferns, while the other was kept free

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[3] J. F. McCaffrey *Scotland in the Nineteenth Century* (Basingstoke: Macmillan, 1998), p. 43.

for the admission of air and light, this being regulated by the direction in which the wind blew. The rafters forming the roof were always laid on the inner, instead of the outer edge of the wall; consequently, the rain, entering the top of the wall, was continually oozing through, keeping the house in constant damp.

The food of the crofters was scant and poor. Some of them had a small supply of oatmeal, and their cattle gave them milk; but their chief dependence was on potatoes and fish, often on potatoes and salt. Their clothing was very coarse, and personal ablution was not much practised by them.[4]

Urban poverty was stressed in a pamphlet by Dr William Pulteney Alison, physician and poor law reform campaigner, entitled *Observations on the management of the poor in Scotland, and its effects on the health of the great towns* (1840). A couple of extracts will set the tone. The first concerns conditions in the Old Town, Edinburgh, while the second indicates that conditions in Glasgow—the so-called second city of the empire—were no better:

from the evidence given by the Rev. Dr Lee, Minister of the Old Church, before the Commissioners of Religious Instruction, 18th Feb. 1836, on the state of another portion of the Old Town: I have seen a mother and five daughters with another woman, in a house where there was neither chair nor table, stool, bed, or blanket, nor any kind of implement for cooking. She had the largest allowance given by the Charity Workhouse, 2s. 6d. a-week.

For Glasgow:
I have been in one day in seven houses where there was no bed, in some of them not even straw. I found people of eighty years of age lying on the boards. Many sleep in the same clothes which they wear during the day. I may mention the case of two Scotch families living in a miserable kind of cellar, who had come from the country within a few months, in search of work. Since they came they had had two dead, and another apparently dying. In the place they inhabit, it is impossible at noonday to distinguish the features of the

[4] Rev. A. Clerk, statement of 24 October 1883 to the Napier Commission: *Her Majesty's Commissioners of Inquiry into the Conditions of the Crofters and Cottars in the Highlands and Islands of Scotland*, Appendix A, p. 29

human face without artificial light. There was a little bundle of dirty straw in one corner, for one family, and in another for the other. An ass stood in one corner, which was as well accommodated as these human creatures.

Observations made by one of the Assistant Commissioners on the Handloom Inquiry include:

The wynds in Glasgow comprise a fluctuating population of from 15,000 to 30,000 persons. This quarter consists of a labyrinth of lanes, out of which numberless entrances lead into small square courts, each with a dunghill reeking in the centre. Revolting as was the outward appearances of these places, I was little prepared for the filth and destitution within. In some of these lodging-rooms (visited at night) we found a whole lair of human beings littered along the floor, sometimes fifteen and twenty, some clothed and some naked; men, women, and children huddled promiscuously together. Their bed consisted of a layer of musty straw, intermixed with rags.[5]

So, why were the existing poor laws not working? Partly it was because the need for expenditure just was not matched by the funds available to fix the problem. There was also a question of differing attitudes towards the poor often affected by religious beliefs—those who classified some as 'the deserving poor' while others regarded as idlers, as well as those who were the responsibility of their own families, or were the victims of their own fecklessness, including drunks, fornicators and such like.

   Dr Alison was far from the only one to recognise the problems in the cities. A growing ground swell of public opinion, fanned by work such as *Tait's Edinburgh Magazine*, a publication described as having 'a penchant for politics'[6] was putting pressure on the

[5] W. P. Alison, *Observations on the Management of the Poor in Scotland, and its effects on the health of the great towns* (Edinburgh: W. Blackwood & Sons; London: Thomas Cadell, 1840), pp. 6–7.

[6] See *Tait's Edinburgh Magazine*, 'Condition of the Labouring Poor, and the Management of Paupers in Scotland' (2 part article) Nos. LXXXIII and LXXXIV, Vol. VII (November and December 1840); *Tait's Edinburgh Magazine*,

government to do something. Fundamental to many of the issues surrounding management of assistance to the poor is the fact that the administrative unit for supplying relief to the poor had for many centuries been the parish. For a thousand years or more throughout Europe the Christian church in its various manifestations had been responsible for charitable care. The role of the state was always ambiguous. Brown suggests that in a 'vacuum of secular government, the Established Church [had become] a vital instrument of civil power, having in its parish churches, schools, officials and ethos of popular participation the most sophisticated machinery available to impose stability in society'[7] Mitchison writes that the parish was, in reality, 'the effective instrument of local government'.[8] This is to look backwards from a position which sees secular government as the only legitimate form of authority. Before the nineteenth century this was hardly so.

In 1839, a Committee of the General Assembly of the Church of Scotland, taking for granted the legitimacy of its position, had reported to the General Assembly and identified some of the issues. It was generally believed that, being local, the parish was in the best position to understand local conditions and needs and the Court of Session had acknowledged this in 1772.[9] The parish even had a system to licence beggars. It was also where each person might be considered to have contributed to the local community, through work, church contributions, and by supporting others in need. This involvement earned the person a right of 'settlement', the place to which he or she belonged and which had the obligation to provide support when necessary. Determination of a person's settlement was vital when it came to deciding which parish had the responsibility to

'Relief of the Poor in Scotland'. At: http://www.electricscotland.com/history/articles/poor2.htm. Accessed 31 March 2014.

[7] C. G. Brown, *Religion and Society* (Edinburgh. Edinburgh University Press, 2007), p. 68.

[8] Mitchison, *Making of the Old Scottish Poor Law*, p. 69.

[9] 'Extract from Report to the General Assembly', Supplement to the *Poor Law Report*, pp. lxxiii–lxxiv.

provide the funds needed to help a pauper. Much depended on this local administrative unit.

Raising the money required for the Kirk Session's poor relief activities was undertaken by collection at the church door, door-to-door visitation, special collections for particular circumstances, pew rents, mortcloth fees, and fines for a range of matters contrary to church teaching such as sabbath breaking, swearing, drunkenness, blasphemy or fornication. [10] Perhaps a financial windfall was obtained by the church following a good Saturday night out or whatever constituted the equivalent of a win by the local shinty team. Occasionally a bequest or donation may also have been available to the parish for poor relief, such as the Kilmallie Kirk Session record in May 1845 of a bequest from Samuel McKechnie, Planter of Tobago, of the sum of £23/8/5 'to be used in consideration of the poor of his native parish'. Its cash book had earlier recorded on 31 January 1843 a donation of £5 from (Cameron of) Lochiel which was specifically to be used 'for the poor on his own estate'.[11] Charity began at home.

When it became clear to a Kirk Session that there were insufficient funds to cover expenses, including for poor relief, then the Session could resort to a system of assessments on the local heritors, in effect the rate payers in the parish. The problem with assessments is that the level of assessment was set by the Kirk Session, which was made up mainly of local heritors—the very people who would be taxed to raise the money needed for poor relief. So, the funds available to disburse among a parish's paupers would be only those which were raised by the means already described and coming mostly from among the poorest in the parish,

[10] 'Extract from Report to the General Assembly', pp. lxxiii–lxxiv. There is also a record of money for the poor being raised in Annan in Dumfriesshire by public drinking bouts 'but this was not an option commending itself': M. Fry, *A New Race of Men*, Scotland 1815–1914 (Edinburgh: Birlinn, 2013), p. 169.

[11] CH 2/719/1 Minutes of the Kirk Session of Kilmallie April 1844 to July 1845 including the cash book of the Kirk Session of Kilmallie January 1842 to July 1845. The emphasis was in underlining in the original hand written record.

many barely one step ahead of pauperism themselves. Although the Disruption in the Church of Scotland is dated to 1843, by this time attendances at the established churches had often plummeted with a resulting reduction in collections at the church door and in other ways, and it was clear to anyone with foresight that the existing arrangements could not continue.[12]

So, on 26 January 1843 and in the sixth year of Her reign, Queen Victoria signed a commission which 'for divers good Causes and Considerations Us thereunto moving, … a diligent and full Inquiry should forthwith be made into the practical operation of the Laws which provide for the Relief of the Poor in Scotland.' The seven Royal Commissioners appointed were Viscount Melville, Lord Belhaven, Henry Drummond, James Campbell of Craigie, Edward Twistleton (of whom more shortly), and two ministers of the Church of Scotland—Patrick M'Farlan from Greenock and James Robertson from the county of Aberdeen. Once appointed, the serious work began. The commissioners prepared a list of some seventy questions which were printed and sent to the Ministers of every parish in Scotland.

At least some of the questions reflected the personal interests of some of the Commissioners. Royal Commissioners then, as now, often had their own barrows to push. There were at this time some 880 separate parishes in Scotland each receiving a request for information. The list starts with a request for the numbers of 'single women mothers of illegitimate children', then the numbers of 'such women relieved with their parents', and proceeds to seek information on numbers of orphans, foundlings, vagrants, able bodied women without children but relieved on account of casual failure of work, and proceeding eventually to questions such as 'is the desertion of wives and children by husbands on the increase or decrease in your parish' (#57), 'are early marriages more frequent in your parish than formerly, or the reverse' (#64) and finishing up with the loaded question at #70 'Are there any children in your

[12] Mitchison, *The Old Poor Law*, pp. 192–3; J. D. Mackie, *A History of Scotland* (Harmondsworth: Penguin, 1954), p. 335.

parish who, you have reason to believe, are suffered to grow up, either entirely destitute of religious instruction, or with a religious and moral education wholly imperfect; and if there are children left in this state of destitution, what is the number of them?' [13]

Sorting and tabulating all this information from the majority of 880 parishes and trying to get it into a more or less standardised format resulted in a Royal Commission report that makes fascinating reading.[14] The Commissioners travelled and investigated widely, talking to all strata of society and the several volumes of detail which underpinned its report contain a wealth of detail. The Queen's warrant allowed any two or more of the Commissioners to act as the Royal Commission itself and this allowed the seven men to work throughout the country in pairs or more. Occasionally, some Commissioners even took evidence alone when their 'partner' was called away by other business. They started taking evidence on 2 March 1843. They took evidence from 121 witnesses in Edinburgh, 80 in Glasgow, 24 in Greenock, 25 in Paisley, 22 in Ayr, and 15 in Kilmarnock. All of these 287 witnesses were men. By the end of May, they took advantage of the summer to travel to the more remote districts of the northern and western Highlands and Islands. The report claims that 'the witnesses examined may be considered as representing every class of society—members of Parliament, clergymen, country gentlemen, lawyers, doctors, farmers, manufacturers, tradesmen, artisans, and labourers, differing in education, feelings, habits and interests and exhibiting a great variety of opinions upon many parts of the subject.' The Commissioners also personally visited the houses of many of the paupers in one or more parishes in each district of the country to ascertain the condition of

[13] Poor Law Inquiry (Scotland). Appendix, Part VI. Containing answers to questions.

[14] Viscount Robert Melville et al, *Report from Her Majesty's Commissioners for Inquiring into the Administration and Practical Operation of the Poor Laws in Scotland*, to which is appended an 'Extract from Report by a Committee of the General Assembly on the Management of the Poor in Scotland, 1839' (Edinburgh: Her Majesty's Stationery Office, 1844).

the inhabitants and their means of subsistence. This is probably the only time that the enquiry had any benefit of the views of women, paupers or otherwise although I wonder whether most of these paupers might have been intimidated by the appearance of the gentlemen of the Commission.

The Commissioners' task of trying to deliver a balanced report was crucial. Just on the question of assessments, there was a great disparity of views. Apart from those already mentioned—Dr Alison, and *Tait's Edinburgh Magazine*—supporting compulsory assessment, there were also eminent figures like the Rev. Dr Thomas Chalmers, Professor of Divinity in the University of Edinburgh, who was about to lead the Disruption that fundamentally altered religious life in Scotland. He had managed poor relief in his Glasgow parish of St John's by voluntary contributions only and opposed any form of rating or assessment to raise funds for poor relief. Chalmers said also that abstaining from drink and other wasteful habits could do much to allow paupers to support themselves.[15]

On 2 May 1844 (significantly after the Disruption which had largely undermined the social role of the Scottish church), the Commissioners presented their report. It was not unanimous. Edward Twistleton, who had been a Poor Law Commissioner in England, submitted a dissenting report because he believed it was deficient in its recommendations for how to raise the money needed to provide poor relief, and some of *his* views were subsequently reflected in the legislation. It was then up to the Government to make of the report what it might. Nearly a year later, in March 1845, questions were being asked of the Home Secretary about progress on a response, and Sir James Graham undertook to bring soon to the House (the British House in Westminster remember) a definitive statement of the Government's intentions. This he did and introduced the Bill on 2 April 1845. It was debated in the House of Commons on 2 April and 12 June, then in Committee of the

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[15] See T. Chalmers, *Tracts on Pauperism* (Glasgow: William Collins, 1833); T. Chalmers, *On the sufficiency of the Parochial System, without a poor rate, for the Right Management of the Poor* (Glasgow: William Collins, 1841).

House on 3, 11, 14 and 17 July, and reported and finally passed with amendments on 21 July 1845 before being considered by the Lords on two days—28 and 29 July—the following week. *Hansard* runs to some 65 pages and shows there were strongly held views expressed by a number of speakers on both sides of the debate. [16] Very early in his opening remarks to the House, Duncan McNeill the Lord Advocate, put his finger on a central issue. He said that 'the quantum of relief given [to paupers] is not measured by the necessities of the pauper, but by the sum which the Kirk Session may happen to have in hand for distribution.' The £5 donated by Lochiel for the poor on his own estate shared out among the, 109 paupers in 1849 on that estate, would give each, less than a shilling.

One Irish Member wanted to know why the Government was not acting towards Ireland as it was towards Scotland. There were questions asked about lunatics and their treatment and the discussion touched on the practice of farming out lunatics, in appalling conditions, on the island of Arran. Another question was asked about whether Roman Catholic priests would be excluded from poorhouses and whether means would be found to provide for the spiritual wants of the poorer classes of the Catholic population of Scotland. Debate ranged over how long a person needed to be resident in a parish before earning the right of settlement and hence the right of support from that parish—three, five or seven years (in the end the compromise of five years was reached). Needless to say, the Highland clearances were dragged into the debate, with one Member reading into the record the report in *The Times* of the episode that found people sheltering in the graveyard behind Croick church.

