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Scottish Burgh Record Scholarship c. 1830-1880

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In 1832 the Maitland Club published a selection of extracts from the burgh records of Glasgow.¹ This volume was edited by John Smith, who in the volume's preface mused that:

It has frequently occurred to me, that much valuable and minute information illustrative of Scottish history, local antiquities, manners, customs, as well as many interesting hints regarding the progress of civilization, would be obtained by the partial publication of a class of national muniments which have hitherto been seldom consulted by the professional historian or antiquary (1832: .i).²

Smith's edition was the first volume from Scotland's publishing clubs to focus on this type of material. Compared to investigation into literary, legal and genealogical sources there was a lack of intellectual investment in burgh record scholarship before the late 1860s. Over the four decades following Smith's edition a trickle of similar works appeared. Only six collections of burgh records were published between 1830 and 1865, plus a further two focusing on burgh-related material. In 1867, however, the Scottish Burgh Records Society was founded and this trickle became a flood. Between 1868 and 1880 the Society released fifteen editions of previously unpublished burgh records, a rate of production that continued into the twentieth century. This proliferation was linked to what Bill Bell has called a 'technological revolution' in book production which reduced the cost of publishing over the course of the 1800s (Bell 2007: 1-3). Yet, like the foundation of the Society itself, it is also indicative of an increase in interest in burgh records and represented the consolidation of the field as a legitimate area of inquiry.

However Colin Kidd has depicted the latter half of the nineteenth century, the very point at which research into Scottish burgh records gained momentum, as a period of historiographical disintegration (1993: 268-80). He argues that nineteenth-century historians were bequeathed a poisoned chalice by the intellectual traditions of previous centuries. These traditions were based on a conceptual framework in which history was judged against value-laden criteria such as the advancement of constitutional representation and the defence of liberties against monarchical tyranny. Moreover, as Linda Colley asserts, these values were, from the Glorious Revolution onwards, bound up with a self-proclaiming Protestantism (1996: 10-58). In this context Scotland's past bore embarrassing connotations of Jacobitism and associated Catholicism; autocratic Stewart kings and impotent parliaments. Partially as a result of this, Scottish historical feeling was diverted into an 'Anglo-British identity' based primarily on the English past (Kidd 1993: 205-15). Marinell Ash has shown how historians in the early nineteenth century, spearheaded by Sir Walter Scott, took a new look at Scottish history under

¹ Thanks to Colin Kidd for commenting on this paper, and to Aimee McNair and Jacqueline Ryder for providing me with the opportunity to present it. Full references for all sources discussed in this article can be found in the bibliography. Abbreviated titles are used where sources are quoted from or directly cited.

² This call to historians to make better use of urban sources has been echoed more recently in Flett. & Cripps 1988, p. 41.

the auspices of the Romantic Movement (1980: 13-40). This approach promoted an interest in history for its own sake, partially releasing it from the Enlightenment philosophy which saw the past only in terms of its contribution to the present. One result was a greater focus on obscure primary sources such as medieval charters. This bore fruit in the rejuvenation of the Public Records under Thomas Thomson and the success of publishing clubs such as the Bannatyne, Maitland and Spalding (Ash 1980: 41-86). Yet Ash asserts that by the middle of the century the romantic bandage created by Scott to hold Scottish historiography together was badly frayed. A religious and ideological splintering of Scottish society in the later 1800s led to greater fracturing in the way that Scots saw their own past (Ash 1980: 124-52).

The study of burgh history during the nineteenth century provides a case study on how one branch of record scholarship reacted to this fracturing. It also demonstrates how, even within such a specialist field of study, researchers interpreted the past in different and often antagonistic fashions. In this way it can be used an exemplar of the wider debates about Scotland's past that were taking place in the 1800s.

