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### Learning and the Law

**Citation for published version:**

Cairns, JW & MacQueen, H 2000, Learning and the Law: A Short History of Edinburgh Law School. Privately Published by the Faculty of Law.

**Link:**

[Link to publication record in Edinburgh Research Explorer](#)

**Document Version:**

Publisher's PDF, also known as Version of record

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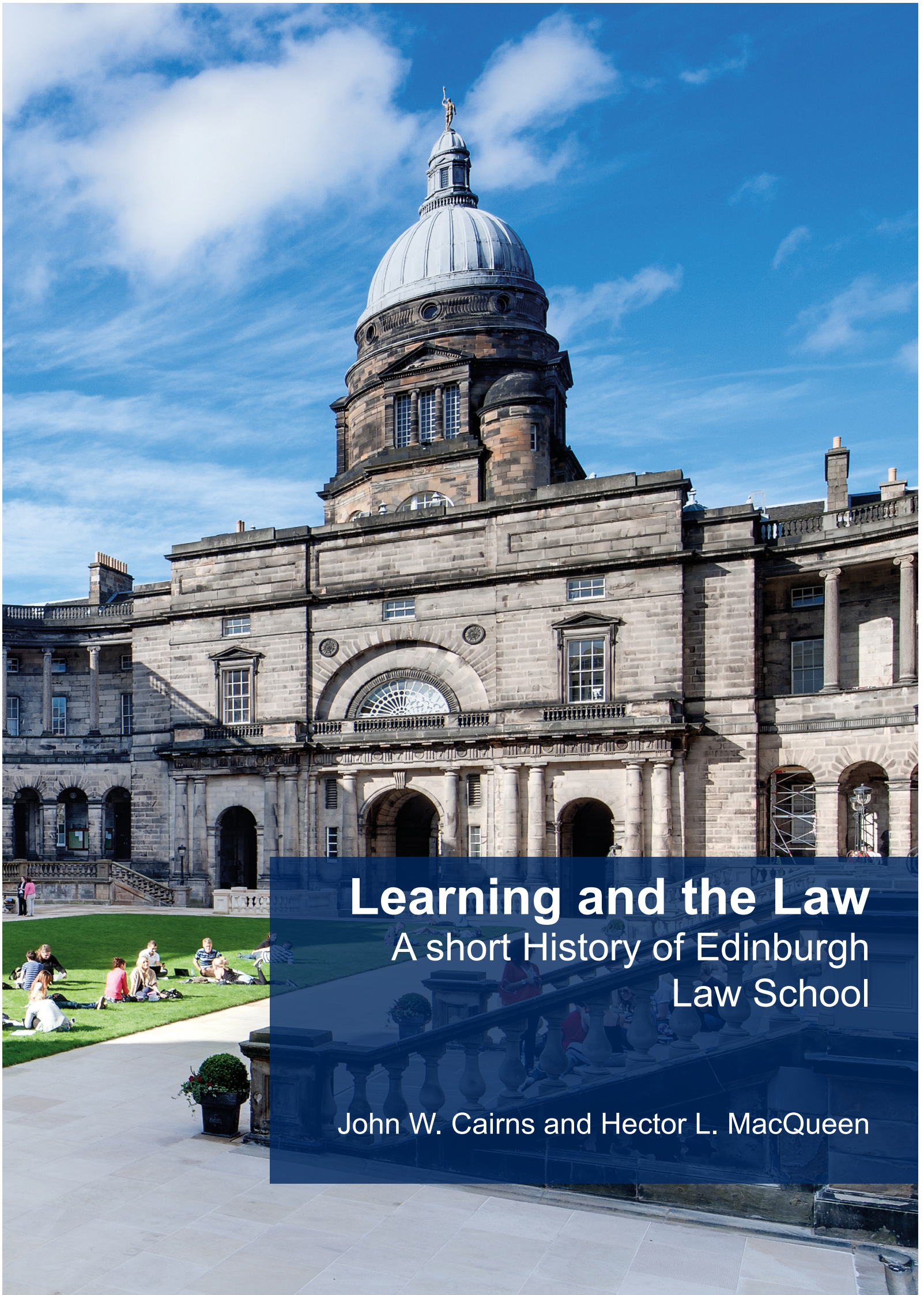
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# Learning and the Law

A short History of Edinburgh  
Law School

John W. Cairns and Hector L. MacQueen



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## I. THE EARLY YEARS

In 1707, with the Act of Union with England as a background, Queen Anne established the Chair of Public Law and the Law of Nature and Nations in the University of Edinburgh, to which Charles Erskine (or Areskine) was appointed: this was the formal start of the Faculty of Law. Yet, the history of legal education in Edinburgh can be traced much further back than that.

The three medieval universities of Scotland - St. Andrews, Glasgow, and King's College and University of Aberdeen - had all had law faculties. In the sixteenth century, however, with the Reformation under way, the desire grew for some type of formal instruction in law in the nation's capital. Under the Regent, Mary of Guise, in the 1550s royal lectureships in Civil (meaning Roman) and Canon Law were created in the city: Some distinguished men, such as Edward Henryson, held these, teaching in the Magdalen Chapel in the Cowgate.

This innovation did not last. In 1583, the royal charter granted by King James in establishing the University of Edinburgh as the Tounis College supposed the erections of professorships of law; nothing happened immediately, and when a professorship of law was created in the 1590s, it did not last, largely because of the opposition of the Faculty of Advocates, although the normal aspiration for advocates was to have a university education in law.

In the course of the seventeenth century, however, increasing pressure came from the Faculty of Advocates to create chairs in law in Edinburgh, especially in Civil Law, largely to reduce the cost of legal education, which had to be acquired expensively abroad in the universities of continental Europe. Finding the money to endow the chair was the problem. As a result, private enterprise filled the gap. From 1699, a number of advocates, generally educated abroad, offered to teach Civil Law and Scots Law, especially the former, since from the early 1690s, all men who became advocates were examined in Latin on Civil Law for admission.

An advertisement from the *Edinburgh Courant* of 1705 placed by one of these early teachers illustrates their work:

“Mr. John Cuninghame Advocate, Son to the Deceast Sir John Cuninghame of Capringtoun intends to begin his Lessons of the Civil and Scots Laws, upon Monday the 12 of November next. He may be spoke with any time after the first of November, at Mr. John Duncan Merchant his House, the Fourth Storie of the new Stone-Land in the Covenant Closs.”

The Faculty of Law emerged from the work of these private teachers. The reason for the first chair being the appointment of **Charles Erskine** in **Public Law and the Law of Nature and Nations**, rather than Civil Law, is easy to explain. From 1698 to 1709, Alexander Cunningham of Block, a protégé of the families of Argyll and Queensberry, held a Parliamentary appointment as Professor of Civil Law, unattached to the university; Erskine's appointment was specifically not to infringe on Cunningham's monopoly. The discipline to be taught by Erskine was one popular with Scots, who often studied it abroad.



In 1710, as soon as Cunningham's appointment expired, the Town Council, as Patrons of the University, appointed **James Craig**, who had been teaching Civil Law privately, as the University's first Professor of **Civil Law**. Craig had no salary; but the appointment encouraged students to attend his classes rather than those of his competitors, even although, according to one of his students, Henry Home (later the judge and jurist Lord Kames), "Craig was a very dull man, and I was sensible of it." In 1716, part of the revenue from a tax on beer on Edinburgh was allocated to provide him with a salary.

In 1719, the Town Council appointed **Charles Mackie** as Professor of **Universal History**, his duties being later expanded to include Roman Antiquities, a course complimentary to Civil Law and aimed at law students. Finally, in 1722 the Town Council created a Chair in **Scots Law**, appointing **Alexander Bayne** as first Professor. In the same year, an Act of Parliament allocated a salary of £100 to each of the three chairs created by the Town Council, again to be paid out of the revenue from the Beer Tax. The act also provided that future vacancies were to be filled by the Town Council choosing one of two names presented on a "leet" by the Faculty of Advocates, confirming the close link between the establishment of legal education in the University and the Faculty.

By 1722, the University therefore had four professors of law. Often, the Professor of Public Law and the Law of Nature and Nations did not teach, although some holders of the chair were very successful in attracting classes. The classes in Civil Law, Scots Law, and History proved popular, although, so far as we can tell, the student numbers were rarely above 30 and often less. The early classes were taught in the same way the private teachers taught: they were given in the home of the professor or in a convenient hall (Professor Bayne probably taught in the hall of the Masonic Lodge near his home).