Mr Loch, the MP for Wick, spoke up to defend the treatment of the people of Sutherland by that county's landowners. The names of James Loch and Patrick Sellar, well known 'villains' in the infamous Sutherland clearances were reinstated. In testimony to the Royal Commission, it had transpired that the Duke of Sutherland

[16] *Hansard* records of debates. At: http://hansard.millbanksystems.com/1845. Accessed 31 March 2014.

felt it his duty to contribute to the poor funds in each of the parishes in which he had an interest and gave each such parish the grand sum of £6 annually. There was debate over whether the same law should apply to Highlands and Lowlands and the cities, because of the differing conditions in each. Some Members wanted to put any changes back by at least a year, others railed against ANY delay. Some wanted the Bill referred to a select committee rather than debated in the House, a move resisted by the Government which wanted full transparency in all that was said and done.

The Royal Commission report had claimed that a system of publishing reports, what I refer to as 'name and shame', would be enough to make sure every parish was supporting its paupers sufficiently. One Member of the House called this 'one of the most astonishing propositions ever laid before the House … [and] ... one of the most simple and delusive imaginations that ever proceeded from so learned a body of men'. I am pleased to say that in effect the Government agreed with him. The House of Lords had, of course, the final say and that went to that old war horse, the Duke of Wellington who regretted that an 'abstract legal question should have been mixed up a little with party views'.[17]

The Act became law on 4 August 1845, almost exactly one hundred years to the day after the start of the Jacobite rising of 1745.

THE ACT

The act contained 92 clauses and the powers it provided to those authorised under it were enormous. It first established a nine-member Board of Supervision for the Relief of the Poor to be based in Edinburgh. These nine initially were the Lords Provost of Edinburgh and Glasgow, the Solicitor-General of Scotland, and the Sheriffs-Depute of the counties of Perth, Renfrew, and Ross and Cromarty, and three others. In 17 clauses, the Act dealt with a number of administrative matters concerning the functioning of the

[17]A. Wellesley, 1st Duke of Wellington, *Hansard*, 29 July 1845.

Board but it also gave the Board effective ability to enforce its Rules and operations. Later, other powers were added to form the start of modern devolved administration of Scotland.

The Act established a Parochial Board of managers of the poor in every parish in Scotland but allowed for combinations of parishes for practical reasons for better management. In the early years of operation of the Act, of the 880 parishes, however, only three were combined. The act required every parochial board to appoint a paid Inspector of the Poor and specified his duties. The funds for paying the Inspector were to be raised in the parish. Interestingly, although Parochial Boards could appoint Inspectors, only the Board of Supervision could suspend or dismiss them.

Section XXXIII gave parochial boards the power to raise funds by assessment of the property owners and others in the parish. The act deals in great detail with the assessment process and management of the funds raised, even down to stipulating how canals and railways were to be assessed, and making clergymen liable to have their stipends assessed for poor relief. Parochial Boards were required to make up rolls of persons liable for assessment, and the amounts payable, and to appoint one or more fit and qualified persons to be collector/s of the assessments. This of course set up a system of appeals by rate payers against the assessments levied, another process to be followed. The Act specifically abolished certain privileges enjoyed by members of the College of Justice and the Queen's household.

Clear instructions were provided for dealing with lunatic paupers who were to be promptly conveyed to and lodged in an asylum or establishment certified to receive them. There was to be no repetition of the scandal on Arran.

Parochial Boards were permitted to establish poor houses but were not compelled to. This was a major divergence from the English and Irish practice where the willingness to go into the workhouse was the first criterion for eligibility to receive poor relief. The Scottish practice instead was founded on the principle of out-doors relief—allowing paupers to remain in their own homes or that of relatives or friends. Parochial Boards were permitted to apply funds for the relief of the occasional poor, although this did not confer a right to demand relief by able bodied persons temporarily out of work.

EXTENSION OF AUTHORITY

The act established important new rules that assisted the poor. When a person applied for Parochial aid and was assessed as destitute, the Parish to which she or he applied was required to provide it immediately, even if there were uncertainty over which Parish was responsible. In a process which established rights for the first time, significant provision was made for simple, direct appeals against either a refusal to provide relief, or the provision of what a pauper considered inadequate relief. Earlier appeals processes had been so complicated that it had been virtually impossible for a pauper to bring an appeal to court. This new Act established channels for appeals to the sheriff of the county and to the Board of Supervision in Edinburgh. In its first five years of operation, the Board of Supervision dealt with 3,738 appeals, and in 27% of these, was able to achieve a negotiated outcome satisfactory to both the pauper concerned and the relevant Parochial Board. In many other cases, the Board of Supervision after investigation did agree with the Parochial Board's decision, but in a small number of cases, the Board of Supervision authorised a case to be taken to the Court of Appeal, providing a clear statement of reasons for that Court's guidance. This was probably the key to the effectiveness of the law. No longer could a parish respond to a need for poor relief by claiming it did not have the money needed. It had to go out and get it, and if the heritors and others in the parish did not provide the cash by voluntary assessment, then there were provisions for compulsory assessments.

Even more significantly, the Boards were required to make provision for the education of poor children who were, or whose parents were, receiving parochial relief. How all these rules were applied locally varied. Parochial Boards, for example, were required to provide for medicines, medical attendances, nutritious diet and clothing for paupers as necessary. Some but not all Parochial Boards appointed their own medical officers.

The Act was passed just in time to play a vital role in the 1846 famine. On 10 September 1846, the Board of Supervision recognised its responsibility to respond to the unfolding crisis by using the discretion contained in Section LXVIII of the law to assist the occasional poor. It directed the issue of a circular letter to parochial boards concerning 'the measures recommended if additional allowances to paupers should be necessary in consequence of the

failure of the potato crop.'[18] It followed this on 11 February 1847 with a resolution to check that in the distressed districts the local Inspectors were relieving the wants of paupers in cases of urgency and visiting them in their homes. On 1 April 1847, the Board considered the report of one of its clerks, Mr Peterkin, who had been sent to Barra and South Uist to check on the situation there and had found a total absence of anything approaching relief of the poor in terms of the act and that some paupers on Barra had starved to death.[19] The Board took immediate action to enforce the law, dealing swiftly and firmly with the agent and the factor of the sole heritor on Barra and South Uist, Colonel Gordon of Cluny. It called for copies of the Sheriff's precognitions resulting from the deaths, called for the resignation of the local Inspector of the Poor and threatened to dismiss him if he failed to resign, and ensured that Cluny was aware of the situation and the views of the Board that matters were intolerable.[20] While the men on the Board of Supervision were members of the ruling class—there was no solidarity there—they were determined to do their job as best they could. When the Central Board of Management of the Fund for the Relief of the Destitute Inhabitants of the Highlands finally withdrew its publicly subscribed relief efforts from the Highlands in the autumn of 1850, the Scottish poor law authorities had to accept

[18] NRS: HH23/1 Records of the Board of Supervision.

[19] NRS: HH23/2 Records of the Board of Supervision.

[20] NRS: HH23/2 Records of the Board of Supervision. It has been noted in Florence MacAlister, *Memoir of Sir John McNeill* (London: John Murray, 1910), p. 295 that many heritors had expended sums in providing work for those on their estates between 1846 and 1850, including £4,834:5s by Gordon of Cluny. Obviously, that expenditure on providing work had not prevented deaths from starvation. Devine claims that Gordon had, by 1848, spent nearly £8,000 on famine relief. See T. Devine, *Clanship to Crofters' War* (Manchester: Manchester University Press, 1994), p. 77. However, James Hunter's assessment of Gordon's behaviour is far less charitable and more widely based. See J. Hunter, *Last of the Free: A Millennial History of the Highlands and Islands of Scotland* (Edinburgh and London: Mainstream Publishing, 2005), pp. 276–7 and pp. 280–2.

responsibility for famine relief in the area, again exercising the 'discretion' in the legislation in an attempt to avoid any repetitions of these deaths from starvation or a repeat of the situation in Ireland.[21]

The poor-law responsibility for medical services was both new and important. The Board obviously used this authority to take the initiative to do whatever it could to minimise the consequences of cholera. There is clear evidence that, in October 1848, when the first case of cholera had reached Scotland, the Board took it upon itself to start preparations for dealing with an epidemic. This is probably the first clear evidence of the start of government medical services in Scotland. There are records of Parochial Boards like Morvern having issued instructions about such matters as cleaning up the houses of the poor, lime washing inside walls, removing dung heaps, digging drains and so on.

CONCLUSION

Close examination of the parochial boards at work contributes to our understanding of key political figures and their attitude towards social stability.[22] Those two villains of the Clearances James Loch and Patrick Sellar had another side to them. Loch, was, however you view him, a man of considerable intellectual stature and political importance. His private intervention in the act was important.[23] In the Lochaber Archives in Fort William and on the

[21] J. Hunter, *Making of the Crofting Community* (Edinburgh: Donald, 1976), p. 75.

[22] James Hunter's new book about the Sutherland clearances, *Set Adrift Upon the World* (Edinburgh: Birlinn, 2015) paints a very black picture of the characters of James Loch and Patrick Sellar, and this is the generally accepted view of these men.

[23] 'Loch, James (1780-1855), of 23 Hart St Bloomsbury, Mdx', *The History of Parliament: The House of Commons 1830-1832*. At: http://www.Historyof parliamentonline.org/volume/1820-1832/member/loch-james-1780-1855. Accessed 6 December 2017.

very first page of the minutes of the Parochial Board of Morvern is found the signature of Patrick Sellar by then owner of the Ardtornish estate, and that parochial board's first chair. Sellar is shown in that context as very proper, hard but fair. The new act had given him a different authority and he observed the requirements it made until his death in 1851.[24]

[24] Philip Gaskell, *Morvern Transformed: A Highland Parish in the Nineteenth Century* (Cambridge: Cambridge University Press, 1980 [1968]), pp. 37–9, 48, 113–4.

THE WELSH AND SCOTTISH PART IN THE MAKING OF MAGNA CARTA[1]

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Magna Carta was engrossed, sealed and issued by King John at Runnymede, between Staines and Windsor, on 15 June 1215,[2] following five days of intensive discussion and negotiation, during which many of the Articles of the Barons (which King John had accepted in principle) were extended, or re-arranged, or had their contents broken up and redistributed, while gaps in their coverage were filled.[3]

INTRODUCTION

T O put what was going on in the negotiations around Magna Carta into a context that makes sense of the role Wales and Scotland played in its creation, it is necessary briefly to consider the wider European position and the part that shifting ideas about monarchy and liberty played there. This is not simple. Most of the substantial recent works discussing the growth of intellectual ideas in the twelfth century are mainly concerned with the more abstract issues of philosophy and theology and make few direct references to legal ideas even though it is philosophy that underlies the changing

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[1] The term Britain is deliberately chosen in this article because in 1215 it was more than the future of England alone that was at stake.

[2] Well, that is the date on the charter—but some historians, never willing to accept the obvious, have argued that it was actually finalized on 19 June.

[3] The Magna Carta Project: http://magnacarta.cmp.uea.ac.uk. Accessed 31 December 2017. Just one Article (no. 13 Assizes of novel disseisin and mort d'ancestor are to be expedited, and other assizes likewise) has no equivalent in Magna Carta, but six chapters of Magna Carta (1, 14, 19, 21, 24, and from our point of view most importantly 57) have no equivalents among the Articles of the Barons.

definitions of the nature of law.[4] Reference to philosophy in the studies of Roman law and Canon law which were becoming common in most universities including Oxford and Cambridge and interacted at some levels with the secular law are equally passing[5] although they contributed to establishing the role of the papacy as the final arbiter in difficult legal issues.[6]

STATES AND THEIR JUSTIFICATION IN 1200

Conceptual ideas about government in Europe had substantially altered by 1200. In a dramatic presentation Keith Stringer describes it as the period that saw 'the birth of the modern West European state.'[7] It has to be said, however, that at that time the definition of state was not uniform across Europe. Although all areas were influenced by the newly rediscovered Roman and canon law, Aristotle and other Roman philosophers, the states of Europe were developing varying and quite different constitutional systems and alternative ways of incorporating customary practices—from the French and Spanish, where localities clung to customary laws that

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[4] For example, Marcia L. Colish, *Medieval Foundations of the Western Intellectual Tradition 400–1400* (New Haven, CT: Yale University Press, 1997), esp. pp. 160–70.

[5] James A Brundage, 'The Teaching and Study of Canon Law in the Law Schools', in Wilfred Hartmann and Kenneth Pennington (eds), *The History of Medieval Canon Law in the Classical Period 1140–1234* (Washington, DC: Catholic University of America Press, 2008), pp. 98–121.

[6] Charles Duggan, 'Decretal Collections from Gratian's *Decretum* to the *Compilationes antiquae*: the making of the new case law', in Wilfred Hartmann and Kenneth Pennington (ed.), *The History of Medieval Canon Law in the Classical Period 1140–1234* (Washington, DC: Catholic University of America Press, 2008), pp. 246–292.

[7] Keith Stringer, 'The Emergence of a Nation-State, 110–1300', in Jenny Wormald (ed.), *Scotland: A History* (Oxford: Oxford University Press, 2005), p. 38.

were eventually written down,[8] to the Holy Roman Empire with its hundreds of entities represented in the Reichstag and with a legal existence where a culture of compromise and negotiation, checks and balances governed flexible connections between the centre and strong local sub-states over which the emperor had little authority.[9]

Academic 'lawyers' in Europe were beginning to articulate the implications of these shifts in the perceptions of kingdoms. For them a king did not simply wield political power he also exercised jurisdiction as the ultimate authority for making and maintaining the law. This was based on two civil law ideas that were new to scholars in the 1100s: first, that a king should have no superior; and second, that a king had as much authority in his kingdom as the Holy Roman Emperor. The Emperor—seen as the successor of Roman emperors—was the embodiment of all authority: he was 'lord of the world.'[10] But the position of the pope was in opposition to this.

By applying these new ideas about kingship to a kingdom, the king's authority over his people was recast as jurisdiction over a territory. The seed of this idea of national sovereignty had been sown even in places as geographically remote as Scotland.[11] The relationship between the regime and the people was complex and the basis of royal authority and the relationship of ruler and vassal could differ from one place to another—whether the ruler was

[8] J. H. Elliott, 'The Cultural and Political Construction of Europe. A Europe of Composite Monarchies', *Past and Present*, Vol. 137, Part 1 (1992), pp. 48-71.

[9] In his introduction Joachim Whaley, in *Germany and the Holy Roman Empire* (Oxford: Oxford University Press, 2013), Vol. 1, shows something of the complexity here.

[10] See Peter Stein, *Roman Law in European History* (Cambridge: Cambridge University Press, 1999), Chapter 3; Manlio Bellomo, *The Common Legal Past of Europe 1000–1800*, 2nd edition, translated by Lydia G. Cochrane (Washington DC: Catholic University of America Press, 1985), Chapter 5.