The burgh editions that appeared between 1830 and 1880 focused primarily on legal documents such as charters, court records and council minutes (which were themselves largely concerned with civic ordinances). Smith's 1832 work, for instance, consisted of council records and court proceedings, whilst a follow-up in 1835 focused on council minutes. John Stuart's first two editions of Aberdeen records, published in the 1840s and covering the fifteenth, sixteenth and seventeenth centuries, comprised similar material. John Fullarton's 1834 Prestwick collection included not only records produced by the burgh but also charters in its favour. This emphasis continued in the publications of the Scottish Burgh Records Society. James Marwick's volumes on the burgh of Edinburgh relied in the medieval period on notary books and inventories of writs and from the sixteenth century on the records of the guild court and town council. He supplemented this in 1871 with a collection of Edinburgh charters covering the period 1143 to 1540. The two volumes of Glasgow burgh sources he edited in 1876 and 1880 were similar in composition. Moreover his editions on the Convention of the Royal Burghs were built around Convention minutes from the sixteenth and seventeenth centuries. In the same vein Stuart edited another two volumes of Aberdeen records in the early 1870s, again drawn from the council register. This legalistic emphasis is best illustrated by Cosmo Innes and James Marwick's *Ancient Laws and Customs of the Burghs of Scotland*. This edition gathered material from across Scotland's documentary record to provide a coherent depiction of burgh and trade law in the Middle Ages. Significantly it was the very first volume produced by the Society, and the introductory tract found in later Society publications cited it as a necessary companion to the burgh-specific editions that formed the bulk of the Society's output (Marwick 1869: 1).

The content of these editions was to an extent dictated by the types of sources available; charters, council minutes and court proceedings constituted the majority of extant documents that could illustrate burgh history. As MacQueen and Windram assert, the burgh court was the main instrument of urban government in medieval and early modern Scotland (1988: 213-18). However this institutional emphasis was also a function of the backgrounds of the scholars engaged in burgh research. Stuart was from 1836 a member of the Edinburgh Society of Advocates, whilst Innes held a succession of legal posts within the state apparatus. Moreover they were part of a group of lawyerly historians whose ranks included Thomas Thomson, David Laing, William Fraser, Joseph Robertson, Patrick Fraser Tytler, John Hill Burton and, in the early part of the century, Sir Walter Scott. This legal background led to an emphasis on legal and institutional documents as a resource for illuminating the past. Marwick, the driving

force behind the Scottish Burgh Records Society, was in many ways a successor to these scholars. His career tended more towards the municipal than the legal; he was Town-Clerk of Edinburgh and then Glasgow. Nevertheless he was a trained solicitor and had practiced law in the 1840s and 50s.³ According to his memoir it was at his time that he established cordial relations with many of the record scholars mentioned above (Marwick 1905: 154-57). Significantly these figures had been energetic contributors to the publishing clubs of earlier decades. These relationships allowed Marwick to recruit Stuart's talents for two further volumes of Aberdeen records and enlist Innes's help in the production of the *Ancient Burgh Laws of Scotland*. They also enabled him to include Innes, Stuart and Laing on the committee of the Society, creating a bridge with the publishing clubs of the earlier 1800s (Marwick 1869: 3)

Thus there was a clear continuity in terms of personnel and approach between the editions produced before 1867 and those produced by the Society subsequently. The evidential slant that resulted led to a depiction of the burghs as primarily legal entities. The explanation of their origin in Patrick Fraser Tytler's *History of Scotland* is a good example of this:

It was soon discovered by the monarchs of Scotland, that these opulent communities of merchants formed so many different points, from which civilisation and improvement gradually extended through the country; and the consequence of this discovery was their transformation, by the favour of the sovereign, into chartered corporations of merchants, endowed with particular privileges, and living under the especial protection and superintendence of the king. In this manner, at a very early period, royal burghs arose in Scotland [...] and it is evident that our kings soon found, that the rise of those mercantile communities, which looked up to the crown for protection, and repaid it by their wealth and their loyalty, formed a useful check upon the arrogance and independence of the greater nobles.⁴

Tytler's depiction focused on the legal existence of the burghs, expressed by charters and defined by their relationship with the crown. He presented the burghs as centres of order and civilisation, casting them in sharp relief against an anarchic aristocracy. Later in the century Cosmo Innes even went as far as to postulate a shared institutional philosophy and inheritance across all the burghs of medieval Europe (1860: 148-54). The focus of research into burgh history in the 1800s was institutional rather than commercial. This in turn led to the emphasis on Scottish towns as legal rather than economic units that, as Heather Swanson notes, has pervaded the study of Scottish urban history (Swanson 1999: 67-8).