The Professors dictated notes to the students on a chosen text book: for Roman Law and History usually a Dutch or German work; for Scots law Sir George Mackenzie's Institutions was the text used. The students sometimes attended the identical course of lectures two or three times, perfecting the copy of their notes, and engaging in increasingly sophisticated reading on their own. (There was soon a market in good sets of notes, prompting Professor Bayne to publish his own.)

Scots law was generally covered in 50 lectures and taught in English. Civil Law was taught in two courses: the first, on Justinian's Institutes, was also covered in 50 lectures, but was given twice in each academic year; the second, on Justinian's Digest, lasted for around 100 lectures, both courses being taught in Latin.

Memorisation of what the students were taught was the ideal; it was thought to bring and to demonstrate understanding. To promote memorisation, professors would hold "examinations" or oral quizzes to test the students' knowledge. The inculcation of a standard knowledge was the aim. This conformed with educational ideal and practices common in the age, though some, such as Kames, found it inexpressibly dull: "Law, like geography, is taught as if it were a collection of facts merely: the memory is employed to the full, rarely the judgment."

#### **Professors of Public Law and the Law of Nature and Nations**

1707 Charles Erskine  
1734 William Kirkpatrick  
1735 George Abercrombie

#### **Professors of Civil Law**

1710 James Craig  
1732 Thomas Dundas

#### **Professors of Universal History and Greek and Roman Antiquities**

1719 Charles Mackie

#### **Professors of Scots Law**

1722 Alexander Bayne

## II. THE INSTITUTIONAL YEARS, 1737-1858

The Professors of Civil Law through the first years of the School's existence were all diligent, sometimes clearly very learned, men; but none were of any distinction otherwise. Mackie was a successful teacher of history and taught many later famous men; but, after his departure from the chair, a certain impetus was lost and the teaching remained fixed for a while in a rather rigid and old-fashioned mode. When teaching from the history chair became successful again later in the century, there was no longer a class aimed specifically at the needs of law students.

Some Professors of Public Law and the Law of Nature and Nations were very successful and attracted large classes (notably Robert Bruce of Kennet); but later in the century, interest diminished and some professors treated the chair almost as a sinecure, or, at best, had difficulty attracting a class.

It was different with most of the Professors of Scots Law. In 1737, on the death of Alexander Bayne, **John Erskine** was appointed to the Chair of Scots Law. Though Bayne was obviously competent enough, Erskine was a man of a higher calibre. He initially taught using Mackenzie's *Institutions*, until he brought out his own *Principles of the Law of Scotland* in 1754; thereafter this became the standard text to teach Scots Law. Erskine was a successful and admired teacher for nearly thirty years, until he retired in 1765 to work on his *Institute of the Law of Scotland*, a work developed out of his classes on his *Principles*. The *Institute* was posthumously published in 1771.

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### **John Erskine, Principles of the Law of Scotland, 1st edition, 1754,** Advertisement -

Though the Institutions of the Law of Scotland, which were written by the learned Sir George Mackenzie of Rosehaugh, have been justly received with universal approbation, it must, at the same time, be confessed that his fondness to reduce the Work within the compass of a small duodecimo led him either to omit altogether, or to treat more slightly, several important articles relating to his subject. Nor, indeed, is that Author's Compend so useful at present as it was formerly, because of these many and considerable alterations which the Law of Scotland has undergone since its publication.

The following sheets are designed to supply these defects; and, by exhibiting a more full and complete view of the principles and general system of our Law, to prepare the reader for deeper researches into that study. ...

If, after all I have done, this attempt shall answer my design, I shall be happy in reflecting that my labours have not been useless to my country.

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Erskine was succeeded by **William Wallace**, who held the chair until 1786. He was a man of little distinction. At the same time, the Professor of Civil Law was **Robert Dick**, appointed in 1755, who also had difficulty in maintaining the class in Civil Law. The two men faced very stiff competition from Professor John Millar in Glasgow, who held the chair in law there from 1761-1801. Millar was an innovative teacher and disciple of Adam Smith who taught a modernised curriculum reflecting the intellectual developments of the Scottish Enlightenment. Dick and Wallace, despite the advantages of their situation in Edinburgh, simply could not compete, although the former even copied Millar by teaching Civil Law in English (a practice traditionalists found nothing less than scandalous).

The fortunes of the Edinburgh Law School revived with the appointment of **David Hume** (the nephew of the philosopher) to the Chair of Scots Law in 1786 and **John Wilde** to that of Civil Law (initially jointly with Dick) in 1792. Further, in 1796, a chair of **Medical Jurisprudence** was created in the Faculty of Medicine. Enrolments in law in Edinburgh shot up. Both Hume and Wilde were in very different ways innovators, who gave the necessary fillip to legal education in the capital, at a time when bodies of law agents, writers and procurators in Scotland were coming to expect (or require) their apprentices to have a university education in at least Scots Law (although it is clear that a number of them had always followed university studies in law).

Instead of teaching the same course on Justinian's *Institutes* twice each year, Wilde taught one, much more extended, course through the entire year, with a very strong emphasis on the historical development of Roman Law. The depth of his personal scholarship may be questioned, but his solutions to the problems in having a vital Civil Law class were rather similar to those contemporarily reached in Germany. He reverted to teaching the Digest in Latin; again his course was expanded and intellectually more demanding. Wilde's innovations came to an end with his removal from the University in 1800 because he had become insane.

Influenced by Millar, whose lectures he had attended, Hume developed a much more extended course on Scots law. He no longer dictated notes on a text, but developed his lectures as an extensive and thoughtful treatise on Scots law, supporting his propositions with the authority of decided cases. It took two years to go through his entire course. This made a major methodological innovation in teaching (away from rote learning of propositions of law) and reflected a similarly major methodological innovation in Scots law, which was now coming to be viewed as a complete, logical and rational system entire in itself and generating its own answers to novel problems. Hume's account of Scots law in his lectures (which were cited in court) was to be the major statement of it for the first half of the nineteenth century and beyond.

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### **Sir Walter Scott, 'Memoir of his early years written by himself', 26th April 1808.**

Sir Walter Scott, the great poet and novelist (1771-1832), became an advocate after study of law at Edinburgh University from 1789 to 1792, an

experience which he recalled in this memoir written in 1808:

The Bar, though I was conscious of my deficiencies as a public speaker, was the line of ambition and liberty ... So to that object my studies were directed with great ardour and perseverance during the years 1789, 1790, 1791, 1792.

In the usual course of study, the Roman or Civil Law was the first object of my attention – the second, the Municipal Law of Scotland. In the course of reading on both subjects, I had the advantage of studying in conjunction with my friend William Clerk, a man of the most acute intellects and powerful apprehension, and who, should he ever shake loose the fetters of indolence by which he has hitherto been trammelled, cannot fail to be distinguished in the highest degree. We attended the regular classes of both laws in the University of Edinburgh. The Civil Law chair, now worthily filled by Mr Alexander Irving, might at that time be considered as in abeyance, since the person by whom it was occupied[1] had never been fit for the situation, and was then almost in a state of dotage. But the Scotch Law lectures were those of Mr David Hume, who still continues to occupy that situation with as much honour to himself as advantage to his country. I copied over his lectures twice with my own hand, from notes taken in the class, and when I have had occasion to consult them, I can never sufficiently admire the penetration and clearness of conception which were necessary to the arrangement of the fabric of law, formed originally under the strictest influence of feudal principles, and innovated, altered, and broken in upon by the change of times, of habits, and of manners, until it resembles some ancient castle, partly entire, partly ruinous, partly dilapidated, patched and altered during the succession of ages by a thousand additions and combinations, yet still exhibiting, with the marks of its antiquity, symptoms of the skill and wisdom of its founders, and capable of being analysed and made the subject of a methodical plan by an architect who can understand the various styles of the different ages in which it was subjected to alteration. Such an architect has Mr Hume been to the law of Scotland, neither wandering into fanciful and abstruse disquisitions, which are the more proper subject of the antiquary, nor satisfied with presenting to his pupils a dry and undigested detail of the laws in their present state, but combining the past state of our legal enactments with the present, and tracing clearly and judiciously the changes which took place, and the causes which led to them.