[11] Dauvit Broun, 'Scottish Independence: Roots of the Thistle', *History Today*, Vol. 64, No. 3 (2014). At: http://www.historytoday.com/archive/history-today/volume-64-issue-3-march-2014. Accessed 6 December 2017.

bound to amend the state of the morals and laws of those he ruled, or whether the law as accepted was above the ruler whose God-given role was to have authority over those who did evil.

POSITION IN BRITAIN AT THE TIME OF MAGNA CARTA

These ideas have been widely adopted as contemporary historians' interpretations of the foundations of the state shifted. Alan Harding stresses the relationship of the term when applied to ruler and ruled together to ideas that relate to status, état, and so on and a much more particular sense that while society might have a fundamental sense of order—and so law—how relations between people were governed by private interests and selfish ends.[12] The major authors of books on Western legal theory, however, rarely use Irish, or Scottish legal developments in their arguments,[13] and it is difficult to be certain of the state of ideas there at the time. One cannot rely on the assertions made in the charters and letters on either side. When it came to issues such as the laws and customs of England John was as likely to claim that his actions were in conformity to them as were the barons. There was also, it is true, what John called the Law of the Exchequer but even this was presented as clearly derived from the laws and customs.[14]

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[12] Alan Harding, *Medieval Law and the Foundations of the State* (Oxford: Oxford University Press, 2002).

[13] J. M. Kelly, *A Short History of Western Legal Theory* (Oxford: Clarendon Press, 1992), does not mention Scotland or Wales at all, and Ireland only after the eighteenth century; R. C. van Caenegen, *An Historical Introduction to Private Law* (Cambridge: Cambridge University Press, 1992), pp. 40, 69, claims that Scotland and Germany had opted for learned law in the sixteenth century; Peter Stein, *Roman Law in European History,* (Cambridge: Cambridge University Press, 1999), p. 87, claims that Scottish customary law was similar to that of England and that in the sixteenth century it took up Roman law.

[14] *Dialogus De Scaccario The Course of the Exchequer* by Richard FitzNigel, ed. and trans. by the late Charles Johnson with corrections by F. E. L. Carter and D. E. Greenway (Oxford: Clarendon Press, 1983), p. 26.

What then was Britain like in 1215? What were the accepted laws and customs? Realistically, we should see it as a patchwork of small provinces, each a little distinct. While the monarch of England had certain prerogatives and privileges John, in some ways, was no different from the ordinary lords and barons in Britain.[15] He too employed marriage and treaties to advance his position. Many of the lords were too powerful for him to subdue for long: Walter de Lacy for instance.[16] His authority in the north was also problematic as the monarchs of England and Scotland fought over the act of homage for some lands.[17]

Thus, the much-vaunted central government of England with its growing bureaucracy was faced with virtually independent areas, provinces that held onto their traditional practices. Marcher Lords were given special powers to bring adjacent parts of Wales under Norman control. They fought the Welsh, absorbed towns and villages and lay down their own laws and customs. They kept these lands along the March as rights of conquest, and they were areas where 'the King's writ does not run.' A Marcher Lord could set taxes, administer justice, and build castles. The 'Law of the Marches', created a buffer zone between England and Wales in which a few favoured nobles in effect exercised unfettered sovereign powers. This was periodically disputed by the monarchs but all too often affairs elsewhere required concessions to the Marcher lords.[18]

[15] S. D. Church (ed.), *King John: New Interpretations* (Woodbridge: Boydell Press, 1999).

[16] Colin Veach, *Lordship in Four Realms: The Lacy Family, 1166–1241* (Manchester: Manchester University Press, 2014).

[17] A. A. M. Duncan, 'King John and the King of Scots', in Church (ed.), *King John: New Interpretations*, pp. 247–271.

[18] Frederick C. Suppe, *Military Institutions on the Welsh Marches: Shropshire, A.D. 1066–1300, Parts 1066–1300* (Woodbridge: Boydell Press, 1994); Brock W. Holden, *Lords of the Central Marches: English Aristocracy and Frontier Society 1087–1265* (Oxford: Oxford University Press, 2008), pp. 166–168.

The position on the borders with Scotland was not dissimilar. Other areas with considerable independence included Durham and Cornwall. It was not yet clear where England ended and Scotland began as the Scottish monarch had a claim to the northern counties of what was eventually England.

At this time, nevertheless, the English monarchs were pressing their claim to 'imperial high-kingship power over their 'Celtic' neighbours but those neighbours, influenced by developments in Europe were claiming similar ideas and resisting any overlordship. Their support for the articles the barons were presenting for incorporation in an agreement with John shows how their leaders had taken on such ideas even though neither had yet a university of their own.

For the five to six years before 1215 both Wales and Scotland had been deeply involved in a struggle with John to retain this independent status and their customary law, a struggle that sought to resist the Plantagenet aim to subject them to sovereignty and not mere overlordship. Both had sought French support for their resistance.[19] The issue at this point was not local law and customs but the final authority of the central English court over adjoining states that aspired to similar government structures and social organisation.[20] Princes or monarchs in Scotland and Wales had major claims to authority and distinctive law but their boundaries and relationship to England were not yet fixed.

[19] For the Welsh side see R. R. Davies, *Conquest, Co-existence and Change: Wales 1063–1415* (Oxford: Oxford University Press, 1987), especially pp. 128–9; for a brief account of John and Llywelyn Fawr see Kari Maund, *Welsh Kings: Warriors, Warlords and Prince*s (Stroud: The History Press, 2011), Ch. 5; for some light on the relationship between Welsh charters and Magna Carta see J. Beverley Smith, 'Magna Carta and the Charters of the Welsh Princes', *The English Historical Review*, Vol. 99, No. 391 (1984), pp. 344-362. For the Scots see Richard Oram, *Alexander II 1214–1248: King of Scots* (Edinburgh: Birlinn, 2012).

[20] For a controversial expression of this for Scotland see Patrick Wormald, 'Anglo-Saxon law and Scots law' *Scottish Historical Review*, Vol. 88 (2009), pp. 192–207.

WALES

Wales was not recognized as a state in the wider polity of Western Europe and it was subdivided into small princedoms, including Gwynedd, Powys, Ceredigion, Deheubarth, Glamorgan, Gwent and Brecheiniog, which were in constant dispute and often at open war with each other. The murder of their rulers was frequent and bloody.[21] The unity that had been achieved briefly under Hywel Da did not survive. The people may have been a *gen*s or *nation* but they were not an indivisible lordship.

Parts of Wales were under English control. The English monarchs did not want to see the Welsh rulers as kings, even sub-kings—they attempted to treat them as the equivalent of the English magnates with homage due even though their culture was very different.[22]

Welsh law (*Cyfraith Hywel*) was in theory long established and it was not dependent on princely authority as it had evolved from the people and was implemented by the people. The earliest written evidence of what was claimed to have been law by the tenth century was not written down until the twelfth to thirteenth centuries when Welsh lawbooks made by practicing lawyers appeared,[23] and some argue that this was in part the creation of a myth created by Llywelyn to bolster his position. The eight manuscripts in the Iorwerth redaction, which form a close group, are mostly in Latin and it is not clear whether the Latin is translated from the Welsh or vice versa. Imaginatively named ms A.B.C.D.E.G.K and L, they were possibly written down for the benefit of incoming continental trained lawyers and may rather reflect the law in Gwynedd during

[21] Roger Turvey, *The Welsh Princes: The Native Rulers of Wales, 1063–1283* (London and New York: Longman, 2002), pp. 1–4.

[22] Thomas Glyn Watkin, *The Legal History of Wales*, 2nd edition (Chicago, IL: University of Chicago Press, 2007).

[23] Watkin, *The Legal History of Wales*, quoting A. W. Wade-Evans, *Welsh Medieval Law* (Oxford 1909).

the reign of the two Llywelyns than long established widespread practice.[24]

Certainly, they come at a point where 'sharp breaks in customary continuity had appeared in all parts of Wales, and not merely in those areas where the Norman had secured a permanent foothold', a new territorial framework appearing all over Wales. Their purpose was to 'reconcile new usage with an older fundamental law and custom with which deviations from accepted principle were expected … to conform.'[25] Llywelyn ap Iowerth, Prince of Gwynedd, in the 1180s and 1190s had embarked on an expansion and consolidation program with the intention of creating an independent Wales through a state administrative system and the creation of offices of state. Ednyfed Fychan, his seneschal, was the founder of a dynasty of administrators, which continued into Tudor times. Nevertheless, Wales was not a unitary state even to the extent that Scotland was. Welsh resources were not adequate to support the moves towards European bureaucratic structures.[26] In Richard I's absence, some Welsh leaders had negotiated alliances with Prince John of England, since Llewelyn ap Iorwerth had begun to move against the other Welsh kingdoms. In 1200 John had in his personal right as his wife's inheritance Carmarthen, Pembroke, Glamorgan and Gwynllwg and Gower in the south and west plus the homage and fealties of the Marcher lords. By 1211 John (now king of England) had become sufficiently concerned about Llewelyn's activities to invade Wales to force Llewelyn off his throne. Llewelyn

[24] Llywelyn ap Iorwerth, *c.*1194–1240 and Llywelyn ap Gruffudd, 1246–1282), particularly Llywelyn ap Iorwerth; see Sara Elin Roberts, *Llawysgrif Pomffred: An Edition and Study of Peniarth* MS 259B (Leiden and Boston: Brill, 2010), p. 2. The Iorwerth manuscripts are not only the oldest in date but the most developed version of the laws. A revised version of Iorwerth is found in Col NLW Peniarth 30, 'Llyfr Colan'. This redaction, previously the Venedotian code, is named after Iorwerth ap Madog, the lawyer who is named as the compiler of the Test Book.

[25] T. Jones Pierce, 'Social and Historical Aspects of the Welsh Laws', *Welsh History Review* (1963), special issue, 'The Welsh Laws', pp. 33-49.

[26] Ifor W. Rowlands, 'King John and Wales', in Church (ed.), *King John: New Interpretations*, pp. 273–287.

was forced to seek terms and to give up all lands east of the River Conwy, but was able to recover them the following year in alliance with the other Welsh princes who no longer trusted John. Luckily for Llywelyn John's increasingly interventionist policy and the cruelties inflicted, notably by Robert de Vieuxpont, had driven the Welsh into the arms of Gwynedd.

They realized they risked disinheritance if the English prevailed—a sense of emergency throughout *pura Wallia* resulted in the rapid politicization of the concept of Welsh nationality in the early thirteenth century and Powys and Deheubarth came to recognize that complete independence of action no longer possible. This triggered another full-scale Welsh rebellion against King John and the Marcher Lords followed by a Franco-Welsh alliance in 1212. Llewelyn ap Iorwerth secured the political support of Pope Innocent III, and Shrewsbury fell to the Welsh in 1215. By 1215 the confederation of 1212 revived and the Welsh made a pact with the English barons swearing not to make peace with the king until they all received back the castles, lands and rights of which they had been unlawfully deprived an objective achieved in theory by Magna Carta.

Rees Davies thought John's was the reign when the English monarchy had put together the theory and the military means of subjugating Wales. Rowlands however thinks that Llywelyn after 1213 'had established an ascendancy in Wales not enjoyed by a Welsh ruler since 1060' especially by his taking in 1215 the castles in the south that belonged to the Marcher lords. This might indeed have created a Welsh state. It was, in short, a moment of crisis and one to which Magna Carta was to contribute part of the outcome.

SCOTLAND

Scotland had had centralising kings earlier on and although they had not been wholly successful, it was a recognised kingdom in Europe in the eleventh and twelfth century although one could equally see it as a number of virtually autonomous petty kingdoms that did not seriously acknowledge the authority of the central kingdom. All the Canmore kings in the twelfth century had had to re-assert their authority over outlying areas. David had 'subdued'

Moray and the isles, Galloway and Argyll but his successors had to
'subdue' them all over again. The nature of resistance to monarchs
in Scotland was more formidable than the resistance the kings of
England experienced in England because it was based on a belief
that it was justified by the traditional claims being promoted.[27]
Some of the rebels also looked to the rulers of Norway for their
source of authority. William had had to fight to exert his mastery in
the far north, where the Macwilliams and McHeths the Moray
based descendants of Lulach were still asserting their claim to the
throne, in a series of 'rebellions'. He also had to resist invasions by
the Lord of the Isles, Somerled, and his successors who were looking
to claim the kingdom of Man.[28] Another opponent was Harald
Maddadsson (c. 1134–1206) earl of Orkney and Mormaer of
Caithness a descendant of Scots kings. He also needed to move
against the Galloway lords who were looking to the English kings
for assistance.[29]

   These semi-independent if not fully independent people thus
challenged on the basis of their own inheritance. Although the
Scottish kings took armies to repress them moreover they were not
the main Canmore preoccupation. William's eyes in particular were
more turned southwards looking to make good a claim to
Northumberland and Cumberland, which was William's principal
pre-occupation. Thus, he married his illegitimate daughter Isabella
to Robert de Ros, lord of Wark on Tweed, and another illegitimate
daughter to Eustace de Vescy, who were to be the two key players
in the opposition to John. While the 1249 setting down in writing the
border laws by a group of Scottish and English knights convened for
the purpose suggests that border custom went back to time

[27] R. Andrew McDonald, *Outlaws of Medieval Scotland: Challenges to the Canmore Kings, 1058–1286* (East Linton: Tuckwell Press, 2003).

[28] R. Andrew McDonald, *The Kingdom of the Isles: Scotland's Western Seaboard c1100–c1356* (Edinburgh: Birlinn, 2011).

[29] Douglas David Roy Owen, *William the Lion, 1143–1214: Kingship and Culture* (East Linton: Tuckwell Press, 1997), pp. 153, 219.

immemorial there is no reason to believe that this enshrined the line of the borders from before that time.[30] At the same time the Lords of the Isles and Manx and the rulers of Galloway were prepared to negotiate with the king of Norway and the English kings in support of their claims.[31]

In the late twelfth century, the relationship between the king of Scots and the king of England had been set down in writing, in a document known as the Treaty of Falaise, which was concluded in December 1178 and which subordinated the Scottish to the English king.[32] Under the treaty Henry II then wielded his newly defined authority in 1186 to interfere in the succession to the lordship of Galloway. When Henry II's successor, Richard I, was crowned in September 1189 William lost no time in getting the Treaty of Falaise rescinded. Richard I was willing to agree to this in December 1189 for the considerable sum of 10,000 marks, although William did homage for the 'English' counties. William and his son Alexander had no intention of allowing the treaty to be repeated.