A further commonality existed across these burgh editions in terms of their arrangement. The diversity of material available to editors often made creating a publishable structure problematic. As Stuart put it in his first volume of Aberdeen records:

As the Editor found it impossible to devise any system of classifying materials so various and discordant, which appeared at all satisfactory, he has given them in their chronological order, a plan which seemed less objectionable than any other (1844: ix).

³ See the biographies of the individuals discussed here in the *New DNB*.

⁴ Tytler, *History of Scotland II*, pp. 295-96.

There were several options open to editors regarding the arrangement of extracts. Although a typological organisation is evident in some collections, chronology was the stronger structural imperative. Even in those editions in which sources were arrayed by type, the extracts were within that scheme usually placed in chronological order. Marwick's Peebles volume made a rudimentary distinction between charters and burgh records 'proper' but within that the items were arrayed by date. The majority of editions, however, make use of a purely chronological arrangement. This includes Stuart's work on Aberdeen and Marwick's on Edinburgh and the Convention of the Royal Burghs. In this way the volumes underscored the continuity of burgh history; the sources were a means to illustrate the 'story' of particular burghs and of the wider historical context. This was reinforced by the long date ranges that many editions covered. Some dealt with compact periods; for example Smith's 1832 Glasgow edition focused on the Reformation. Yet it was more usual for collections to incorporate records from a much longer time span. Fullarton's Prestwick edition ran from 1470 to 1782 whilst Hay's Dundee collection covered the period from 1292 to 1880. It was also common for individual volumes to form part of a larger series focused on particular burghs. Stuart's four volumes of Aberdeen records covered the period 1398 to 1747 whilst Marwick's Edinburgh series began in 1403 and had by its fourth volume reached 1581. Marwick's five-volume work on the Convention of the Royal Burghs, meanwhile, ran from 1295 to 1738. As a result burgh editions frequently cut through obvious historiographical barriers such as the Reformation, the Glorious Revolution, the Union and the 1745 rebellion. They straddled the medieval and the modern eras and promoted an impression of burghal continuity through original sources. Thus they linked nineteenth-century Scotland with a past from which, as Kidd and Ash argue, was intellectually divorced.

Whilst similarities existed concerning the types of sources selected and how they were presented, their interpretation was far more divisive. The idea of the town with its connotations of economic activity occupied a key place in the collective psyche of Scotland's intellectual elite. The Enlightenment had been primarily a metropolitan phenomenon and the *litterati* of the 1800s were similarly urban in their social and intellectual centre of gravity.⁵ Ash has suggested that the dichotomy apparent in Walter Scott's approach to the past stemmed partly from his dual upbringing in rural Sandyhove and the commercial *milieu* of Edinburgh. She highlights a romantic nostalgia for the countryside set against a Whiggish enthusiasm for the urban commercial present (Ash 1980: 13). A similar ambivalence towards town and country is evident across historical study in nineteenth-century Scotland. The notion of the town played a prominent role in how educated Scots saw themselves and influenced views of Scottish urban history. The urban environment was seen as the cradle of commercial activity and was central to what Graeme Morton has called 'civic society', a self-consciously urbane and commercial presentation of Scottish culture. Moreover the town was central to Scotland's view of itself within the British Empire; Colley has highlighted strong links between trade, Empire and patriotism in the period (1996: 61-77; 91-105). As a result a conceptual divide existed between the town, with its connotations of commercial progress, and the countryside, often associated with the remnants of outmoded feudalism. It was this divide that led to discordant splits in how burgh records were interpreted.