Under these auspices, I commenced my legal studies. A little parlour was assigned me in my father's house, which was spacious and convenient, and I took the exclusive possession of my new realms with all the feelings of novelty and liberty. Let me do justice to the only years of my life in which I applied to learning with stern, steady, and undeviating industry. The rule of my friend Clerk and myself was, that we should mutually qualify ourselves for undergoing an examination upon certain points of law every morning in the week, Sundays excepted. This was at first to

have taken place alternately at each other's houses, but we soon discovered that my friend's resolution was inadequate to severing him from his couch at the early hour fixed for this exercitation. Accordingly, I agreed to go every morning to his house, which, being at the extremity of Prince's Street, New Town, was a walk of two miles. With great punctuality, however, I beat him up to his task every morning before seven o'clock, and in the course of two summers, we went, by way of question and answer, through the whole of Heineccius's Analysis of the Institutes and Pandects, as well as through the smaller copy of Erskine's Institutes of the Law of Scotland. [2] This course of study enabled us to pass with credit the usual trials, which, by the regulations of the Faculty of Advocates, must be undergone by every candidate for admission into their body. My friend William Clerk and I passed these trials on the same days – namely, the Civil Law trial on the [30th June 1791], and the Scots Law trial on the [6th July 1792]. On the [11th July 1792] we both assumed the gown with all its duties and honours.

### **Lord Cockburn, Life of Lord Jeffrey, vol 1 (1852)**

Two contemporaries of Scott (a Tory) were Henry Cockburn and Francis Jeffrey, both Whigs who later became judges in the Court of Session as well as leading members of the Edinburgh literati of the period. Cockburn's comments on Jeffrey's view of Hume probably reflect his own.

After leaving Glasgow, in May 1789, [Jeffrey] returned home, and remained in and about Edinburgh till September 1791, when he went to Oxford. ... There is no reason to suppose that he attended any of the Edinburgh College classes, except a course of Scotch Law by Professor David Hume, (Session, 1789-90), and of Civil Law by Mr Dick, (Session 1790-91) ... (p 21) ... [After a period in Oxford, Jeffrey returned to Edinburgh and prepared to enter the Scots Bar.] ... During the winter session of 1792-3, he again attended the Scotch Law lectures of Professor Hume, those of Professor Wyld on the Civil Law, and those of Professor Alexander Tytler on History. He groaned under what he held to be Hume's elaborate dullness. His "notes taken from" Tytler, that is, his transfusion of the lectures into his own thoughts, occupy 436 folio pages of his writing, which would be at least double in ordinary manuscript.

### **Thomas Carlyle**

Another great literary figure who held Hume's teaching in low esteem was Thomas Carlyle, who studied law at Edinburgh in 1819 and commented acidly on the experience in his correspondence:

The Professor, Dr Hume, a nephew of the philosopher, ... speaks in a voice scarce audible; and his thinking has yet to show all its points of similarity with the penetrating genius of his Uncle. (1819)



David Hume owns no spark of his uncle's genius; his lectures on law are, (still excepting Erskine's Institute) ... the dullest piece of study I ever saw or heard of.

I had thought of attempting to become an advocate. It seemed glorious to me for its independency, and I did read some law books, attend Hume's lectures on Scotch law, and converse with and question various dull people of the practical sort. But it and they and the admired lecturing of Hume himself appeared to me mere denizens of the kingdom of dullness, pointing towards nothing but money as wages for all that bog-pool of disgust, Hume's Lectures once done with, I flung the thing over for ever.

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Hume also sometimes gave a separate course on criminal law. This formed the basis of his Commentaries on the Law of Scotland Respecting Crimes. This became almost a foundational account of Scots criminal law, in which the law was vouched for primarily by decisions of the criminal court; but it too was subject to contemporary criticism, at least partly motivated by the partisan politics of the time.

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**Lord Cockburn, Memorials of His Time** (written between 1821 and 1830, published 1856)

Two great legal works appeared about this time – the Mercantile Commentaries of Bell,<sup>[3]</sup> and the Criminal Commentaries of Hume; works that will ever hold their places in our system. ... Hume's work was composed in a great measure for the purpose of vindicating the proceedings of the Criminal Court in the recent cases of sedition, and was therefore hailed with the loudest acclamations by the friends of those whose proceedings stood so much in need of defence. But we are far enough now from the passions of those days to enable us to appreciate its merits more candidly. And the judgment of the public is right in having decided that, for ordinary practice, it is a most useful work, the importance of which can scarcely be understood by those who have never had to grope their way amidst the darkness which he removed, and there its merits end. But his admirers disdain this praise, and maintain it to be a great work of original thought, and the model of a criminal system, the supposed imperfections of which the author has shewn not to exist. They will not allow his style to be heavy and affected, his delineation of principle superficial, his views on all matters of expediency or reason narrow, indeed monastic. The proceedings of the savage old Scotch Privy Council are held up by him as judicial precedents, even in political cases, at the end of the eighteenth century. The impeachable domineering of Braxfield in 1794 is just as commendable as if the times had been moderate, and the judge impartial. As an institutional writer, he certainly could not exclude either ancient or modern proceedings from his view; and he was perfectly entitled to put his own value on them. So was any mere chronicler of legal events. But before anyone can deserve the praise of being an enlightened expounder of a system of law not previously explained or methodised,

and of first delivering to the people the rules which they must obey, and ought to admire, the past actings of courts ought not to be merely stated, but to be criticised and appreciated, so that future tribunals may be guided, and the public instructed, on defects and remedies. On such matters there is no book that has worse stood the test of time. There is scarcely one of his favourite points that the legislature, with the cordial assent of the public and of lawyers, has not put down.

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The first half of the nineteenth century was not the most dynamic period of the Faculty's history, although Hume's success (he resigned from the chair in 1822) was maintained by his successor, another significant author, George Joseph Bell. His Commentaries on the Laws of Scotland and the Principles of Mercantile Jurisprudence were as important for mercantile law in Scotland as Hume's lectures for private and Commentaries for criminal law. Bell's friend and fellow-Whig Lord Cockburn was kinder about his work than Hume's:

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**Lord Cockburn, Memorials of His Time** (written between 1821 and 1830, published 1856)

Two great legal works appeared about this time – the Mercantile Commentaries of Bell, and the Criminal Commentaries of Hume;<sup>[4]</sup> works that will ever hold their places in our system. Bell's is the greatest work on Scotch Jurisprudence that has appeared since the publication of Lord Stair's Institute. Its authority has helped to decide probably eighty out of every hundred mercantile questions that have been settled since it began to illuminate our courts; and it has done, and will do, more for the fame of the law of Scotland in foreign countries than has been done by all our other law books put together.

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1824 saw the final establishment, after many years of opposition, of a new Chair of Conveyancing. The occupant of this chair was supposed to teach the theoretical and practical aspects of drafting deeds and transfer of property. Under the patronage of the Society of Writers to H.M. Signet, the first professor was Macvey Napier, more distinguished as a litterateur than lawyer. Napier seems to have been more popular as a lecturer than Bell, whose students often criticised his approach and style.

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**From *The New Lapsus Linguae or, The College Tattler for Session 1824-25***

Mr Editor,

I think it must be admitted, that as Students attending any Class do so for the purpose of acquiring a knowledge of the subject treated of there, they are entitled to all possible information on any subject falling within the range of the Professor's

Lectures. Now, if the Professor of Scots Law deliver a doctrine, and cites in support of it a Decision of the Supreme Court, which, on examination, a Pupil finds, as he conceives, quite at variance with it, would it, in such a case, Mr Editor, be a breach of the Pupil's respect for his Professor, or an encroachment on his dignity, to ask in a becoming manner, some explanation? Yet the Professor considered my modest application as undeserving of notice, and treated it with silent contempt. Now, Mr Editor, is not this a very great hardship? The uncertainty of Law, is, in itself, sufficiently discouraging, but when joined with such conduct on the part of our Instructor, it becomes quite overwhelming.

Yours, &c

DIRLE DON

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Dear Lapsus,

As you did me the honour to insert a former Sketch of mine in your amusing and elegant little work, I now trouble you with another, on one of our Law Professors, viz the worthy Lecturer on Scots Law. Scots Law! Did I say? - he seems rather to be the Professor of French and English Law than of Scots. Yes, Sir; however strange it may seem, it is, I assure you, a perfect fact. This is one fault that his Pupils universally complain of in him, and with great reason. It may at first seem a trifling one, but, on investigation, it will be found more serious. Not that I find any fault with him for explaining to us the principles of the English or of the French Law, or for quoting them at times; all this is quite right and proper, occasionally; but surely it is chiefly incumbent upon him to expound to us the principles of Scots Law, and to quote authorities from Scots cases rather than from those of other countries. Another charge to be brought against him is that of not having his Lectures prepared before-hand. This allegation, I am aware, was more applicable to him during other Sessions than during this; but he still is, at times, almost unprepared upon the subject he means to lecture on. This may be attributed to his time being so much occupied by his professional business; but that ought not to prevent him from dedicating a portion of his time to prepare himself for his Class; - his duty towards his Pupils, and his situation as Professor in this University, demand it. His mode of speaking, too, is rather mincing and affected, which is a pity, as it prejudices his Students against him. Having thus disburdened myself of these dark shades in his character, I now proceed to the more pleasing task of pointing out his merits: - He is a sound Lawyer, and stands, most deservedly, very high at the Bar. In short, he is a perfect Gentleman; and although in justice to my fellow-Students, I have thought it my duty to mention the preceding remarks, yet there is not a man any where that I have more respect and esteem for.