Scotland in 1215 was probably not a kingdom that had a firm sense of its boundaries or its Scottish identity. King David I (1124–53) addressed the men of the area as 'Francis, Anglis, Scotis, Cumbrians and Galwegians.' There were also Scandinavians; Gordon Donaldson speaks of a multi-racial and also a multi-lingual country 'French and English and Welsh, Irish and Norwegians and Flemings, as well as the official languages, French and Latin'.[33] Gaelic-speaking Buchan, Fife, Carrick and Galloway were not the only areas with different languages from the court. If one of the powerful men in Scotland had been asked about their identity, most

[30] Cynthia J. Neville, *Violence, Custom and Law The Anglo-Scottish Border Lands in the Later Middle Ages* (Edinburgh: Edinburgh University Press, 1998), pp. 5–8.

[31] Richard Oram, *Domination and Lordship: Scotland 1070–1230*, Vol. 3 (Edinburgh: Edinburgh University Press, 2013).

[32] Broun, *Scottish Independence*, see fn. 11.

[33] Gordon Donaldson, *Scotland's History, Approaches and Reflections*, ed. James Kirk (Edinburgh: Scottish Academic Press, 1995), p. 111.

with lands in England and France and perhaps Ireland might not have been able to answer. They were part of the Europeanisation of Scotland bringing in outside ideas. On the other hand, some of them had royal blood somewhere in their ancestry and saw themselves as more than that. Sommerled, for example (from whom Clan Donald comes), was descended from kings and able to challenge the Crown itself.[34]

In Scotland, the monarchs from king David I on had been developing the law –the earliest records known being the *leges inter Brettos et Scotto*s.[35] At the same time the Scottish monarchs had little authority over areas like Argyll and Galloway.

THE POSSIBILITIES IN 1215

Perhaps, had things gone differently, a system not unlike the later Holy Roman Empire might have emerged in Britain, with a weak central power with subordinate territories in control of regulating society, raising armies and the like. Such territories might have included Wales and Scotland and here Magna Carta probably played a role in the development of states with a sense of identity. It has been shown that canon law ideas and ideas from the *ius commune* are implicit in Magna Carta, and find parallels in imperial privileges.[36] It is usually thought that the archbishop of Canterbury Stephen Langton was responsible for this.[37]

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[34] Edward J. Cowan and Lizanne Henderson (ed.), *A History of Everyday Life in Medieval Scotland* (Edinburgh: Edinburgh University Press, 2011).

[35] Alice Taylor, 'Leges Scocie and the lawcodes of David I, William the Lion and Alexander II, *Scottish Historical Review*, Vol. 88 (2009), pp. 207–288; Alice Taylor, *The Shape of the State in Medieval Scotland* (Oxford: Oxford University Press, 2016), p. 123: leges inter Brettos et scottos, p. 132: promulgation of written law in late twelfth and thirteenth centuries; David M. Walker, *A Legal History of Scotland*, Vol. 1 (Edinburgh: W. Green, 1988).

[36] Richard H. Helmholz, 'Magna carta and the ius commune', *University of Chicago Law Review*, Vol. 66 (1999), pp. 297–370; Kenneth Pennington, 'Magna

The question of the justified resistance to authority was as much critical to the position of the Welsh and Scots as it was to the great English barons. About 1214 Wales and Scotland had joined in a movement by which the great Norman barons were attempting to resist attempts to subject them to unpredictable demands. In 1215 all the leading Welsh princes, the northern barons in association with Scotland and a powerful group of English barons had associated to oppose John. In May the barons publically repudiated their vassal status. On 17 May the barons seized London. Negotiations that included the Welsh and the Scots followed.[38]

Nevertheless, when John met the magnates of Britain at Runnymede[39] on 15 June 1215 none can have thought that the charter to be sealed there would be more than an episode in the struggle for control of government in Britain, a struggle that critically involved both Wales and Scotland and to a lesser extent Ireland.[40] Sir James Holt, who wrote on Magna Carta in the 1960s, a study which still remains a major account, saw the Charter and the other documents like the demands of the barons as 'complex records which bear the imprint of nearly three years of political

Carta and Fourth Lateran Council Reform in 1215', *Bulletin of the Medieval Canon Law*, Catholic University of America Law repository. At: http://scholarship.law.edu/cgi/viewcontent.cgi?article=1929&context=scholar. Accessed 16 February 2017.

[37] John W. Baldwin, 'Master Stephen Langton … the Paris Schools and Magna Carta', *English Historical Review*, Vol. 123 (2008), pp. 811–846.

[38] Nicholas Vincent, *Magna Carta: A Very Short Introduction* (Oxford: Oxford University Press, 2012).

[39] The Barons were Eustace de Vesci; Robert de Ros; Richard de Percy; William de Mowbray; Roger de Montbegon; John FitzRobert; William de Forz; John de Lacy; Saer de Quincy, Earl of Winchester; Richard de Montfichet; William de Huntingfield; Roger Bigod and Hugh Bigod; Robert de Vere; Geoffrey de Mandeville; Henry de Bohun; Richard de Clare and Gilbert de Clare; William D'Albini; Robert Fitzwalter, William Hardel; William de Lanvallei; William Malet; William Marshall II; Geoffrey de Say.

[40] See David Carpenter, *The Struggle for Mastery: Britain 1066–1284* (Harmondsworth: Penguin, 2003).

crisis and protracted, discontinuous negotiation' but not as potentially durable. [41] The king's supporters in the vicious develop-ments immediately after it was sealed saw it as 'a disturbance, wilfully engineered, contrary to law, and destructive of the interests and peace of the realm.' The papal bull of annulment said it was 'exacted by force, shameful, demeaning, illegal, unjust and derogatory to the king's rights and dignity.'[42] We should perhaps see this in context of the Fourth Lateran Council.

Only one thing set England's Magna Carta apart from the rest of the European charters of the time: its survival in the form in which it was re-issued in 1225 and its re-issuing periodically throughout the century at times of crisis.[43] Neither the 1217 re-issue nor these later ones included the Scottish and Welsh clauses and so its relevance to their history has been overlooked.

The original charter was probably seen principally as a peace treaty and it was one that the monarch could more easily than most repudiate. The contents of this first version of the Charter included requirements for Wales and Scotland. At a further session called for 16 July at Oxford some of the outstanding issues were discussed but many were not resolved. The later re-issues including 1217 do not, as the relationships with the two Celtic kingdoms had changed. This is not surprising as the negotiators, on both sides suspicious and mistrustful, were focused on the immediate.

Nicholas Vincent suggests that the Scottish and Irish clauses in the 1215 Charter were John's attempts to separate them from the

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[41] J. C. Holt, *Magna Carta*, 2nd edition (Cambridge: Cambridge University Press, 1992).

[42] Holt, *Magna Carta*, p. 374.

[43] 1225, 1237, 1253, and 1265 as the need to levy new taxes arose. Henry's successor, King Edward I (reigned 1272–1307), reissued Magna Carta and the Charter of the Forest in his Confirmation of the Charters (1297) to gain funds to support his war in Flanders.

English, but this seems unlikely.[44] The demands of the two countries were already included in the articles of the Barons. Article 46 of the articles of the barons read:

> Let the king deal with the king of Scots for the returning of hostages, and over his liberties and right, in accordance with the terms he comes to with the barons of England, unless it should be otherwise under the charters which the king has, by judgment of the archbishop and such others as he wishes to convoke to act with him.

By Article 59 in the Charter John promised slightly differently:

> we shall deal with Alexander concerning his sisters, the return of hostages and his liberties and rights in the same manner as we will deal with our other barons of England, unless it ought to be otherwise because of the charters which we have from William his father previous King of Scots and this shall be determined by the judgment of his peers in our court.[45]

Holt suggested that this gave Alexander II an opening to renew his dynasty's claim to the three border shires. Certainly, after the twenty five adjudged them to him the northern baronage paid homage to him.[46]

Articles 44 and 45 of the Barons were for Wales—effectively what was included in the Charter as articles 56 and 57:

> 56 If we have deprived or dispossessed any Welshmen of land, liberties, or anything else in England or in Wales, without the

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[44] See both Nicholas Vincent, *Magna Carta: A Very Short Introduction* (Oxford: Oxford University Press, 2012); and N. C. Vincent, *Magna Carta: The Foundation of Freedom 1215–2015* (London: Third Millennium Publishing, 2015).

[45] Nos faciemus Alexandro regi Scottorum de sororibus suis, et obsidibus reddendis, et libertatibus suis, et jure suo, secundum formam in qua faciemus aliis baronibus nostris Anglie, nisi aliter esse debeat per cartas quas habemus de Willelmo patre ipsius, quondam rege Scottorum; et hoc erit per judicium parium suorum in curia nostra.

[46] Holt, *Magna Carta*, p. 365.

lawful judgment of their equals, these are at once to be returned to them. If dispute on this point arises it shall be determined in the Marches by the judgment of equals. English law shall apply to holdings of land in England, Welsh law to those in Wales, and the law of the Marches to those in the Marches. The Welsh shall treat us and ours in the same way.[47]

(57) In cases where a Welshman was deprived or dispossessed of anything, without the lawful judgment of his equals, by our father King Henry or our brother King Richard, and it remains in our hands or is held by others whom we should warrant, we shall have respite for the period commonly allowed to Crusaders, unless a lawsuit had been begun, or an enquiry had been made at our order, before we took the Cross as a Crusader. But on our return from the Crusade, or if we abandon it, we will at once do full justice according to the laws of Wales and the said regions.[48]

(58) We will at once return the son of Llywelyn, and all Welsh hostages, and the charters delivered to us as security for the peace.[49]

[47] In the original, p. 56: Si nos disseisivimus vel elongavimus Walenses de terris vel libertatibus vel rebus aliis, sine legali judicio parium suorum, in Anglia vel in Wallia, eis statim reddantur; et si contencio super hoc orta fuerit, tunc inde fiat in Marchia per judicium parium suorum; de tenementis Anglie secundum legem Anglie; de tenementis Wallie secundum legem Wallie; de tenementis Marchie secundum legem Marchie. Idem facient Walenses nobis et nostris.

[48] De omnibus autem illis de quibus aliquis Walensium disseisitus fuerit vel elongatus, sine legali judicio parium suorum, per Henricum regem patrem nostrum vel Ricardum regem fratrem nostrum, que nos in manu nostra habemus, vel que alii tenent que nos oporteat warantizare, respectum habebimus usque ad communem terminum crucesignatorum, illis exceptis de quibus placitum motum fuit vel inquisicio facta per preceptum nostrum ante suscepcionem crucis nostre; cum autem redierimus, vel si forte remanserimus a peregrinatione nostra, statim eis inde plenam justitiam exhibebimus, secundum leges Walensium et partes predictas.

[49] Nos reddemus filium Lewelini statim, et omnes obsides de Wallia, et cartas que nobis liberate fuerunt in securitate pacis.

The inclusion of Welsh and Scottish demands in the negotiations is not surprising. Both Llywelyn Fawr for Wales and Alexander II of Scotland had their representatives at Runnymede and their interest in the outcome was considerable. Alexander's two brothers-in-law (husbands to two of his illegitimate sisters), Robert de Ros and Eustace de Vescy, were key players in the 'English' baronial opposition. On the other side, Alan of Galloway was one of John's advisors.

After agreeing to the charter and arranging for its circulation, however, John had no intention of adhering to it and was already appealing to the pope to disallow it. As a result, it proved necessary for Wales and Scotland to realize their claims by violence. Llewelyn was therefore presented with a further opportunity to enhance his position as a national leader. In December 1215 he led an army, which included all the lesser princes of Wales, to capture the castles of Carmarthen, Kidwelly, Llanstephan, Cardigan and Cilgerran. He also successfully insisted on the consecration of Welshmen to two vacant sees that year. Gwenwynwyn's revolt in 1216 allowed him to reinforce his position. By the Agreement at Worcester in 1218 Llywelyn did homage and fealty and he was seen as the English king's deputy thereafter at least in the north, although Hubert de Burgh was extending his authority in the south.[50]

At the same time Alexander II of Scotland advanced into England and a 'baronial judgement' (the 25 named to enforce Magna Carta) probably in September awarded the lands of Northumberland, Cumberland and Westmorland to him. At the siege of Norham, probably on 22 October 1215, the barons of Northumberland did him homage.[51] To the Scottish kings the clauses in Magna Carta were part of their assertion of independence and ambition to move the borders southwards. At first it seemed to have succeeded but in retaliation for Alexander's role John invaded

[50] R. F. Walker, 'Hubert de Burgh and Wales 1218–1232' *English Historical Review*, Vol. 87 (1972), pp. 465–494.

[51] Duncan, 'King John and the King of Scots', p. 267.

Scotland in January 1216 and burned Berwick, Roxburgh, Dunbar and Haddington. Later when the dauphin Louis's arrival led to Alexander again invading England, agreeing with the marriages of his sisters, and a treaty with the barons and the city of London. He accepted Louis as king of England but all this fell apart with John's death. Technically, once the pope's veto had arrived until it was re-issued by Henry III's government, in altered form and without the Scottish and Welsh clauses in 1217 the charter had no authority and without them what it had secured was again problematic.

LATER DEVELOPMENTS

After Magna Carta, then, Llywelyn was able to unite major parts of Wales as effectively independent, even if under a distant English overlordship. There was no need for further inclusion in later versions of Magna Carta as the specific problems had been resolved. His newly created chancellor and chancery clerks used great and privy Seals to authenticate Llywelyn's acts and taxation was systemised through the position of treasurer. Lawyers developed a common law code from the complex customs and laws that prevailed in the new areas now under the control of the Prince of Gwynedd. Revolutionizing traditional relationships demanding homage, hostages, oaths, pledges charters and chirographs and his supremacy bolstered by patronage of ecclesiastical foundations in a way similar to developments in Europe.

Llywelyn's problem was that although the authority of Gwynedd was concentrated in the prince and his officers of state he had too few resources to develop the political institutions that were becoming standard in other states. The circumstances of small government and small wealth limited the patronage system, which the princes could accommodate, and only small clientage networks, which were by nature semi-permanent, evolved[52]. While integration

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[52] James Given, *State and Society in Medieval Europe Gwynedd and Languedoc under Outside Rule* (Ithaca, NY: Cornell University Press, 1990), pp. 27–35.

of social and political spheres had begun and the new concept of a landed gentry class arose Welsh land law complicated the creation of a new patronage system. The dynastic problems that Welsh inheritance law created also created problems where a unified Welsh state was envisaged.