Some researchers saw much that was positive in the history of the burghs. Innes was one of the foremost record scholars of the century and in later life a founding member of the Scottish Burgh Records Society. In 1860 he put forward the view that:

⁵ As argued Clark & Houston 2000: 612-13 and Fitzpatrick 1999: 299-310.

[...] our Scotch burghs seem to me the natural, healthy and happy growth of an industrious and steadily progressive country. The privileges, necessary at first perhaps for their existence, and so beneficial to the country, they have gradually abandoned, as they appeared to obstruct an extending commerce. Their citizens have always worthily filled the important place and functions of a third estate. In early times, [...] they were the zealous supporters and encouragers of a liberal education. When there was less mixture of ranks than at present, and more gross immorality, they were free from many of the temptations and many of the vices of the rural gentry. Not extremely given to busy themselves in public affairs, they yet took a reasonable interest, a patriotic concern in the affairs of the country [...] Above all, their steady industry and active enterprise – quite removed from the mad speculations that now surround us – their honest frugality, and simple primitive manners, not rarely united with some accomplishment and learning – formed a class of men that I should be sorry to think was altogether extinct (Innes 1860: 173-74).

Innes saw the burghs as drivers of economic progress and champions of freedom. They were a vital ingredient in helping Scotland to move away from associations of barbarism towards nineteenth-century 'civilisation'. This interpretation sat well with the presentation of burgh records in chronological form which emphasised the links that the burghs provided with the past. Elsewhere he asserted that the burghs created the 'first germ of a middle class' and were responsible for the first security of private property and the earliest commercial enterprise (Gordon 1980: vi-viii). He argued that in Europe the monopolies on which the burghs were based continued whilst their 'free institutions' declined, but in Scotland the reverse occurred (Innes 1861: xlv-xlix). He also asserted that the burghs enabled Scotland to develop liberty, independence, self-reliance, love of education and respect for law and order. He believed that the patriotism, public spirit and enterprise of modern Scotland derived from the burghs, and that the laws presented in the *Ancient Laws and Customs of the Burghs of Scotland* provided direct evidence of this (Innes 1868: xlix-xl).

Other editors also essayed approval of some aspects of burgh history. Smith praised the burgh of Glasgow for its introduction of jury-trials, support for the poor and the help it provided to the university and the cathedral after the Reformation (Smith 1832: i –xxi). William Hay admired the burgesses of Dundee for their patriotism during the Wars of Independence (1880: iv-v). Moreover Stuart commended Aberdeen for the quality of its grammar schools in the seventeenth century (1848: xxiii-xxvii). However Stuart's attitudes towards the burghal past and Scotland of his own day were ambivalent:

The measures which followed the suppression of the rebellion of 1745, ushered in a new condition of things, less admitting of illustration, and which, with its many advantages was destitute of those features of contrast and picturesque-ness which have invested the Burgh Records of earlier years with so much of interest and historical value (1872: xxxix).

Here Stuart displayed the conflicted Whig-romantic sensibilities identified by Ash in Walter Scott's work. He accepted that the changes made since the last Jacobite rebellion had improved Scotland, yet was nostalgic for the features of the past that these changes had erased. Like Scott he was torn between his emotional attachments to the past and his intellectual adherence to the totem of progress (Ash 1980: 15).

Other burgh record scholars read the sources in a more negative way, often focusing on the monopolies that the burghs held. The benefits of free trade had been expounded by Adam Smith during the Enlightenment. The idea of encouraging private competition rather than state control of the economy was therefore, in an emotional sense, Scottish property. Smith also linked free trade to a Whiggish idea of progress in which the decline of monopolies was another step away from tyranny towards freedom. In his Prestwick edition Fullerton echoed this view, stating that the burgh monopolies were based on ‘erroneous principles’ and served only to ‘obstruct [...] the cause of beneficial competition and enterprise’. He went on to describe those monopolies as:

Special immunities and privileges of all sorts – the legitimate progeny of ignorance and cupidity – are in truth only an aggravated species of legalized robbery, for whilst one portion of the community is thereby compelled unjustly to contribute to another, competition, that prime spring of improvement, is excluded, as well as the self-creative principle of commerce interdicted and destroyed (Fullerton 1834: xviii).