JUSTUS

**Thomas Fraser, "Record and Confessional of Thomas Fraser", (law student in Edinburgh 1831-32), published by T StJ N Bates, 1980 JR 166, at 176**

I attended both the Law of Scotland class taught by the celebrated legal author George Joseph Bell; and the Conveyancing class taught by Macvey Napier, who was less known as a lawyer than as a litterateur. He had I believe little or no practice in his profession of WS but he had been the Editor of the Edinburgh Encyclopedia and [was] Editor of that periodical when Jeffrey became Lord Advocate. Strange to say, however, the lectures of Mr Bell notwithstanding his high legal reputation were generally considered profitless, and his class were most inattentive. While the lectures of Napier, who as a lawyer was unknown were deemed most instructive and always commended the utmost attention from his students. The explanation however is easy. The subject of Mr Bell's lectures was a very wide one embracing the whole law of Scotland, with the exception of conveyancing which he left to Napier, and criminal law, which he rarely touched on, and his mode of treating it was extremely desultory consisting almost entirely of verbal commentaries with little attempt at system or arrangement upon his own very excellent text book, the Principles of the Law of Scotland. Napier's department on the other hand was very limited and admitted of being treated in an elaborate and complete manner; and he went through it in a series of lectures arranged in the clearest and most satisfactory manner and written in a style marked by extreme conciseness and precision and by as much elegance as was compatible with those predominating characteristics ... I paid as much attention as I could to Mr Bell's class and worked hard at Mr Napier's.

**Lord Cockburn's *Circuit Journeys* (published 1888)**

Entry for 1 October 1843, written at Bonaly –

While here, I received intimation of the death of my old friend, George Joseph Bell, Clerk of Session, and Professor of Scotch Law, and destined to be known to posterity as the author of the book on Bankruptcy. His death was not to be regretted, - old, blind, poor, and getting poorer, and never forgetting the disgraceful treatment which excluded him from the Bench because he would not be dishonest, life for him had lost most of its attractions. There could not possibly be a better man, and he is the greatest legal writer in Scotland next to Stair. It is not perhaps too much to say that his work is the greatest practical book on Mercantile Jurisprudence that has been produced in modern times.

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Bell's successor was John Shank More, who held the chair of Scots Law from 1843 to 1861; not such a famous name as Hume or Bell, he none the less edited Erskine's Principles and Stair's Institutions and was considered a suitably learned man who inspired some affection in his students despite the dullness of his lecturing style:

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**Lord Justice Clerk Macdonald, *Life Jottings of an Old Edinburgh Citizen* (Edinburgh, 1915) pp 232-235**

John MacDonald, later Lord Justice-Clerk (1888-1915) and author of the treatise on criminal law, was a law student at Edinburgh University from 1856 to 1859.

I entered on study for my profession with no drawback of weakness, and began the most strenuous work of my life. I chose the Bar, and attended logic and law classes. I have already confessed that my inclination is not naturally towards close and continuous application to one class of subject. But when I was faced with examinations in three languages, logic and metaphysics, and civil law, Scots law and conveyancing to follow, and all within two years, the necessity of the case was realised and study was paramount, social engagements were declined, and amusements, except on a Saturday, shunned. "I suspect you have been burning midnight oil, John," said my brother when he came home on leave from his regiment. Well, I had. With the aid of a teapot, in which tea stewed for hours in the fender, and to which I applied time after time, I kept myself awake, and worked late as well as early. I came out sixth in order of merit in Scots law, in a class of about one hundred, which was far above what I had expected to attain, and it gave me hope of passing creditably when I should come up to be examined for the Bar. I believe that my surviving that teapot's contents, consumed in quarts, is the best proof of how robustness had taken the place of delicacy. My teachers were Professor Fraser—now a nonagenarian, who so ably filled the Logic chair; Professor Shank More, who lectured on Scots Law; Professor Campbell Swinton, who was in the Civil Law chair; Professor Bell, who taught Conveyancing; and Professor Traill, who lectured on Medical Jurisprudence. I also went to the Watt Institution to learn the practical arts of joinery and carpentering and turning, a knowledge of which has been most useful to me in many ways, professional and otherwise. As regards Medical Jurisprudence, I have often regretted, having come to know Dr Littlejohn so well, that I did not take his class at the College of Surgeons, but Professor Traill was a charming old man, and his lectures and exhibits very instructive. Although there was no examination to be passed on his subject, its highly practical character made it most interesting to me, and I learned much which was of great utility in my criminal practice afterwards. I will confess that, with the exception of the Civil Law, I found the law lectures very dry. Mr Bell I still seem to hear in the Conveyancing class, repeating: "Morison 2755, Morison 2755", the reference always being uttered twice in monotonous tone. And the Scots Law lectures were also terribly humdrum in character. Only one touch of relief do I remember, when the law on slavery was stated, and the dear old modest Professor More, who never looked at the class, but glanced up at the end of every utterance to the upper left-hand corner of the class room, said in most sober tone: "And so" (head up) "as the sun can never set on the British Dominions" (head up) "so that sun can never rise upon a British slave."

The worthy gentleman blushed as he looked for the last time at the

corner, when for once the room resounded with a round of applause, possibly ironical to some extent, but kindly as well.

There is one story connected with his name which may bear repetition. A junior counsel had been asked for his opinion on the memorial of a client. He wrote below it:

"Your case does not seem to me to have a leg to stand upon. Perhaps it would be as well to take in the assistance of one Shank More."

It is also told of him that his good nature led him on the occasion of an examination, when in answer to his question the student had said, "Yes" firmly, he gently responded: "Right, but rather 'no'."

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The Professors of Civil Law remained undistinguished in the first half of the nineteenth century, the new dynamism of Roman law in Germany and other parts of the Continent largely passing them by. The Public Law chair was a sinecure left unfilled.

There could be little doubt, however, but that the Faculty of Law at Edinburgh was now well established and secure. Glasgow had dramatically declined as a law school after Millar's death in 1801. As the legal profession expanded dramatically in the period to 1830, student numbers at Edinburgh grew enormously: in some years there were well over 200 students in the Scots law class alone.

While in the early years of legal education in the university, the law professors had often taught in halls and rooms outside the University, by the end of the eighteenth century they had generally come to use the University's own class rooms. Their position was clearly recognised in the building of Old College from 1789 onwards, when their needs and requirements for their class rooms and retiring rooms were taken into account. Moreover, David Hume, for example, as well as some of the other professors, played a significant part in settling on Playfair as the architect to complete Adam's unfinished building and in making aesthetic decisions on what should be done. The large class in Scots law was to be accommodated in one of the class rooms on the ground floor or current quadrangle level (now Lecture Theatre 175), while the smaller classes in Civil Law and Public Law were awarded jointly a small classroom on the second floor, adjacent to the current librarian's office in the modern Law Library. As the Faculty developed after 1858, however, the classes moved to other lecture theatres as needs and size required.

### **Professors of Public Law and the Law of Nature and Nations**

1759 Robert Bruce  
1764 James Balfour  
1779 Alexander Maconochie  
1796 Robert Hamilton  
1832 Vacant

### **Professors of Civil Law**

1745 Kenneth Mackenzie  
1755 Robert Dick  
1792 John Wilde  
1800 Alexander Irving  
1827 Douglas Cheape  
1842 A. Campbell Swinton

### **Professors of Universal History and Greek and Roman Antiquities**

1753 John Gordon  
1754 William Wallace  
1755 John Pringle  
1780 Alexander Fraser Tytler  
1801 William Fraser Tytler  
1821 Sir William Hamilton, Bt.  
1837 George Skene  
1842 James Frederick Ferrier  
1846 Cosmo Innes

### **Professors of Scots Law**

1737 John Erskine  
1765 William Wallace  
1786 David Hume  
1822 George Joseph Bell  
1843 John Shank More  
1861 George Ross

### **Professors of Conveyancing**

1825 Macvey Napier  
1847 Allan Menzies  
1856 A. Montgomerie Bell

### **Professors of Forensic Medicine**

1807 Andrew Duncan  
1820 William Pulteney Alison  
1822 Robert Christison  
1832 Thomas Stewart Traill

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[1] i.e. Robert Dick.