Throughout his life, Llywelyn Fawr remained politically and militarily powerful enough to side step the oath of allegiance to King John as overall Prince of Wales but his son David was not so powerful. The English made considerable inroads into Welsh territory during David's reign and although unsettled conditions in England and on the Marches brought unprecedented land acquisition and political power for Wales, power consolidated in the 1267 Treaty of Montgomery signed between Llywelyn and Henry III of England, it was not to last Edward I's ambitions.[53] Seventy years of virtual independence after Magna Carta, however, probably ensured that Welsh law remained distinct for the next seven centuries. Welsh law, although essentially the customs of the people, required royal authority to be valid and only 'precede' the law if so confirmed. The authority and structures inherent within English law were concepts with which Welsh people were very unfamiliar and the period ensured that English law was not imposed in crucial matters such as property rights. [54]

SCOTLAND

What Magna Carta meant to Scotland was rather different, although with John's death and a minority in England the worst immediate threat was removed. In any case, there was no need to

[53] On this topic Sally Parkin's doctoral thesis *Women, Witchcraft and the Law in Early Modern Wales (1536–1736): A Continuation of Customary Practice* (University of New England, 2002) is an invaluable resource. My thanks are due to Sally for her friendship and scholarly assistance over many years.

[54] Thomas Glyn Watkin, *The Legal History of Wales*, 2nd ed. (Chicago, IL: University of Chicago Press, 2007), Chapter 2.

repeat the Scottish clauses in the later versions as in Wales the specific issues were resolved. The Carta as renewed however did not acknowledge Scotland's independence. During Henry III's reign Alexander had to agree that the northern English counties would be held by homage and the Anglo-Scottish border was established nearer what it is today.[55] The relationship between the king of Scots and the king of England remained ambiguous, neither side before Edward I came to the throne pressing the issue of overlordship too hard.

Nevertheless, Magna Carta simply by providing a period in which the monarchy could strengthen its European position helped the Scottish monarchs. Richard Oram says the thirteenth century was 'a period of decisive change during which a new self-confidence in the nature and identity of Scottish kingship became apparent and relationships with external powers were redefined',[56] and current scholarship sees the institution of important new relationships between Scotland and Europe in the thirteenth century as significant for Scotland's domestic development and her position in Britain.

The first sign of change was in 1222 when Alexander II began to add his regnal year to the dating clause at the end of his charters. He had also recently discussed the possibility of a coronation with a papal legate visiting Scotland. A more formal attempt to gain the pope's approval for this in 1233 was blocked by Henry III, who, not unnaturally, perceived the suggestion as a threat to the king of England's dominant position. While a coronation oath as was common in England and on the continent wherein the king

[55] Sybil Jack, 'Margins or Heartlands: Nationality on the Borders of England and Scotland', in Pamela O'Neill (ed.), *Nation and Federation in the Celtic World* (Sydney: Sydney Series in Celtic Studies, 2003), pp. 35–51; Sybil Jack, 'The 'Debatable' Lands, Terra Nullius and Natural Law in The Sixteenth Century' *Northern History*, Vol. XLI, No. 2 (2004), pp. 289–300.

[56] Oram, *Alexander II,* 'Introduction', pp. 1–47.

undertook to uphold peace and justice, the coronation ritual did not require this.[57]

In the continuing confrontation over relations between the kings, between the English claim that homage was owed for Scotland and not just for the king of Scots' lands in England, and the Scottish assertion that the king of Scots was fully a king and therefore of equal standing with his English counterpart the Scots were able to strengthen their position. In practice, this continued to be tempered by political common sense. For example, in 1237, when Alexander II signed the Treaty of York formally renouncing all claims to northern England, which he had inherited from his father William, he did not swear in person to keep the terms of the treaty but gave his oath by proxy, out of respect of his royal dignity.[58]

Scottish law was already more like English law and much influenced by European ideas. Walker thinks that from 1100 English law was the major external influence on the law of Scotland 'subject to qualifications in respect of the northern isles, the western isles and western parts of the mainland and Galloway'.[59] There is scant evidence of the law of the Picts and the Britons (although that may have been similar to the Welsh laws of Hywel Dda) and the Celtic law may have been similar to the early Irish where there were little formal law courts. Much may have been absorbed into what became the mainstream of Scots law although in the Lordship of the Isles Celtic law continued a separate existence until the kingdom fell. But while the Scottish kings borrowed from English practice-such things as writs (brieves) and the assize, and a formal structure of courts emerged the men at the time recognised that it was distinct both from English and Continental practice.[60]

[57] Walker, 'Hubert de Burgh and Wales 1218–1232', p. 135.

[58] Broun, *Scottish Independence*, see fn. 11.

[59] David M. Walker, *A Legal History of Scotland*, Vol. II (Edinburgh: W. Green, 1990), p. 12.

[60] Michael Lynch (ed.), *The Oxford Companion to Scottish History* (Oxford: Oxford University Press, 2001), pp. 381–383.

CONCLUSION: WHAT WAS THE IMPORTANCE OF MAGNA CARTA FOR THE FUTURE OF WALES AND SCOTLAND?

How important was their inclusion in the first Magna Carta to the survival of a separate Welsh and Scottish nation and of their distinct customary laws? Sir James Holt argued that the Magna Carta was, in its time, neither unique nor successful. This however does not mean that it was not important. Many of the broad concepts, such as judgment by peers and protection against arbitrary disseisin (seizure of property) were hot topics all over Europe in the thirteenth century. Similar charters were issued in Germany, Sicily and France in the thirteenth and early fourteenth centuries. This was law-making—and lawmaking was 'the working together of the edicts of rulers and the customs of the people'.[61] Although later versions of Magna Carta no longer specifically referred to Welsh and Scottish affairs their role was not wholly forgotten.

Law was part of the ongoing argument amongst the socially powerful which was going on in Wales and Scotland as well. Magna Carta may or may not have been directly related to the growth of the English common law but 'a number of provisions in the document refer favourably to developments in the common law and its court system or regulate certain common law procedures'.[62] Paul Brand says it seems 'a codification and reaffirmation of existing rules and principles'[63] and this made it important not only to England's ability to resist the continent common law based on the revival of Roman law, but also to the Welsh and Scottish ability to retain considerable parts of their original customary law since they had been recognized as existing in 1215. That some of the clauses

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[61] Alan Harding, *Medieval Law and the Foundations of the State* (Oxford: Oxford University Press, 2002), p. 191.

[62] Katherine Fischer Drew, *Magna Carta: The Greenwood Guides to Historic Events of the Medieval World* (Westport, CT: Greenwood Press, 2004), pp. 43–45.

[63] Paul Brand, *The Making of the Common Law* (London: Hambledon Press, 1992), p. 447.

relate back to Henry I coronation oath gave them further symbolism of custom and tradition. Magna Carta was not directly related to the development of Welsh or Scottish law but the stress on maintaining long established customs may have helped prevent the wholesale imposition of English law. That common law did not wholly replace Welsh or Scottish law, although it was taken to Ireland where it became the basis of the present system, is probably partly due to the struggle over Magna Carta. Paul Brand thinks that the Irish position was settled in 1210 when John issued a charter now lost, but which was read to all the assembled magnates in 1228, with the consent of the magnates of Ireland that the laws and customs of England would be observed there.[64] In Wales and Scotland no such event ever occurred and such absorption of English common law practices as took place came about in a more pragmatic manner.

[64] Brand, *The Making of the Common Law*, Chapter 19.

MACQUARIE THE PROJECT MANAGER

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THIS article aims to throw some light on Lachlan Macquarie from a new angle. While the term 'Macquarie, the Builder' has a familiar ring to it, I want to talk about 'Macquarie, the Project Manager'. There have been several recent biographies of Macquarie, however most have ignored the details of his practical management of the estate.[1]

It became apparent that Macquarie's asset management had been largely neglected while I was researching the architecture of the period for the late Caroline Simpson,[2] research which was attempting to assess Macquarie's motivation in his vast upgrade of the Parramatta Government House and its Domain, and in doing so, gain insights into his character and administration. Macquarie's buildings have been greatly admired, and studied from an architectural perspective, but the way he went about his building program; the sophistication of its organization and the methodologies employed have been overlooked.

Among Macquarie's initial concerns on arrival in January 1810, was the need to obtain base data on the state of the colony. Infrastructure had been neglected since the Rum Rebellion in January 1808, from when there was effectively no lawful government that could authorize works on the public account. A detailed empirical analysis of the accounts of Richard Rouse,[3] who was the

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[1] For example, Harry Dillon and Peter Butler, *Macquarie: From Colony to Country* (Melbourne: Random House Australia, 2010).

[2] Sue Rosen, *Government House, Parramatta 1788–2000: a History of the Governors, their Home and its Domain, Parramatta Park* (Sydney: Caroline Simpson, 2003).

[3] Marjorie Lenehan, 'Rouse, Richard (1774–1852)', *Australian Dictionary of Biography* (Canberra: Australian National University / National Centre of Biography, 1967). At: http://adb.anu.edu.au/biography/rouse-richard-2612/ text3601. Accessed 13 December 2017.

Superintendent of the Parramatta Lumber Yard from 1805 until 1821, illuminated this aspect of Macquarie's governorship.
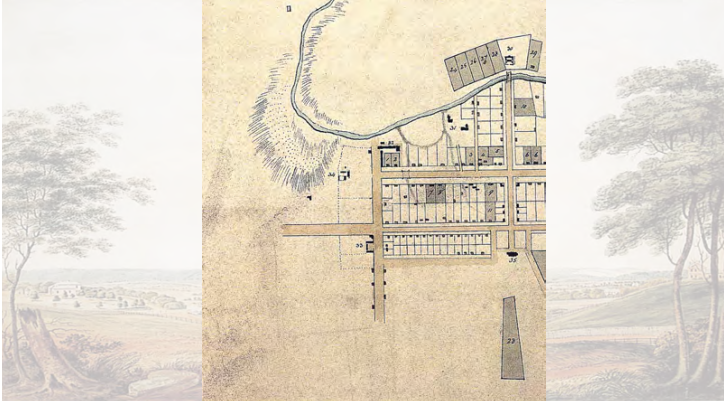
Figure 1

This extract from an 1804 plan by Surveyor George Evans shows the location off the Lumber Yard, down the hill from the Parramatta Government House. The streets in the area were later reconfigured and part absorbed into the Domain. (National Archives, Kew Colonial Office 700).

The Lumber Yard was the nineteenth century equivalent of the Department of Public Works. It was located in the Domain, just down the hill from Government House.

Figure 2

A detailed analysis of the accounts line by line tabulating the allocation of labour, skilled trades and materials against work sites in Parramatta, enabled priorities to be identified and also to sort out the sequence of development at Government House and the Domain. They also reveal Macquarie's priorities, concern for the colony and refute the claim that Macquarie was self-indulgent and self-aggrandizing in the works he undertook at the Parramatta Government House.

Figure 3

Figures 2 and 3 show extracts from the January 1810 survey showing the recommended works for a number of public buildings in Parramatta. It was from this survey that priorities were determined for Macquarie's public works program. [National Archives, Kew Colonial Office Port Jackson Despatches 201/53, pp. 127–128].

Known, colloquially, as the 'Rouse Returns', the accounts embed the story of local public works construction, and provide real insights into the public works program as a whole. They are exemplars of modern economic rationalist accountability, and they use a language and methodology peculiar to the accounting genre, with labour and materials charged against specific projects. It was possible to draw out entries concerning particular places for both labour and materials to conceptualize the construction process and the approach to public works.

Figure 4

This extract from the Rouse Returns dated April 1810 shows the dense detail of the returns and indicates that there were only 34 men available for public works at Parramatta. [ML: Richard Rouse, Returns of labour of the Parramatta Lumber Yard, 1803–1821, FM4/2119 and A2086].

All major public buildings in Parramatta, for example the hospital and barracks, were constructed with an accompanying suite of outbuildings and included landscape elements such as paving, and levelling with gravel and fencing.

One of Macquarie's earliest instructions was to order Rouse to undertake a survey of public buildings. What you can see in figure 3 is an extract showing the Parramatta survey, found in Colonial Office records in Britain under Port Jackson Despatches, 1810. It lists all the public buildings in Parramatta and their condition, for example the Gaol was in a good state, the hospital in an indifferent state, and the Court House irreparable. It then lists required works and their costs.

Major works required at Government House included: [4] 1) re-shingling; 2) northern end to be taken down and rebuilt; 3) and a

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[4] National Archives Kew Colonial Office 201/53, Port Jackson Despatches, p. 128.

new stair case (£56). The survey did not assess the coach house and stables as worth repairing.

Macquarie later said, when required to defend the work on Government House, that the house was in danger of falling, and the Kitchen in fact fell to the ground and the stair was extremely dangerous, with 'many persons having got severe falls on it. ...' The Stables were so close to ruin that a horse could not be put into them.[5]

He was universally hampered in rectifying the situation as the number of convicts transported had declined since 1803 due to the Napoleonic Wars, which interrupted shipping. Until post 1815 and their cessation, there was a shortage of both skilled and unskilled labour as convicts completed their sentences and were not replaced by fresh transports.

Responding to the situation, Macquarie ordered a programme of essential repairs to keep buildings standing and functional. The sequence of resource allocation indicates that the work reflected the needs identified in the 1810 survey, and that structures were repaired until, if necessary, entirely new buildings could be constructed. The key factor, in juggling essential maintenance against the need for entirely new structures, was a work force capable of undertaking it. The records make it clear that skilled labourers were in short supply.

In the first half of 1811, there were less than forty labourers inclusive of only two or three carpenters, smiths, two plasterers and no bricklayers or masons. Reflecting the labour situation, the Parramatta Court House, pessimistically described in the 1810 survey as irreparable, was under repair and in May 1811 work commenced on the female factory, also identified as requiring extensive repairs and modifications. Later in the year, the provision store was tackled. As that neared completion, work on the wharf commenced.

[5] Mitchell Library NSW: Macquarie to Bigge, 18 January 1821, BT Box 26, p. 5733.

By mid 1812, repair to the wharf (commenced in August 1811) had been completed and the focus was on repairs to the military barracks. Labourers had increased to almost fifty men in the second half of 1811 and there were by then up to five carpenters. All the artisans associated with these projects were based in the Domain.

When bricklayers arrived in December 1812, repairs on the hospital were undertaken, and the brickies were subsequently engaged at the factory, the military barracks and elsewhere, for short periods indicative of repair and modification work. The process of work at the Government House stables typifies activity at numerous Parramatta sites; minor repairs were undertaken in November 1811, May, October and November 1812, and April 1813; but they were not ultimately rebuilt until 1817. It was in March 1813, three years after Macquarie's arrival in the colony, that extensive repair work commenced at Government House.

In summary, at Parramatta the priorities for building works in the 1811–1814 period were, in order, the female factory and provision store followed by the wharf. When the Rouse Returns resume in 1817 the major building priorities in order were the new hospital, new barracks, new factory, the church tower, prisoner's barracks and new Lumber Yard.[6]

The pattern of works under Macquarie, beyond the 'repair' stage was for two major construction projects, two road and bridge projects, and a number of miscellaneous undertakings. Project management was sophisticated, as the managers attempted to make the best use of available workers. The pattern that is evident post 1817 is likely to have developed over the period 1815 to 1817 where records have not survived. The first to go onto a site were the bricklayers, followed by carpenters, roofers, glaziers, plasterers and painters. On completion of the work, they transferred to a second major project.