He believed that there was no evidence of advancement in the history of the burghs; instead it was the Union that provided the catalyst for improvement across Scotland. He thus provides an example of the Anglophile strand of Scottish historiography identified by Michael Fry (1992: 81-88). Moreover his view is in sharp contrast to Innes’s disapproval of the ‘mad speculations’ of the 1800s. Some time later the publisher William Chambers issued a condemnation of the burghs in the preface to Marwick’s Peebles edition:

The extracts offered on these and other points in social economy during a period extending over centuries painfully enlightens us on three things – the extraordinary degree of arbitrary power which was exercised by the burgh authorities, the prodigious ignorance and narrow-mindedness concerning the principles of commercial, and it may be said public, well-being, and the wretched state of manners and morals prevalent in what are fancifully spoken of as the “good old times” (Chambers and Marwick 1872: lxxv).

This view was anticipated by William Muir in his 1853 volume of Dysart sources.⁶ Both men felt that nostalgia was counter-productive; Scots were far better off in the modern era than they had been under the barbarity and injustice of yester-year. Chambers and Muir emphasised the deficiencies of the burghs and disparaged those who saw burghal history in sentimental terms. This can be read as an attack on ‘traditional’ antiquarianism as identified by Iain Gordon-Brown, who argues that antiquaries often sought escape in the past from an unpalatable present (1980: 23-26). Such views are at odds with Innes’s positive spin on burgh history and Stuart’s sense of regretful nostalgia.

The existence of the Scottish Burgh Record Society marked burgh sources out from other areas of record scholarship in the later 1800s, both in terms of the number of editions produced and the control that the Society exercised over the field. Nevertheless the existence of such a specialist society was also symptomatic of the fracturing of Scottish historiography that Ash and Kidd highlight. The debates found in burgh editions were not mere historical curiosities, but were at the heart of questions about Scottish identity. Moreover the emphasis on legal sources indicated a search for legal foundations, even if few editors were as willing

⁶ *Notices from the records of Dysart*, p. x.

as Innes to link burgh history to Scotland's modern constitution. Burgh editions could offer a sense of historical continuity that was lacking in other areas of Scotland's past. The Reformation created wounds in Scotland's ecclesiastical historiography whilst family history could easily be read in the context of a disruptive aristocracy. Meanwhile constitutional continuity was hampered by the abolition of the Scottish Parliament in 1707 and subsequent legislation such as the Heritable Jurisdictions Act of 1746 and the Reform Act of 1832. Urban history was less affected by these historiographical fissures, which is perhaps why the burghs have, as Michael Lynch *et al* argue, traditionally been sketched in contrast to rather than concert with the wider Scottish historical experience (1988: 4). As Geoffrey Barrow notes in a discussion of the medieval burghs:

The burghs and burgesses to be examined in this chapter had their origin in our period but preserved as a class an astonishingly unaltered, homogenous character from the twelfth or thirteenth century to the eighteenth (1981: 84).

Burgh editions, with their long date ranges and chronological arrangements, presented a line of historical continuity extending back to the 1100s. Urban sources could therefore illustrate Scotland's 'story' from the twelfth century to the present day, seemingly bridging the cracks in Scotland's past that the Enlightenment had helped to create. Yet there was a conspicuous lack of consensus on what those sources actually told Scots about their own history, with harsh criticism levied at the burghs even by those researching them. In this way these burgh editions provide a prime example of how Scotland's historiography was characterised by conflict and even a kind of intellectual schizophrenia during the nineteenth century.

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Note on Publishers

There is little information available on the publishers or printers of the primary source editions below. The decision has therefore been taken to note the place of publication and the publishing club or historical society by whom the edition the commissioned.

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