[2] This must mean Erskine's Principles rather than the much larger Institute.

[3] See further below for Bell and Cockburn's view of his 'great work'.

[4] See above for Cockburn's criticism of Hume.



### III. THE UNIVERSITIES (SCOTLAND) ACT 1858

The Scottish universities had been the subject of increasing dissatisfaction from 1820 or so onwards. Within the British context, they were compared unfavourably with Oxford and Cambridge (themselves far from immune for criticism at this period), while the tremendous development of the universities of Germany provided a model for the rest of Europe to admire and attempt to emulate. The German universities had developed a serious institutions for research as well as teaching and this had invigorated their intellectual life. This model was attractive to many Scots, especially the small number who travelled to Germany to study. Though few, many men who were to exert influence on university life studied there.

One of them was **James Lorimer**, advocate, alumnus in arts and law of Edinburgh, who had also studied in Geneva, Berlin, and Bonn. Lorimer was an articulate advocate of university reform influenced by his experiences of Germany. Finally, the Universities (Scotland) Act was passed in 1858. This provided for a thorough reconstruction of the universities, including, establishing the University of Edinburgh independently of the Town Council, with a new constitution. The Act also established the University Commissioners to regulate detailed matters.

One Ordinance issued in 1862 by the Commissioners created the new degree of LL.B, drawing on and reformulating the existing traditions of the Scottish universities, in particular Edinburgh. The degree was only open to graduates. Students had to attend courses and be examined in Civil Law, Conveyancing, Public Law, Constitutional Law and History, and Medical Jurisprudence. The degree was to be a mark of “academical” rather than “professional” distinction, so examiners were to pay particular attention to Public Law (which meant Jurisprudence and International Law) and Constitutional History.

For a long time this degree could only be taken in Edinburgh, as no other Law School could offer the full range of courses. At first, few students took it; many continued simply to attend the courses in the university they thought necessary to pass their professional examinations, which underwent major reform at much the same time.

### IV. THE AGE OF MUIRHEAD, LORIMER, AND RANKINE, 1862-1914

The period after reform was one of great intellectual vitality in law in Edinburgh. In 1862 two crucial professorial appointments were made: **James Muirhead** to the Chair of Civil Law and **James Lorimer** to the revived Chair of Public Law and the Law of Nature and Nations. Muirhead had studied in law and arts in Edinburgh and law in Heidelberg; Lorimer’s studies have already been alluded to. These two men managed for the first time in the nineteenth century to give legal study in Edinburgh a greater international presence through their contacts overseas, and as authors participating in the emerging European world of legal scholarship.

Muirhead established modern Roman law teaching in Edinburgh, drawing on the best contemporary, essentially German, scholarship, with which he kept up-to-date all his life, and on which he himself wrote, notably his edition of *The Institutes of Gaius and Rules of Ulpian* (1880) and *Historical Introduction to the Law of Rome* (1886). His obituary noted that “[A]s Professor of Civil Law ... his reputation is more European than English”, and his lectures were described like this:

In Edinburgh you saw seated before a mere sprinkling of students a broad-shouldered, buirdly form, surmounted by a refined, clean-shaven face, indicating high intellectual capacity. And enthusiasm kindled there, not over a barren logomachy, but when the gradual development of some important institute was being traced through long eras of Roman history.

He died in 1889, but his style of scholarship was maintained by his successors in the Civil Law Chair. The first was **Henry Goudy**, educated at Edinburgh (M.A. LL.B.) and Königsberg; best known now as author of a still important treatise on the Scottish law of bankruptcy, Goudy was called to the Regius Chair of Civil Law in Oxford in 1894. His successor was **James Mackintosh**, author of a student text on the *Roman Law of Sale* (1892) and *Roman Law in Modern Practice* (1934).

Lorimer became a renowned author in legal theory and international law, essentially founding these as modern disciplines in Scotland. He was said to be “an interesting but not a wholly successful lecturer”:

Under the dingy bust of Socrates, the Professor, his spare figure closely bent over the manuscript, discoursed on lofty themes in a voice, weak indeed and tremulous, yet capable of expressing equally a rare humour or a genuine pathos ... Few professors have ever exercised a greater personal magnetism over the students ... [H]e was a great moral teacher, moulding their characters and transfiguring their whole view of life. He was their master; they were his disciples.

Lorimer’s successor was **Sir Ludovic Grant**, who held the chair from 1890 to 1922. His

career was more that of university administrator than scholar: he was Dean of the Faculty of Law from 1894-1910.

In 1862, **Cosmo Innes**, the famous record scholar and an editor of the *Acts of the Parliament of Scotland*, occupied the history chair: teaching of English and Continental Constitutional History was a necessary component of the new LL.B degree. Innes's successor in 1874 was **Aeneas J.G. Mackay**; also a noted author whose works included a life of Stair and a treatise on Court of Session practice. Mackay's successor in 1881 was **John Kirkpatrick**, educated in Edinburgh and Heidelberg, where he had graduated doctor of law; one of the other contenders for the chair in 1881 was Robert Louis Stevenson. (Stevenson's mother reassured him: "I am on the whole relieved that you have not got the chair as I am sure it would have worried you.") In 1909, Kirkpatrick was succeeded by **John Hepburn Millar**, who had for some time served as Lecturer in International Private Law, one of the growing number of lecturers who supplemented the teaching of the professors as the Law School and curriculum expanded.

The occupants of the Chair of Scots Law in the second half of the nineteenth century were largely undistinguished men. When Robert Louis Stevenson was a student in the Law Faculty in the early 1870s, the holder of the Chair was **Norman Macpherson**, editor of the series of Session Cases which bears his name. In November 1872 Stevenson wrote to a friend as follows about the experience:

I am now, working hard (credite posteris). I am at Political Economy, which I love; and Scots Law, which is a burthen greater than I can bear. The large white head of the professor relieved, in the pale gaslight, against the black board, is the one 'taedii dulce lenimen' that we poor students have. He is called 'The Bum-Faced', by those who know him. [1]

However, Macpherson was succeeded in the Scots Law Chair in 1888 by its most distinguished holder since Bell, **John Rankine**. Rankine, who was Professor until 1922, was educated in Edinburgh and Heidelberg. A successful and popular teacher, Rankine was the noted author of the still authoritative *Law of Landownership in Scotland* (1879), which went through several editions, and the *Law of Leases* (1887). On his death the Royal Society of Edinburgh noted that "In the course of the thirty-four years during which he held the Chair, most lawyers now in practice in the south-east of Scotland, and many others, passed through his hands; and few, if any, do not look back upon his lectures as their first illumination of the great fabric of Scots law."

From 1866 to 1892 the chair of Conveyancing was held by **James Stuart Fraser Tytler of Woodhouselee**. His successor, **John Philp Wood**, held the chair until 1900; author of a number of works, his lectures were published in 1903. **John Mounsey** next held the chair until 1922.

### **John Adam Lillie, *Tradition and Environment in a time of change* (1970).**

John Lillie, later Sheriff of Fife and author of a student text on mercantile law, was a student in the Edinburgh Law Faculty just before the First World War, and has left us these comments about his teachers in his memoirs.

The professorial staff included some very distinctive personalities. Professor John Rankine, of the chair of Scots Law, was a very learned precisian, an expositor of and commentator on especially the law of landownership and of leases. He was a son of the manse from Ayrshire and knew country life. His lectures were very comprehensive and detailed in treatment and, it was said, varied little from year to year, even the jokes and wiseacre interjections ('We've all got the seeds of dissolution in us') being the same and, there being no suitable textbook – Erskine's Principles, 'little Erskine', which he prescribed was unenlightening to a student – a number of very full notes of his lectures were in circulation. In appearance he was short, slightly bow-legged with aquiline features, and a long moustache and trimly pointed beard. He was exact in speech and had an unpretentious dignity and courteous manners.

Sir Ludovic Grant held the chair of Jurisprudence and Public International Law. He was the son of a Principal of the university. He was very tall, rubicund, moustached and of an aristocratic personality. He was easy on notetakers, repeating each sentence as he went along and all in a very loud and explosive tone of voice. The names and concepts of his subject were accordingly highly flavoured and memorable. 'Pumperdink', 'Bynkerschoeck', the 'mare clausum' and such reverberate still in one's ears. We heard with pleasure from him that the first essay in English on the law of warfare at sea was the work of a Scotsman, the notable John Clerk of Eldin. And of course the standing of his predecessor, Professor Lorimer, among international jurists was a matter for pride.