Another feature of the projects was the recycling of materials. All sorts of materials, including bricks and iron, as well as entire

[6] ML: Bigge Appendix, Evidence of Richard Rouse. BT Box 1, 27 January 1821, p. 334.

buildings were recycled. When the Government brewery in the Governor's Domain (now Parramatta Park) was dismantled in 1811, the associated granary identified in the 1810 survey as being in a 'good state', was re-erected at the female factory. One of many examples of re-use was the use of the hinges from the brewery, which were put on doors at the provision store. In March 1813 when the new store was completed, the old store originally constructed in 1790 was demolished. The bricks were re-used in the construction of a Gardener's house in the Domain. The re-use of these materials has helped confuse the dating of buildings in the so-called 'Dairy Precinct' of Parramatta Park. It is actually the site of Australia's first brewery, established by Governor King in 1804. In 1813 the former Domain malt kiln (identified in 1810 as being in good condition) was converted to a house for the Government Gardener. It is still extant in the Domain today, unfortunately identified as the dairy cottage.

A chief source of grievance toward Macquarie by free settlers was that skilled convict labour was rarely available to them because of the administration's retention of artisans in public employment. Macquarie's use of the skilled workforce was a key factor in the complaints made about his administration that ultimately resulted in the Bigge Enquiry and Macquarie's recall. Certainly, Commissioner Bigge agreed with Macquarie's detractors, who were critical of his retention of the majority of skilled convict arrivals in government service for as long as possible. While the aggregation of statistics for the period can be deceptive, Bigge noted in his *Report on the State of the Colony* that Macquarie was reluctant to disperse the artisans and that of 11,767 male convicts who had arrived in New South Wales between 1st January 1814 and 29 December 1820, some 4,587 were taken by government; 1,587 of those were mechanics, the most skilled and three thousand were labourers.[7]

Macquarie's policy of keeping skilled mechanics together rather than dispersing them made a lot of sense from the government's

[7] The Bigge Report and Evidence can now be viewed online on the State Library of New South Wales website. The data was published by John Ritchie in 1971 and has been extensively used by Australian historians of the period.

viewpoint: large numbers of convicts and an increasing number of free settlers required more public infrastructure. The demands of the free settlers were self-aggrandising. A large skilled labour force meant that new works rather than repairs could be undertaken. Nevertheless, Bigge recommended otherwise. The clash was one of public versus private interests and the control of a skilled workforce in a rapidly developing private and public economy.

Macquarie, did not undertake even minor repairs to the Parramatta Government House until January 1811 when a plasterer made minor repairs to the kitchen. It was not until March 1813 that more extensive repairs were commenced. From late 1813, the focus of construction in the Domain was on the second gardener's house and as that drew to a conclusion, work began in earnest on Government House. With almost 3,000 feet of fencing specified in the 1810 survey, fencing was an ongoing activity which occupied not only carpenters, but the smiths who repaired tools, and made nails and hinges etc. for the gates, and the sawyers who prepared timber.

Less than six months after Lieutenant John Watts' appointment to Macquarie as Aide-de-Camp, in June 1814 plans for major work began to be implemented. Watts had served in the British Army in the West Indies before his posting to Australia and prior to that had worked for the Dublin architect, Griffin.[8] Watts has been credited with the design of the government houses at both Parramatta and Tasmania. However, there are a series of plans of the Parramatta Government House and outbuildings in the Public Records Office that link these buildings to architect Francis Greenway.[9] Greenway, a convict, transported for fraud, arrived in the colony in early 1814.

[8] Helen Proudfoot, *Old Government House the Building and its Landscape* (Sydney: The State Planning Authority of New South Wales and Angus and Robertson, 1971), p. 30; Morton Herman, *The Early Australian Architects and Their Work* (Sydney: Angus and Robertson, 1954), p. 86.

[9] National archives, Kew, Colonial Office, Port Jackson Despatches, 201/133, MFQ 236(12).

He was introduced to Macquarie by Surgeon John Harris and had been employed by Harris to extend *Ultimo*, his Sydney residence.[10]

The design for the Government House involved the doubling of Hunter's two-storey house and the addition of two single storey wings. The addition to the central section contained the staircase and the front entrance was enhanced by a fanlight and a portico designed by Greenway. The roof became 'M' shaped. The single-storey, hipped-roof wings were linked by corridors or lobbies.[11]

Finally, after some 22 months of works, Macquarie noted on 2 October 1816, that

> The whole of the additions and repairs, some time since ordered to be made to the Government House, Garden and Grounds at Parramatta, being now completed to our satisfaction, we have resolved on passing a great part of our time here in future, especially during the Winter and Spring months.[12]

On 18 November Macquarie arrived at Parramatta intending to take up full-time residence, while Government House at Sydney, which was in a poor state, was under repair. After settling into the house, Macquarie set about landscaping the grounds and erecting outbuildings. Stables were constructed under Greenway's supervision.[13] With the additions, Government House, Parramatta had again become recognised as one of the colony's most distinguished buildings.[14] While construction activity may have slowed, in 1817

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[10] Sue Rosen, *Australia's Oldest House: Surgeon John Harris and Experiment Farm Cottage* (Ultimo: Halstead Press, 2010), pp. 52–53.

[11] Proudfoot, *Old Government House the Building and its Landscape*, p. 32.

[12] ML: Macquarie's Diary. 2 October 1816, A773.

[13] NLA CO 201/133, 'List of Works undertaken, now in progress or completed in NSW and Van Diemen's Land Since February 1810'. Reel 120; Government and General Order July 5 1817; M.L.: The Rouse Returns, A2086.

[14] *A Description of Sydney, Parramatta, Newcastle, &c. Settlements in New South Wales with some account of the manners and employment of the convicts in a letter from John Slater to his wife in Nottingham published for the benefit of his wife and four children* (Nottingham: Sutton & Son, Bridlesmith Gate, 1819), p. 5.

Macquarie was not living in an isolated pastoral idyll. In August, while the plasterer worked on the stable, six labourers worked in the garden and another thirty-one were in the Domain. Macquarie, at breakfast, was likely to look across at a busy scene of activity with people passing on their way to work or in their employment. It is not surprising that trespassing was a problem and privacy difficult to achieve.[15] It was a working estate at which raw materials—such as stone, slate and clay were extracted for use on public infrastructure in Parramatta. Charcoal was burnt for use by the Lumber Yard smiths and bricks were moulded and fired.

A deposit of slate discovered in April 1788 on the first exploratory trip into the area, was being extracted for use in road works and on paths. In April 1818, some dozen men were employed digging slate for the Sydney Road, and by the end of year, paths in the Domain were formed using this material. In the Domain, construction of the Dam to supply water to Parramatta had also begun and work on the Domain Bridge commenced in November and four bricklayers commenced work on the Pigeon House. A town cart was continually engaged in drawing wood and water to Government House and dung to the garden. By early December, the bricklayers employed on the pigeon house had been replaced by four carpenters and two plasterers, and work on the bridge had progressed sufficiently for it to be painted. Stone was being quarried for the Dam, where six members of the Town Gang and twelve other labourers were occupied. More gates for the Domain were being made. Three carts were busy drawing the slate and gravel, taking loam and lime to the pigeon house. A timber carriage was drawing logs to the dam.

During 1819, the Domain remained a busy workplace, usually, at least a 20 strong Town Gang was employed in the Domain on such tasks as infilling ditches, getting stone and gravel or removing earth. The construction of gates and fencing, including a new stone wall, were underway. A dwarf wall had been constructed in front of the

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[15] SRNSW Col. Sec., CGS 897, Main Series of Letters Received, 1788–1826, 4/1744, p. 338.

Government Domain.[16] Invalids were pulling cotton trees that had become a pest—a legacy of the agricultural experimentation, practiced in the Domain from its earliest days. The scene was being set for the house, where the Macquaries were now spending a considerable part of their time.

In fact, Government House and its Domain at Parramatta rather than being an isolated retreat, was the very center of public works during Macquarie's governorship. At times, and for considerable periods, for example across 1819, there were never less than 50, and up to 90 men employed there and the sight and sound of them as they moved about their tasks was unavoidable. Other workers such as the Government House house-keeper, laundress, and stable hands further added to the numbers.

The Lumber Yard was situated only a short walk down the hill from Government House, in the Domain, near present day Pitt Street, between Hunter and Macquarie Streets. Aside from Government employees, prior to 1820 there were an unknown number of land owners whose properties were absorbed into the core of the Domain, that core remains today as Parramatta Park.

In addition to George Salter, an early resident whose house was located in the maltings/garden area from late 1796, there was, for example, George Howell who operated a mill on the Domain Creek from around 1814 to 1820, George lived in the Domain with his large family, employees and servants (George had some 9 children by 1822).[17] Others who lived in the Domain in the Macquarie period were the government gardeners and after 1817 the dairyman, stockmen and shepherds.[18]

[16] ML: Bigge Report Appendix, BT Box 1, p. 17.

[17] SRNSW: Col. Sec., CGS 905, Main Series of Letters Received, 1826–1982, 2/7884, Letters Re: Land, Howell 18 March 1820.

[18] SRNSW: Col. Sec., CGS 898, Special Bundles, 1794–1825, 4/1819, Coroner's Inquests 1809–1822, p. 273.

CONCLUSION

From the analysis of the Rouse Return it can clearly be demonstrated that Macquarie was not setting himself up as some sort of colonial laird, as portrayed by his enemies, who had their eye on the skilled workforce that Macquarie so carefully fostered and put to public use. He was a master planner, project manager and strategist in very difficult circumstances.

As a centre of agricultural activity and experimentation, since its inception in 1789, and with many convicts at some time having worked in the Domain, Parramatta residents were familiar with its extensive grounds and this remained the case during Macquarie's governorship. Government House Parramatta and its Domain, under Macquarie was a working estate, not an isolated, exclusive country retreat. It was the hub of his public works program.

Table 5.1 Public works undertaken from Parramatta lumber yard excluding Government House and the Domain, 1811–1817

Figure 5

This table drawn from the minute of the Rouse Returns for the period 1811–1817 shows the pattern of works in the period, with minor works and repairs predominating and reflecting the priorities of the 1810 survey. [Rosen, *Government House*, pp. 64–5].
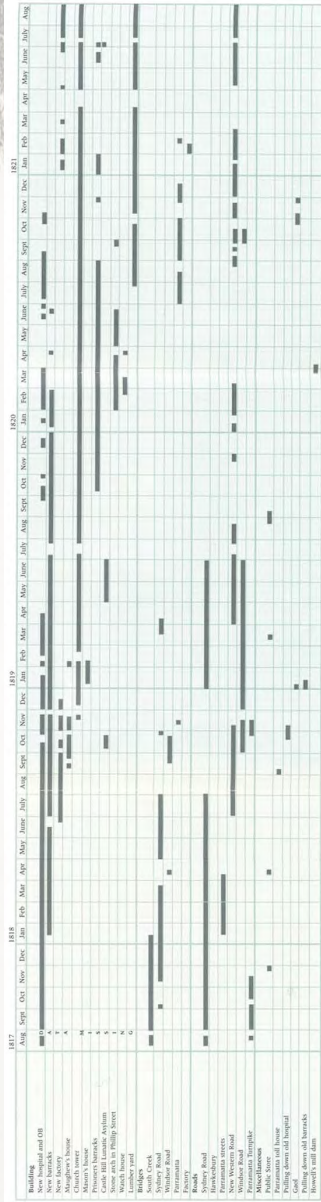
Figure 6

This table drawn form the minute of the Rouse Returns for the period 1817–1821 shows the pattern of works in this period, when the number of transports had increased. Major works were initiated with two major projects on at any one time, the program reflects the priorities of the 1810 survey and the upgrading of buildings previously repaired. [Rosen, *Government House*, pp. 64–5].

THEODORE NAPIER
A VICTORIAN JACOBITE IN KING EDWARD'S COURT[1]

Stephen Michael Szabo
Heraldic Consultant, Sydney

AFTER a long if not always glorious reign of nearly sixty-four years, Queen Victoria died at half past six in the evening of Tuesday 22 January 1901. As reported some months later in the *Kalgoorlie Western Argus*, that same night an unknown hand or hands posted a notice 'on the gates of St James Palace, the railings of the Guildhall and elsewhere' protesting against the accession of Victoria's eldest son and asserting that the Crown of the United Kingdom of Great Britain and Ireland 'doth of right belong to her Most Gracious Majesty Queen Mary the IV, whom God defend.'[2] While no-one stepped forth to claim credit for this particular action, one of the most prominent supporters of it was a man domiciled in Edinburgh named Theodore Napier who, in a letter to one of the Scottish newspapers, expressed his regret that the handbill had not been more widely circulated.

In the months following Queen Victoria's death Napier continued to be at the forefront of neo-Jacobite activity. When the coronation

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[1] A much shorter version, 'Theodore Napier—An Australian Jacobite', was published in History: *The Magazine of the Royal Australian Historical Society*, No. 132 (June 2017), pp. 18–19. The picture above is from 'MR. THEODORE NAPIER', *The Australasian* (Melbourne, 1864–1946), 9 August (1901), p. 59. At: http://nla.gov.au/nla.news-article143295512. Accessed 23 December 2017.

[2] 'Notes From London', *Kalgoorlie Western Argus*, Tuesday 2 April (1901), p. 10. 'Queen Mary IV' was Maria Theresia Henrietta Dorothea von Habsburg-Lothringen, the Jacobite heiress to the thrones of England, Scotland and Ireland. She succeeded to the Jacobite claim in 1875.

of the King approached in mid-1902, the *Adelaide Register* carried this story:

> If a rumour be true, the coronation ceremony in Westminster Abbey is likely to be enlivened by a startling dramatic incident. By certain perfervid Scots, who cherish the memories of Wallace and Bruce, the King's assumption of the title of Edward VII is regarded as historically and otherwise unjust to the northern portion of the kingdom, which until last year was never ruled over by an Edward. Efforts to induce His Majesty to call himself by some name more pleasing to the extreme Scottish Home Rule Party have proved unavailing, and now, it seems (says The Leeds Mercury), a bold step has been decided upon by the insulted patriots north of the Tweed. It is reported that Mr. Theodore Napier, the leader of the movement against the Edwardian nomenclature, whose picturesque figure in all the glory of the kilt is a familiar one in the streets of Edinburgh, intends at the coronation to dispute the title of King Edward to style himself the Seventh of Scotland, by challenging the King's Champion to mortal combat. It is a pity for the truth of this story that there will be no 'Champion' at the coronation.[3]

Theodore Napier was no stranger to readers of newspapers in Britain and Australia in the last decade of the nineteenth century and the first two decades of the twentieth century. His fervent Scottish nationalism saw him involved in an annual round of commemorations of events such as the Massacre at Glencoe, the Battle of Bannockburn, the Battle of Culloden, the execution of Mary Queen of Scots, and others. He espoused Legitimism, which took the fundamental view that it was God, not the people, who chose monarchs. He also understood the importance of the spectacle in drawing attention to a cause, even if some of the attention was negative.