Most dramatic of all lecturers, as befitted his subject, was Professor Harvey Littlejohn, of the chair of Forensic Medicine, son of a very famous predecessor, Professor Sir Henry Littlejohn. Harvey was dramatist, in mind and manner. He used no notes. He strode up and down behind his desk as he lectured, and pointed his very real eloquence with gestures and facial expressions. Visits to the police mortuary were a somewhat gruesome addition to the lectures – the sailor who had been six weeks in the Forth, still fully dressed but without flesh on hands and face, the suicide who had swallowed chloroform in an Edinburgh cemetery, the contents of whose stomach we were invited to smell, and other such, were upsetting experiences to many in the class.

Professor Hepburn Miller of the chair of Constitutional Law and History was, like most others of that time, a very vigorous personality. There was never any question of audibility in these days and Professor Miller was pronouncedly authoritative, and



some said controversial, in his exposition. But he knew his Scottish history and literature, and he was himself one of the outstanding Scottish literati of his day. The pages of Blackwood's 'Maga' testify to this.

The law of Scotland has many roots in and affinities with the law of the Romans, the 'Civil Law'. This affinity it shares with many of the systems of the continent of Europe and their offshoots in the colonial field. The Civil Law has a rounded finish given it in its years of mature development in the great Codes, the Institutes, especially those of Gaius and Justinian. It has been further illuminated in the writings of the continental jurists of the Low Countries and Germany and France. It was in these schools that its principles were learned and absorbed in the founding centuries of the law of Scotland. So it was essential for the young Scottish jurist to be steeped in this history and tradition as a proper prelude to the study of the law of Scotland and a necessary shield against the impact of the alien code of England – alien alike historically and in its foundations, in its guiding intellectual concepts and its procedural framework – in a word in its attachment to custom, convention and precedent, and the vagueness of its reliance on philosophical principle. The study of the Civil Law was accordingly a basic concern of the law schools of Scotland, properly prefaced by a – perhaps too brief – survey of its history. Here in the class of Civil Law, of Professor James Mackintosh, KC, was raised a curtain upon the stage of humanity scarcely to be equalled in breadth and range.

The great chapters of the law were laid out before us in the setting of the world and empire of one of the three great contributory streams of our civilisation and culture, the Roman – the others the Hebrew and the Greek. Side by side with it we were introduced in the class of Jurisprudence to the philosophical concepts which have been thought proper to regulate the effort after Justice. Such was the preparation for the study of the law of Scotland as it is, and of the more special fields of regulation by law – International Law, Constitutional Law, Forensic Medicine, Conveyancing and Evidence and Procedure.

These studies were most beneficially made against a background of daily practice in the law in its business aspect. In the rapidly expanding business of Baillie & Gifford, Writers to the Signet, I was plunged into a wide variety of sides of the practitioners' business, an experience which militated against academic laurels but greatly enhanced the understanding of the abstract in law. In particular I obtained an early grounding in the fascinating techniques of the feudal law which much illumined the lectures of that fine expositor, Professor Mounsey, of the chair of Conveyancing.

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As well as the individual distinction of Lorimer, Muirhead and Rankine, this period saw a broadening of the curriculum to include other subjects with the development of the appointment lecturers in some specialist subjects. The important developments derived from the Universities Act of 1889. Moreover, the curriculum saw significant reform, both to

take account of developments in the University and changes in the requirements of the legal profession. Progressively, graduation in law started to become the norm, with the M.A. LL.B. combination being particularly popular, although the undergraduate degree of B.L. had also been instituted. The aspirations of the Faculty were high and international, to be more than just a teacher of local lawyers.

At the very end of the period, one significant development took place: women were for the first time admitted to study law. In 1909, Eveline MacLaren M.A. and Josephine Gordon Stuart M.A. graduated LL.B. The two women had been warned they might face hostility from the other law students, but in fact they were met with cheering when they first entered the lecture hall. Josephine Stuart was placed first in Administrative Law, second in Civil Law, second in Scots Law, and ninth in Conveyancing. For a long time there was merely a trickle of women law students and graduates; but Miss Stewart had led the way in dramatic style. It was not until after the Great War, however, that women were admitted to the legal profession.

#### Professors of Public Law and the Law of Nature and Nations

1862 James Lorimer

1890 Sir Ludovic James Grant, Bt.

#### Professors of Civil Law

1862 James Muirhead

1889 Henry Goudy

1893 James Mackintosh

#### Professors of Constitutional History 1909 (formerly Universal History)

1874 Aeneas J.G. Mackay

1881 John Kirkpatrick

1909 John Hepburn Millar

#### Professors of Scots Law

1864 George Moir

1865 Norman Macpherson

1888 Sir John Rankine

#### Professors of Conveyancing

1866 James Stuart Fraser Tytler

1892 John Philp Wood

1900 John Little Mounsey

#### Professors of Forensic Medicine

1862 Sir Douglas MacLagan

1897 Sir Henry Duncan Littlejohn

1906 Harvey Littlejohn

## V. FROM THE GREAT WAR TO REFORM OF THE LL.B.

The liveliness and buoyancy of the era after 1860 was perhaps not matched in the interwar years. 1922 was a year of great changes in the Faculty: **William Wilson**, placed third in Scots Law to Miss Stewart in 1909, was appointed to the Chair of Public Law and the Law of Nature and Nations; **Robert Candlish Henderson**, one of the more distinguished men to be appointed to the chair of Scots Law and author of what is still the leading work on *Vesting*, was a worthy successor to Rankine; **Sir Ernest MacLagan Wedderburn** succeeded Mounsey as Professor of Conveyancing and held the chair until 1935. There was little further change in personnel until the Second World War, while Professor Mackintosh served as Dean from 1909 until his retirement from the chair of Civil Law in 1938.

Increasing specialisation in teaching led Wilson to teach only International Law in a course of eighty lectures, while jurisprudence was taught by a special lecturer in a separate course. One important innovation was Wedderburn's introduced of the practice of having special small classes to teach the drafting of deeds and writs necessary to conveyancing: an innovation that lasted until the establishment of the Diploma in Legal Practice in 1981 removed the practical aspects of land law from the LL.B. degree. Erskine's *Principles* remained the primary teaching book for Scots law until, in 1927, with Professor Gloag of Glasgow, Professor Henderson co-authored *Introduction to the Law of Scotland*, still continuing as one of the standard statements of Scots law.

Despite the introduction of a number of specialist lecturers, the Faculty remained essentially one of Professors, most of whom were members of the Faculty of Advocates (in whose Library, Faculty meetings still sometimes took place) and essentially part-time teachers, teaching part-time students, with classes fitted around office hours. Most professors retained a practice at the bar or as a partner in a firm of solicitors, while some were sheriffs (Professor Mackintosh, for example, was Sheriff of Ross from 1912 to 1940). While this system may have worked well in the nineteenth century, by the end of the Second World War it was showing distinct signs of strain.

The period immediately after the Second World War was thus one of debate over the future of legal education in Scotland, as a desire developed, among both practitioners and teachers, for a more academic and sophisticated law degree, with a higher level of teaching than had sometimes prevailed, and a curriculum that gave a more balanced legal education, with greater scope for more advanced and specialised teaching. Important figures and appointments promoting and signalling change were Professors T.B. Smith and David Daube of Aberdeen and D.M. Walker of Glasgow. In 1958, **T.B. Smith** was appointed to the Chair of Civil Law in Edinburgh.

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Nicholas Fairbairn, *A Life is Too Short* (1987), pp. 93-96, 102-103

Nicholas Fairbairn, later to become a prominent advocate, MP and Solicitor



General for Scotland, described his time in the Law Faculty (the late 1950s) thus in his memoirs:

I had now added moral philosophy, civil law, constitutional law and Scots law to my completed inquiries. Moral philosophy was taught by Professor Murray, whose wizened and venerable face made it seem likely that he had known in person all those whose works he explained to us so lucidly from Plato on. Civil law was the estate of the atrabilious Professor Fisher. Everything about him had an air of mystery, his morbid voice, his drooping, bloodhound eyes, his slouching step. Even when he permitted a brumous smile to visit his expression it seemed to wrack him with intolerable pain. I have never met a drier man, but inside this Presbyterian fortress lived a wise, kind tutor. We were privileged to be the first beneficiaries in the class of constitutional law of the instruction of Professor Mitchell, the extent of whose knowledge and the profundity of whose thoughts reflected the massive energy of his mind. His sense of humour was delightfully dry but unlike Professor Fisher that was all that was dry about him. All these distinguished luminaries entertained me on many occasions with their wisdom and their hospitality.

I was now due to sit my Master of Arts degree exam. Unfortunately I had long taken the view that I could read more quickly from a textbook than I could be read to out of one. Accordingly, I had frequently not been present at the nine o'clock lectures in Scots law given by Professor Montgomery, who solemnly copied out the texts of Gloag and Henderson's textbooks and read them to us, making such major changes from the original to put us off the scent, as 'in a case where X sued Y' where the original said 'A sued B'. Everything about this boring lusk was flameless. His speech was clipped and his presence was totally unvirile.

As a result of my regular absences from his gripping lectures I failed to enrol in time for my degree exams – I was a month late. The regulations stated quite clearly that in very exceptional circumstances, and with an excuse of celestial originality, a student might be allowed to enrol up to seven days late, but in no circumstances whatsoever must he enrol thereafter. Believing that rules are made by petty officials to make life easier for themselves and to show their power I decided to try to discover the meaning of 'in no circumstances whatsoever'. I went to my Director of Studies and explained that in a moment of mental aberration, I had entered the date of enrolment in the wrong month though on the right date. To prove it, I did so. He arranged that I would be allowed to meet the Dean of the Faculty of Arts, Professor Orr, but that would be the end of the indulgence. I can't say I thought a meeting with the professor was the same as sitting degree exams, but perhaps it was consolation and a necessary step to my goal. It was certainly not a consoling experience. The professor was tall and aloof. I was shown into his presence at the appointed hour. With studied bad manners he ignored me, though he knew I was there, thus hoping to increase his stature in my eyes and reduce mine in his. After tolerating this insult for a few minutes I turned and left. Immediately he got up:

'Where are you going?' he said. 'I am going,' I replied, 'to arrange an appointment with you at a time when you are free to see me.' This impertinence had the desired effect. He became humble, affable and apologetic and threw in permission to sit the degree exams in mitigation of his embarrassment. It was a grim afternoon, but I had discovered the meaning of 'no circumstances whatsoever'.

I now had to go to the Matriculation Office and enrol. It was incomprehensible to Mr Jennings, the clerk, that an unbreakable rule had been broken, particularly a rule that would have broken a student. His normally amethystine complexion went so deep that it became almost black like a bramble. With a reluctance and contempt bordering on insanity he enrolled me. I sat the exams, passed them and forgot to enrol to be capped, and Mr Jennings had the ultimate indignity of having to ring up to ask me if I was going to be there. On this occasion such was his pain he almost laughed, much as he preferred misery to laughter. I had got past one more impossible. ...

In the summer of 1957 I was due to take my LLB final exam. The only subject in law which I had found difficult was conveyancing, which is the mystical and unnecessarily complex art of disposing of property in Scotland. The professor, Professor Henry, a partner in an exalted firm of Writers to the Signet, was an ascetic perfectionist to whom these mysteries were as clear as the constellations are to the masters of astrology. But to me they were meaningless and obfusc. I therefore did some work. I believed I had mastered the profundity of these abstruse absurdities. I wrote notes on postcards and reduced them to visiting cards as the mysteries sunk in. Nevertheless, lest I hadn't mastered them, I decided to do a double check. I arranged to sit the Bar exams as well as the degree exams. I thought I had done quite well in the Bar exams, but I scored only eight per cent (the pass mark was seventy per cent) and the degree exams were only a fortnight away. How could I master these mystical fantasies if I couldn't pass the only exam I ever did any work for? My calculations, in any event, had been a little premature and I had arranged to give a party with my friend, Kenny John Cameron, in the dungeons of Rosslyn Castle, attended by the tormentingly beautiful Alison Seeböhm, so there was little time available for learning the science of conveyancing. 'A pennyweight of love seemed better than a pound of law.' Prospects for success at so dry a subject looked bleak indeed. I went to the first exam. The questions were incomprehensible, but then I thought 'The greatest fool can ask more questions than the wisest man can answer.' So I went into the second exam, strengthened by the morbid knowledge that nobody else could understand the first paper either. Baffled again, I waited in terror to see if I would even be granted an oral examination or whether I had failed already. I was granted an oral. Now the Almighty intervened on my side, as he has done from time to time in my life on critical occasions. As the lean ascetic professor strode omnisciently up the Mound to beat us at his game, he was suddenly struck down by a searing pain and transported, whence he came, by ambulance, to bed. That left the co-examiner, the visiting professor, to take the

orals. Like me, he had no interest, or showed no interest, in conveyancing. He was a professor in Scots law, interested particularly in criminal law, as I was, so we discussed at length the theories of punishment and criminal procedure. We did not mention conveyancing at all. All day I hoped, but feared. I could stand it no longer. I decided to telephone the stricken professor in his bed. I recall his every Edinburgh word: 'You did two "shawking" papers, but the professor tells me you did a very impressive "awral" so we've decided to pass you.' I have never been more thankful in my life and to the professor, whose indulgence was due to the fact that as a member of the Bar I was unlikely ever to write the word conveyancing again, I extended my everlasting gratitude and my hopes for his continuing good health. It was as if sentence of death had been removed from me. I was ecstatic, but one precaution had first to be taken. In those days, in order to pass one degree exam you had to pass two. I immediately and anxiously telephoned the lecturer in Evidence and Procedure to see if I had passed. To have climbed the Everest of Conveyancing and to be beaten by the molehill of Evidence would have been a tragedy indeed. I learned that I had conquered the molehill of legal procedure with a speechless swoon of joy. *Haud facile emergunt!* But I had emerged – just – with the degrees of MA and LLB.

Fairbairn's hostile view of George Montgomery, Professor of Scots Law 1947-1968, should be balanced by the following remarks of T B Smith in an obituary notice (1968 SLT (News) 142):

The qualities for which Professor George Allison Montgomery, who died on 9th August [1968], will be best remembered are not particularly evident in the contemporary academic world – many aspects of which must have grieved him. In all things he acted by the standards of a gentleman, regarding as ignoble the contending and contentious rat-race in a university or any other context. Firm he could be on matters of principle, but in all his dealings he showed gentleness, courtesy and humanity. He spoke ill of none and well of very many; often covering with his charity the mistakes or malice of others. He was a wise and sympathetic counsellor and kept counsel.

His quiet courage was often apparent, sometimes in situations surprising to those who did not know him well. Few meeting George Montgomery would appreciate that he had left school to serve on the Western Front with the Highland Light Infantry, whose formidable military qualities do not notoriously include meekness with untried officers. The humanity which he learnt in the trenches during the 1914-1918 War he was later to evince during Hitler's war as chairman of the Scottish Tribunal for Conscientious Objectors, as member of the Royal Commission on Capital Punishment and as Honorary Sheriff-Substitute of Perth and Angus at Dunblane. ...

Throughout his long period of service in the Faculty of Law, Professor

Montgomery elected *stare super antiquas vias*, and followed in the tradition of Gloag and Henderson, whose book was the basis of his teaching.

Note too the remarks of David Edward, who graduated LLB in 1961 and was to become the British judge in the Court of Justice of the European Communities:

It is true that Professor George Montgomery of Edinburgh read to his students each morning at 9 from a transcript of Gloag & Henderson - not forgetting the chapter headings, "Agreements defective in form province of writing" being solemnly announced (without punctuation) as one of the topics for consideration. His warnings against reliance on that invaluable work were greeted with rapture by his class. ... But it should also be recorded that George Montgomery was a kind man who tried to know all his students by name and, in the most unobtrusive way, gave practical help to a number of them.



#### **Professors of Public Law and the Law of Nature and Nations**

1922 William Wilson  
1945 Archibald H. Campbell

#### **Professors of Civil Law**

1938 Matthew G. Fisher  
1958 Thomas B. Smith

#### **Professors of Constitutional History (from 1945 Constitutional Law and History)**

1925 David O. Dykes  
1946 Laurence James Saunders  
1954 John D.B. Mitchell

#### **Professors of Scots Law**

1922 Robert Candlish Henderson  
1947 George A. Montgomery

#### **Professors of Conveyancing**

1922 Sir Ernest Maclagan Wedderburn  
1935 Harry H. Monteath  
1955 George L. F. Henry

#### **Professors of Forensic Medicine**

1927 Sir Sydney Alfred Smith  
1953 Douglas James Acworth Kerr

## **VI. THE MODERN DEGREE AND FACULTY**

In 1960, reform finally came, in the teeth of opposition from parts of the legal profession. The degree of LL.B. was now to be a full-time and undergraduate degree, with the possibility of honours study on the Scottish model. Dispensing with the requirement of possession of an M.A. degree was controversial, the argument being that this was necessary to ensure lawyers had a general liberal education. Against this was the point that the new degree was broader and more academic in its nature, while, moreover, possession of a B.A. in law from Oxford or Cambridge had always been accepted as “general” education preparing for the LL.B. Moreover, the development of a system of grants to support education only for a first degree meant that a system of lengthy double degrees would inhibit admissions of able but impoverished students.