So who was Theodore Napier, and why would he be of particular interest to Australians of Scottish heritage or with interest in Scottish matters?

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[3] *The Adelaide Register,* Tuesday 10 June (1902), p. 4.

In the early 1840s Melbourne was still a small settlement on Port
Phillip Bay, although some of its citizens had very high hopes of its
potential. One of these was a Scotsman, Thomas Napier, a settler
who had arrived from Hobart in late 1837, successfully speculated in
property and who was also a builder. Theodore Napier, his second
son, was born at the family home on Collins Street in 1845.
Theodore's elder brother, Hector, was to die in 1858 at the age of
nineteen, leaving Theodore as his father's heir.

Following Hector's death, Thomas took the family to Scotland on
holiday in 1860, where Theodore was to remain for 5 years to
complete his schooling. He apparently studied engineering at

Edinburgh University, but there is no
record of him graduating, and by
1865 he was back in Australia. He
then spent 'some years on his father's
sheep station, Mackenzie River,
Queensland, getting experience.'[4]

Two years after Theodore's return
his younger brother Thomas died,
leaving him the only surviving male
issue of Thomas senior. Theodore
commencing studying medicine at
the University of Melbourne in 1868,
but either did not take his degree or
took it but did not practice.

Theodore married Ann Noble in
1877, and they were to have two
daughters and a son. It seems that Theodore, like his father, also
successfully dealt in land, and was to inherit one-third of the residue
of his father's estate in 1881. He was described as being of independ-
ent means, and could afford to be both philanthropic and to indulge

[4] 'Mr. Theodore Napier', *The Australasian*, Saturday 9 August (1913), p. 59. The picture
is from SIR HARRY LAUDER (right) AND MR. THEODORE NAPIER, *The
Australasian*, 4 August (1923), p. 62. At http://nla.gov.au/nla.news-article140823609.
Accessed 23 December, 2017.

his passions. While the term 'mid-life crisis' was unknown in the nineteenth century, Theodore appears to have had one anyway, and at some time in the 1880s he was to become an outspoken Scottish nationalist and an ardent Jacobite.

He became an easily recognisable figure on Melbourne's streets, clad in full highland attire, and he was always keen to argue that Britishness did not equate to Englishness. He supported the Jacobite cause of the rightful lineal descendants of the House of Stuart, and became one of the most able spokesmen for neo-Jacobitism in both Australia and Scotland, writing and speaking on the matter.

Napier's 'costume' was frequently remarked upon, and numerous photographs of him show that he seems to have kilted up at every opportunity. Late in his life *The Australasian* newspaper described his appearance thus:

> Mr. Theodore Napier is easily the most picturesque figure in Melbourne to-day. In the portrait given of him he is wearing his 'everyday costume' of the Cavalier (Charles I) period, Vandyck in very much of its ornamentation. The brown homespun jacket has the gauntlet maroon cuffs and collar, Vandyked with real Irish lace. The belted plaid is of the obsolete Appin-Stewart tartan, with hose to correspond. His leather brogues are of very ancient form, and his bonnet with red border bears the white cockade with crest and motto, 'For King and Country.'[5]

Throughout the 1880s Napier gave the cause of Scottish identity his support through words and deeds. 'In 1885, Napier moved a long motion at a meeting of the [Caledonian] society [of Melbourne] regarding the misuse of the term 'English' for things actually imperial or 'British', but the motion was withdrawn after discussion. Two years later, he led vigorous and successful protests against the use of the term 'Queen of England' in Victoria's Golden Jubilee illuminations.'[6]

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[5] 'Mr. Theodore Napier', *The Australasian*, Saturday 9 August (1913), p. 59.

[6] Malcolm D. Prentis, 'Scottishness and Britishness in Australasia, 1875–1920', *The Free Library* (Sydney: Royal Australian Historical Society, 2010). At https://www.

It was one thing to espouse the cause of Scottish identity in the British colonies, but quite another to pursue Home Rule for Scotland. In the early 1890s Napier felt the call to return to Scotland to work in favour of that cause, or at least to visit for a spell.

On 1 March 1893 *The Argus* carried a report of a banquet held in Napier's honour by the residents of Essendon, where he was living, the purpose of which was to farewell him, as he was leaving for Europe 'for a two years' trip'. In thanking the assembled diners, Napier noted that he 'would take advantage of his trip to Scotland to visit the old historic scenes of Bannockburn and others, and on his return he trusted that he would have something to tell them.'[7]

The visit of two years became a stay lasting nearly two decades, although in that time Napier made some visits back to Australia as well as to other parts of the world.

Writings included pamphlets such as Scotland's demand for home rule or local national self-government: *an appeal to Scotsmen in Australia* (Scottish Home Rule Association, Melbourne, 1892); *The Royal House of Stuart: A Plea For Its Restoration*; *The arrogance of Englishmen a bar to imperial federation*; also, *Remarks on the apathy of Scotsmen* (Scottish Home Rule Association, 1895). He also edited *The Fiery Cross*, a periodical which ran from 1901 until 1912, and was devoted to Jacobite and Legitimist themes. Murray Pittock wrote that, in this journal, Napier

> blended both impossibilist Stuart nostalgia and the beginnings of modern Nationalist aims and means of agitation. Eccentric extremist as in many respects he was, Napier's journal attacked imperialism ('Scotland in 1746 = Transvaal in 1901') and militarism and commented on the cultural structures of Scottish society in a manner which would be familiar to the nationalist theorists who followed him. As well as apparently instituting the Culloden anniversary commemoration which still takes place, Napier organised 'a diamond jubilee petition to Queen Victoria protesting against the misuse of national names' (i.e. 'England' and 'English'

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thefreelibrary.com/Scottishness+and+Britishness+in+Australasia%2c+1875-1920.-a0244716516. Accessed 10 December 2017.

[7] 'Banquet to Mr. Theodore Napier', *The Argus*, Wednesday 1 March (1893), p. 6.

for Britain as a whole) that may have attracted more than 100,000 signatures…. Napier's work was evidence that hard politics could grow out of absurd romance.[8]

Napier was still in Scotland in 1896 for the centenary commemorations of the death of Robert Burns. A special correspondent noted that at the ceremony held at Burns' graveside:

> The Caledonian Society of Melbourne was represented by Mr. Theodore Napier, a picturesque figure in the garb of a Highland chief, who brought a wreath composed of Australian heath.[9]

The wreath of the Highland Society of New South Wales had been despatched packed in ice, but had gone astray. Like the Melbourne Society's wreath, it too was composed of 'Australian flowers'. These floral displays suggest that Napier and other Australians of Scottish descent saw themselves as being capable of identifying as Scottish, British and Australian all at once, a notion that nationalist historians in particular seem to find difficult to comprehend.

In that same year Napier was apparently responsible for instituting the commemoration of the Battle of Culloden anniversary on 16 April.[10] This commemoration became part of an annual round of observances carried out by Napier of events he saw as significant to the Legitimist cause, placing a wreath on the tomb of MacIan at Glencoe on 13 Feb 1900, and visiting Fotheringhay annually for a period of ten years on the anniversary of the execution of Mary, Queen of Scots. A special occasion was marked on 20 November 1908, which was, according to the *Legitimist Kalendar*:

[8] Murray Pittock, *Celtic Identity and The British Image* (Manchester: Manchester University Press, 1999), pp. 73–4.

[9] Special Correspondent, 'The Burns Centenary', *The (Adelaide) Chronicle*, Saturday 5 September (1896), p. 45

[10] 'The Culloden Commemoration', *The Jacobite*, Vol. I, No 1, 8 November (1919), p. 1.

The 33rd Anniversary of the Accession, *de jure hereditario*, of H.R.H. the Princess Louis of Bavaria (Mary III. And IV.) to the Throne of these Realms duly celebrated by Mr. Clifford Meller of Craigard, Carrick Castle, when the Royal Standard is unfurled by Mr. Theodore Napier in honour of our exiled Queen.[11]

Although maintaining a home in Scotland from the mid 1890s until just before the First World War, it seems that Napier made trips back to Australia and also journeyed to other places. In 1906 Napier was travelling yet again, this time in the New World. Here his appearance was to cause a minor incident in the American territory of Hawaii, where a policeman refused him permission to come ashore because he was wearing a kilt, making his landing conditional on donning a pair of trousers. An exchange of views took place, a senior officer was eventually summoned, and Napier was permitted to land with kilt intact. He then proceeded to make an impression on the town 'on account of his typical garb',[12] as one local newspaper put it. The paper went on to say that he 'was Scottish from plume to pedal',[13] a rather nice and striking bit of writing.

As well as his regular appearances in Highland garb and his devotion to commemoration of anniversaries which were significant to those with Scottish nationalist or Jacobite sympathies, Napier had a keen interest in artefacts related to those causes. He was a Fellow of the Society of Antiquaries of Scotland, having been elected in 1896, and took an active interest in the work of the Society. He collected artefacts, such as a cradle which was said to have been that of Mary Queen of Scots, which he 'wrote up' in a

[11] E. Josephine Foulds (ed.), *The Legitimist Kalendar for the Year of Our Lord 1910* (London: The Forget-Me-Not Royalist Club, 1910), p. 86.

[12] 'No Kilts in Honolulu', *Maitland Weekly Mercury*, Saturday 18 August (1906), p. 5, citing an unnamed local Hawaiian newspaper.

[13] 'No Kilts in Honolulu' *Maitland Weekly Mercury*, Saturday 18 August (1906, p. 5.

notice.[14] In 1912 he donated the cradle, along with a bed which was said to have been that of her son, James VI and I, to the Royal Scottish Museum. It seems he also owned one or more Jacobite drinking glasses, and doubtless made ritualistic use of them. These glasses, engraved with motifs such as white roses to allude to the Stuart cause, were used by Jacobites when drinking toasts. When in mixed company, and a toast to the sovereign was called for, the Jacobites present would pass their toasting glasses over their water glass on the table, symbolising that they were drinking a toast to the King over the Water.

In at least one instance, Napier acquired a replica of a relic which had eluded him at auction. In 1904, a harp that was known as the Queen Mary Harp came up for auction. Napier was one of the bidders, but ultimately the Scottish National Museum was successful in acquiring it. A replica of the harp had been made by Robert Glen in 1895, and it was this that came into the possession of Theodore Napier at some point. It is now here in Australia.

It was during one of his Scottish residences that he petitioned for arms, which were granted on 22 May 1896. The arms granted were:

> Gules, on a Saltire engrailed between four Roses Argent a Lion's head afrontée Gules.[15]

The minimal text of the Letters Patent tells us little about the grantee. The arms themselves are a simple variant on those of Lord Napier, or at least on the arms in the quarters of the latter's arms relating to the Napier name, which were *Argent a saltire engrailed between four roses Gules barbed Vert*. The white roses and the Latin motto, when rendered into English

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[14] *The Scottish Antiquary, or, Northern Notes and Queries*, Vol. 10, No. 40 (1896).

[15] Arthur Charles Fox-Davies (ed.), *Armorial Families: A Directory of Gentlemen of Coat-Armour*, seventh edition (London: Hurst & Blackett Ltd., 1929), p. 1420.

do, however, reveal Napier's Jacobite sentiments, as the white rose was a symbol of the Jacobites, and the motto *Pro Rege Et Patria* ('For King and Country') reflects Napier's adherence to the cause and his love of Scotland.

He made use of the arms in the form of the bookplate illustrated here, and frequently flew a banner of his arms, as the following item tells:

> On May 29th (Restoration Day) and 10th June (White Rose Day) Mr. Theodore Napier, in honour of these two notable anniversaries, had his armorial banner flying from his residence at 'Magdala,' Essendon, Melbourne. Mr. Napier has similarly observed these historic events for many years both in Australia and when living in Edinburgh.[16]

It is hardly surprising that a man who was an ardent Jacobite and who doubtless felt he was a gentleman would have acquired and used the indicia of such status.

Conclusion

So, was Theodore Napier simply an eccentric enthusiast, or was he a man ahead of his time who understood the importance of media manipulation and the use of spectacle to draw attention to causes that one believed in? Perhaps it is best to leave it to Napier to have the last word. In an interview with him in Melbourne when he was seventy-five years of age, Napier had this to say:

> 'Some people called me a crank,' he says, laughingly. 'But I am not a crank—I am only an enthusiast. I know the cause that is nearest my heart is a lost cause, but the principle is there just the same. We Jacobites are loyalists as well as royalists. We would like to see the Stuart line come back. But we would rather be loyal to the present king than to no king at all, and had I been a younger man during

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[16] 'Notes and General', *The Jacobite*, Vol. 1 No. 8 (August 1908), p. 29. This publication is billed as 'New Zealand's Only Jacobite Paper'.

the war I would have drawn my sword for King George as gladly as
I would have loved to draw it for Prince Charlie.[17]

Napier lived a further four years, dying in 1924. His heraldic
patrimony would have passed to his son Archibald Wallace Napier
(1890–1967) and subsequently to his grandson John Napier (1924–
1975). The latter appears to have had no male issue, so the arms
would have become extinct with his death. The house Theodore
built, 'Magdala', was destroyed by fire in 1927. What remains, and is
increasingly recognised by scholars and historians, is his significant
role in the development of Scottish national identity in the twentieth
century, and one imagines that is a legacy that Theodore Napier,
Australian Jacobite, would have thought was well worth having.

[17] 'Scotland Forever: An Australian Jacobite', *The* (Melbourne) *Argus* (Saturday 11
December 1920), p. 6.

REVIEWS

Anders Ahlqvist and Pamela O'Neill (eds), *Germano-Celtica: A Festschrift for Brian Taylor* (Sydney: Sydney Series in Celtic Studies 16, 2017); 271 pp.; ISBN 978-1-74210-422-5; paperback.

THIS affectionate tribute to Brian Taylor is a collection of interesting and diverse articles on a range of Germanic and Celtic subjects, prefaced by three personal messages from his son Alasdair Taylor, and colleagues Aedeen Cremin and Sybil Jack. The volume showcases talents that have been nurtured at the University of Sydney in fields including Anglo-Saxon Studies: the Director of the Medieval and Early Modern Centre, Daniel Anlezark, contributes a fine piece, 'The Soul in the Old English Soliloquies and Ninth Century Neo-Platonism;' and Helen Appleton's (Balliol College Oxford) 'The Psalter in the Prose Lives of St Guthlac' reflects well on her time as a Sydney doctoral graduate. Former colleagues of Taylor Geraint Evans (Swansea University) and Helen Fulton (University of Bristol) earn praise for their chapters, 'Welsh Antiquarianism and Proto-Nationalism in Elizabeth Hardy's *Owen Glendower* (1849)' and 'Caerleon and Cultural Memory in the Modern Literature of Wales,' both of which connect medieval Wales with contemporary understandings of medieval Wales. Wales also appears in comparative terms in Karolina Rosiak's 'Literary Translations Between Polish and Welsh: An Overview.'

For those interested in Scottish history and literature there are three substantial chapters that are of particular significance. First is William Gillies' ''The Mavis of Clan Donald': Engaging with John MacCodrum', which is a study of the North Uist poet's self-identification as a mavis or song-thrush. This self-designation conveys 'the idea of the poet as a spokesperson whose role it was to sing on behalf of his island and its people' (p. 123). Gillies traces the critical reception of MacCodrum by critics, but more importantly his involvement with the Gaelic language poets of the eighteenth century, including Alastair mac Mhàighstir Alastair and James MacPherson. Michael Graham Nelson's 'Scottish and German Connections' is an examination of the perceptions that Germans have about Scotland (tourism and mysticism) and the historical links that were crafted by the Hanoverian dynasty, the friendship of Walter Scott and Johann Wolfgang von Goethe, Friedrich von

Schiller's play *Mary Stuart*, the composer Felix Mendelssohn, and the experience of two World Wars. The third chapter is Pamela O'Neill's fascinating 'A Possible Early Medieval Route across Scotland' which chronicles a contemporary attempt to recreate a journey 'from the Firth of Tay in the east to Iona and Islay in the west, based on the locations of sculptured stones along waterways' (p. 213). O'Neill and her companions walked this route in August and September of 2017, an important modern attempt to recreate or enter into the experience of the medieval subject, a desire which drives much scholarly work, however difficult it is to admit or justify in the present academic climate.

Other chapters include such gems as Anders Ahlqvist's '*Hast du mir gesehen*', which investigates an almost untranslatable German idiom, Wallace Kirsop's 'Studying in Continental Europe: The Experience of Australian Postgraduates,' Nicola McLelland's 'From Phonetics to Phonograph: Teaching Spoken German in the 1930s,' and Katherine Spadaro's 'The Death of the Dictation,' an Australian anecdote about the notorious language test that was ignobly used to exclude migrants of non-English speaking background during the period of the White Australia Policy. Lynette Olson's 'Otherness in the Writings of St Patrick' is worthy of particular notice; it is an intensely idiosyncratic and insightful discussion of the writings of Patrick, direct sources for the religious life in the fifth century, not to mention among the earliest Christian autobiographical texts and ethnographical accounts of 'others,' in this case the pagan Irish Patrick sought to convert to Christianity.

Germano-Celtica: A Festschrift for Brian Taylor is a worthy addition to the Sydney Series in Celtic Studies, an academic publishing endeavour that continues to chronicle the work of many under-appreciated and even unsung champions of the University of Sydney's research life. This edited volume is warmly commended to scholars of Celtic and Germanic studies and to those interested in the flourishing of the broadest possible range of Humanities research fields.

Carole M. Cusack
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Lizanne Henderson, *Witchcraft and Folk Belief in the Age of Enlightenment: Scotland, 1670–1740* (Houndmills, UK: Palgrave Macmillan, 2016); xv, 382 pp; ISBN 978-0-230-29438-7; hardback.

THIS book is both a detailed history of the phenomena of witchcraft and folk beliefs in Scotland from the late seventeenth century to the mid-eighteenth century, and a fascinating evaluation of previous scholarship on the subject. Lizanne Henderson's 'Preface' draws attention to the proximity of her home in Galloway to those of the executed witches Jonet McMuldritche (d. 1671) and Elspeth McEwen (d. 1698), whom she cautiously describes as 'typical' (p. xi) of accused witches in Scotland. The 'Introduction' emphasizes that evidence of scepticism or broadly Enlightenment attitudes in the period covered does not fall neatly on the side of those who 'disbelieve[d] in the reality of witchcraft' (p. 3), as sceptical views were also found amongst clergy adopting various theological positions. Sundry important scholars of Scottish witchcraft are introduced here, including Brian Levack, Alan Macfarlane, Christina Larner, Marko Nenonen, Bengt Ankarloo and Gustav Henningsen, Robin Briggs and Malcolm Gaskill, Liv Willumsen, Johannes Dillinger and Oscar di Simplicio. Comprehensive coverage of the full range of witchcraft historians and theorists underpins Henderson's very learned study.

   Chapter 1, 'Fixing the Limits of Belief,' discusses superstition, magical beliefs, folkloristics, and folk beliefs before sketching the historiography of witchcraft and folk belief in Scotland. This provides a definitional basis for Chapter 2, 'The Idea of Witchcraft,' which examines the practices associated with witches, the possible exceptions (such as use of charms), geographical regions particularly associated with witchcraft (for example, Scandinavia), diabolical explanations of the phenomenon, and the range of terminology applied to witches. Gender is noted, with Henderson observing that often the accused were male, and that the stereotype of the unmarried or widowed older woman was not vindicated by the empirical data, as a large majority of the accused were married. This chapter concludes with a section on the Scottish Enlightenment and the role of the kirk in prosecutions. Chapter 3, 'Demons, Devilry and Domestic Magic: Hunting Witches in Scotland,' offer a sceptical and revisionist account of the role of James VI in witch-hunting, and the causes of various witch-hunts, including North Berwick in the winter of 1589-1590 and 'the great

Scottish Witch-hunt … between the spring of 1661 and the autumn of 1662' (p. 105)

In Chapter 4, 'Darkness Visible,' Henderson seeks to 'uncover the Caledonian version of Satan, the Father of Lies, variously known as Auld Nick, Auld Clootie or Auld Hornie, among other designations' (p. 127). Chapter 5, 'Bemused, Bothered and Bewildered: Witchcraft Debated,' is focused on the relative paucity of debate about witchcraft in Scotland until the seventeenth century, and revisits Larner's contention that witchcraft prosecutions diminished because 'witches were no longer considered by the authorities to be a threat to society' (p. 153), noting Levack's objection that a stricter court system and abandonment of torture in securing confessions were at least as important. The Witchcraft Act was repealed in 1736, and in the eighteenth century scepticism gained ground, eventually becoming 'the norm' (p. 188). The sixth chapter, '"Worshipping at the Altar of Ignorance": Some Late Scottish Witchcraft Cases Considered,' discusses a range of cases in the 1690s and early 1700s, particularly in regions like Renfrewshire (the Christian Shaw case) and Pittenweem in Fife in 1705 (when Janet Cornfoot was pressed to death).

Chapter 7, 'The Survival of Witch Belief in South West Scotland: A Case Study,' focuses on Dumfries, Kirkcudbright, and Wigtown, a region where the strictness of the Presbyterian religion was remarked upon. This returns Henderson to the execution of Jonet McMuldritche and Elspeth Thomson, in Dumfries in 1671. She explains the social factors affecting each woman; 'agricultural disputes, straying animals, and theft' (p. 257) in the case of McMuldritche, and the disapproval of her husband's family in the case of Thomson. Elspeth McEwen, also mentioned in the 'Preface,' is singled out because she was of 'superior education' (p. 261). The last chapter, 'The Persistence of Witch Belief,' uses John Mill, the minister of Dunrossness in Shetland from 1740 to 1803, to examine the nature of strict religion and witchcraft and demonic beliefs in the Scottish Highlands and islands far later than on the mainland. Evidence considered includes popular ballads and Dr Johnson's and James Boswell's travels. Henderson's 'Conclusion' reiterates the originality and substance of her book's contribution to knowledge of Scottish witchcraft in the late seventeenth and eighteenth centuries.

Lizanne Henderson's *Witchcraft and Folk Belief in the Age of Enlightenment: Scotland, 1670–1740* is especially welcome as comparable monographs now date from the early 2000s; Peter G.

Maxwell-Stuart's *Satan's Conspiracy: Magic and Witchcraft in Sixteenth-Century Scotland* (2001) and Stuart Macdonald's *The Witches of Fife: Witch-Hunting in a Scottish Shire, 1560–1710* (2002), for example. Henderson's book is very detailed and methodologically sophisticated, and (for this reader at least) proved a fascinating tome to read and pore over. It is highly recommended to all interested in the subject of witchcraft or in Scottish history.

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Benjamin Wilkie, *The Scots in Australia, 1788–1938* (Woodbridge: The Boydell Press, 2017), ISBN 978-1-78327-256-3.

In announcing on his website (https://thescottishaustralian. wordpress.com) the launch of his new publication, author and academic Ben Wilkie wrote 'I am proud to announce that *The Scots in Australia 1788–1938* has been published by Boydell Press, with the support of the Scottish Historical Review Trust, in November 2017. The book is the result of nearly eight years of research and writing on Scottish migrants in Australia, is thematically broad, and covers the convict period up until the outbreak of the Second World War.' The book is a substantial reworking and expansion of Wilkie's October 2013 PhD thesis at Monash University 'Weaving the Tartan: Culture, Imperialism and Scottish Identities in Australia, 1788–1938'; he is currently a Lecturer in Australian Studies and Early Career Development Fellow at Deakin University, Australia and has published already a considerable amount of material on the subject of Scots in Australia.

The book is a useful addition to the existing body of work by a number of authors exploring the contribution made by Scots to the development of Australia as it has become in the twenty-first century. These works include, for example, David S. MacMillan's 1967 *Scotland and Australia 1788–1850: Emigration, Commerce and Investment*; Don Watson's 1984 (republished 2011) *Caledonia Australis*; and Malcolm Prentis' 2008 *The Scots in Australia*, itself an update and expansion of his own 1983 *The Scots in Australia: a study of New South Wales, Victoria and Queensland, 1788–1900*. It adds also to the presentation by the Art Gallery of Ballarat's 2014 exhibition 'For Auld Lang Syne: Images of Scottish Australia from First Fleet to Federation' and the collection of essays from speakers (including Wilkie) at the associated Scottish Symposium held in Ballarat on 9–11 May 2014 and published as *Scots under the Southern Cross* (editors Fred Cahir, Alison Inglis, and Anne Beggs-Sunter). Wilkie acknowledges Prentis as 'a mentor throughout', and notes that his own work takes place 'very much in the shadow of [Prentis'] immense body of work on the Scots in Australia'. It adds also to the exploration of the Scottish diaspora by Scottish historians, most notably among them Professors (Sir) Tom Devine (University of Edinburgh), Marjory Harper (Aberdeen University) and James Hunter (University of the Highlands and Islands), as well as Australians writing about Scotland and the British Empire such as

Professor Eric Richards of Flinders University, and Wilkie quotes from all of these authorities.

Themes addressed in the book include both early free settlers and the convict years and the issues in identifying the Scots who came to the penal settlement as convicts, since some Scots were convicted and sentenced outside Scotland while some non-Scots (particularly from Ireland) were convicted by Scottish courts, under laws and sentencing regimes at variance with those of Scotland's southern neighbour. Wilkie has paid careful attention to analysing the statistics available to provide an accurate summary of the proportion of Scots among the settlers in the early colony of New South Wales which, at that time, included Van Dieman's Land. In looking at Scotland's contribution to the commercial expansion of the British Empire, he has identified the way in which the Scottish emigré Robert Campbell, for example, was able to link New South Wales into that commercial empire and ultimately by sending shipments of produce from Australia to Britain to undermine and end the East India Company monopolies on foreign trade from Australia in the late eighteenth and early nineteenth centuries.

In his chapter 'Scottish Migrants and Indigenous Australians', Wilkie faces the difficult questions of the involvement of Scots in the inter-actions of European settlers, free and convict, with the indigenous custodians of the land. An important aspect of this involved the activities of missionaries, particularly Presbyterians, in areas as far flung as Moreton Bay and the Western Districts of Victoria and here again Wilkie has been able to draw on the work of others who have charted much of the work of the church throughout the Empire; he notes the failure of attempts at various missionary settlements by Scots, among whom were Governor Lachlan Macquarie, merchant Robert Campbell and the Rev. John Dunmore Lang who brought the Disruption in the Presbyterian Church from Scotland to Australia. An ongoing theme in any study of Scotland today is attempting to understand exactly what the image of that country is and how it came to be seen thus, as it were separating the tartan and bagpipes from the complex history of the nation, and in 'Imagining Home' Wilkie takes us on a journey which *inter alia* addresses the image of Scotland conveyed by statues of Scottish heroes, particularly Burns and Wallace, and particularly in Victoria. It is Victoria which provides the case study of the impact of formation of the Victorian Scottish Regiment and its ultimate assimilation into the Australian Army.

The twentieth century activities of Scots in Australia and the arrival of large numbers of migrants provide Wilkie with opportunities to explore in detail and from primary sources the attitudes of expatriates towards the land of their forebears. From the 1928 departure of a 600-strong delegation from Melbourne seeking to encourage migration, trade and investment opportunities to significant youth migration, Wilkie is able to demonstrate how the overwhelming majority of Scots arriving in Australia between the two World Wars were drawn from Scotland's Lowland urban industrial working class rather than conforming to the popular image of the Scot frequently met, for example, by tourists on the Royal Mile in Edinburgh. The involvement of Scots in the industrial movements in Australia, including those involved in the early Communist Party of Australia, also receives careful and detailed attention.

Overall, this book is a welcome addition to the existing studies of Scottish history and the history of its diaspora, particularly as it relates to the foundation and development of Australia. While occasionally the subject matter stretches beyond the book's claim to cover only until the start of World War II it does so to show the outcomes of earlier developments. It will be welcomed by those wanting a thoroughly researched single volume history of Scots' contributions to Australia. It is well presented, clear and easy to read. Its bibliography is extensive and it contains a useful index. Its cover image is a detail from the painting, *Ben Lomond*, by English artist John Glover. Painted in about 1840, it shows a romanticised vision of a tartan-clad family of Highlanders gathered around a fire. The Ben Lomond of the painting is not, however, in Scotland, but Tasmania, near Evandale in the north of the island. The transplanted nature of the culture is emphasised by the kangaroo which is being carried to the feast. This image perhaps best identifies the dilemma in trying to identify how Scots have become part of the Australian landscape and society.

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