The new degree structure initially allowed the splitting of Scots Law from one course into two and the development of many more subjects both of basic professional relevance and of broader legal interest. Moreover, the growth and increasing demand for degrees with honours allowed much more specialisation in teaching with the consequent benefit of the development of a strong research tradition led by teachers who were no longer part-time. Indeed the only chair that remained part-time was that of Conveyancing.

Despite some grim predictions, the LL.B. degree proved an instant hit, so much so that, by the end of the century, virtually all lawyers in Scotland possess the degree of LL.B. from a Scottish university. The Lord President Cooper Memorial Prize, for the most distinguished Honours graduate of the year, was first awarded in 1965, when the initial group of students completed their studies.

The next important development in *professional* training came with the institution of the Diploma in Legal Practice in 1981. Designed to bridge the gap between graduation and practical training for those law graduates who wished to enter the legal profession, this one-year course aimed at introducing students to the practical aspects of law, with training in drafting, advocacy and the like. From 2000, a reformed Diploma reduces the period of study from the normal academic year to slightly more than two terms, but requires trainees at some time during their traineeship with a firm to take a professional competence course and pass a test of professional competence.

The new degree of LL.B. was delivered by a Faculty divided into departments (Scots Law, Constitutional Law, Civil Law and International Law), with a professor at the head of each. As the Faculty grew in size to respond to demand for the degree with expanding numbers of differing courses, some of these departments, such as that attached to the chair of Scots Law, grew very large indeed. Others, such as that of Civil Law, remained at a more modest size, although even it expanded to deliver specialist courses in Roman law and comparative law as well as the general first-year course in Roman law.

An important development was the establishment of the Centre for European Governmental

Studies (now the Europa Institute) in 1967 under the leadership of Professor J.D.B. Mitchell, who moved from the Chair of Constitutional Law to the newly established Salvesen Chair in European Institutions). Though Britain's membership of the then EEC was still several years away, this new interdisciplinary institute gave the Edinburgh Law Faculty a significant lead in the development of the study and teaching of European Law. It quickly established itself as a major centre of excellence, attracting scholars and students from all over Europe and elsewhere to its excellent resources and congenial surroundings. Its prestige is indicated by the appointment in 1991 of the then Salvesen Professor, David Edward, to the newly created First Instance Court, before he later became British judge on the European Court.

The new style of unit within the Faculty was an evident success and stimulated the amalgamation of the Departments of Jurisprudence and Criminology to form the Centre for Criminology and the Social and Philosophical Study of Law (now Centre for Law and Society) in 1983. These more focused units of a slightly different nature from the existing Departments provided a good locus for the development of postgraduate studies and provided a model for the development of further centres and institutes, when the Faculty resolved to become a single school of law without separate departments in 1999. Subsequent foundations within the Faculty have been the Scottish Centre for international Law and the Centre for Legal History.

The development of the broader new degree of LL.B. led the Faculty to become less exclusively focused on the Scottish legal profession. By the early 1970s, only two-thirds of Edinburgh law graduates joined the legal profession, others following a wide variety of careers. Mixed law and languages degrees became more popular and students participated in exchanges with other universities of the European Union. One further important development was the growth of postgraduate studies. Initially the only postgraduate provision was supervision of candidates for research degrees. Criminology led the way in recognising a demand and need for a high-quality taught masters degree. The success of this led to the transformation of the LL.M. from a two-year research degree to a one-year taught degree, though with a high focus on research and writing. This degree and a reformed M.Sc. in Criminology have proved enormously successful and have helped promote Edinburgh as one of the leading law schools in Europe, where German is heard spoken in the corridors almost as often as English.

The new structure is designed to ease the Faculty and School of Law into the new millennium, in which it will celebrate its three hundredth anniversary. The Faculty's long history of continuous legal education has established a firm foundation for a future not only of high service to Scots law and the Scottish legal profession, but as a European and international law school.

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#### **W A W, "Sir Thomas Smith", 1989 Juridical Review 1-4**

T B (Sir Thomas) Smith, who had held the Chairs of Civil and Scots Law in the

Faculty from 1958-1972, died on 15 October 1988. This obituary notice by his erstwhile colleague, Professor W A Wilson, captures something of "T B's" personality as well as his contribution to the Scottish law faculties and Scots law.

Thomas Broun Smith was born in Glasgow in 1915. His early education at Glasgow High School and Sedbergh gave him a sound grounding, not only in the classics of Greece and Rome, but also in history and English literature. He had an exceptionally well-stocked mind and an enviable ability to produce an apt quotation in an instant. On one occasion when he, as dean of the Edinburgh faculty, was discussing with a colleague a request made to him by the Principal of the university, the Principal telephoned to say that further deliberation was unnecessary because the requested course of action had to be taken; T B immediately replied with the words of the priest in Hamlet at Ophelia's funeral: "But that great command o'ersways the order, she should in ground unsanctified have lodg'd till the last trumpet".

After a distinguished career at Oxford, where he was Eldon Scholar, he was called to the English Bar, but on the outbreak of war in 1939 the London Scottish, which he had joined as a private, was embodied and six years of military service began; he served in France and Italy, was mentioned in despatches and rose to the rank of lieutenant-colonel. No one who has served in the forces of the Crown is entirely unmarked by the experience, but T B was more affected than most. For the rest of his life his attitudes and vocabulary were heavily tinged with the pride, pomp and circumstance of glorious war. Students were often referred to as "the Jocks"; it is said that once at Aberdeen a notice was posted ordering his junior colleagues to have haircuts; the claymore was lovingly polished each year when he paraded as honorary colonel of Aberdeen OTC. ...

In 1958 his standing as a civilian scholar was recognised by his appointment to the chair of civil law in the University of Edinburgh. His inaugural lecture - "Stange Gods: The Crisis of Scots Law as a Civilian System" - was a manifesto for revolution in the teaching of civil law. The teaching of classical Roman law was drastically reduced and more attention was paid to the reception, the modernus usus and the mixed jurisdictions. His lectures, delivered with elegance and wit, were well received. The study of comparative law thrived at Edinburgh as it had never done before ... A succession of eminent visiting scholars - Crepeau from McGill, Stone from Tulane, Beinart from Capetown, Feenstra from Leyden - taught for periods in Edinburgh.; There was a cohort of research students from Europe and the United States. ...

In 1968, on the retrial of George Alison Montgomery QC, T B succeeded to the chair of Scots law at Edinburgh. What was the fulfilment of a lifelong ambition seemed, however, to be something of an anticlimax; he seemed unsettled; he found himself increasingly out of sympathy with the central conduct of university affairs;



and he came, quite wrongly, to feel that he could no longer communicate effectively with the student body. He had been appointed as a part-time law commissioner when the Scottish Law Commission was set up in 1965, and in 1972 he resigned the chair and became a full-time commissioner.

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**Hector L MacQueen, “Memoir of Professor W A Wilson, Lord President Reid Professor of Law 1972-1993”, in *Scots Law into the 21st Century* (Edinburgh, 1996)**

For many, a Bill Wilson lecture in the ‘crash course’ which opened the teaching of Scottish Legal System was their first exposure to the joys of Scots law. A unique style of delivery, combining his characteristic economy of words with rising and falling cadences of speech, a relish for Latin maxims and Scots technical terms, long pauses with eyes half-closed while he rocked gently to and fro on the balls of his feet, and a final devastating punchline, was to lead to innumerable attempts at affectionate imitation which could never quite capture the amazing original. The stories are legion: opening the last lecture of term with an emphatic “Goodbye, bastards!” just after the statute removing the last legal disabilities flowing from birth out of wedlock came into force; gravely considering a student’s question on vesting subject to defeasance at the end of a tutorial before leaving the room with the words, “I have been waiting for twenty-five years for someone to ask me that question”; and referring to a work of Professor Diamond, and saying “Spelt thus” while drawing the figure of a diamond on the blackboard, are only a few of the many well-attested examples. He covered nearly all the subjects on the Scots law curriculum, but was perhaps most associated with Scottish Legal System and Mercantile Law. The influence of such teaching is hard to measure, save that no-one who experienced it ever forgot the manner of it; the substance may not always have stuck in quite the same way. He never taught a full Honours course, although he put in guest appearances at those of others when invited. At one such seminar, Wilson concluded his discourse, and silence fell, to be ended after a minute or two by the professor’s ironic comment, “I thought intellectual discussion took place in Honours classes.”

**Professors of Public Law and the Law of Nature and Nations**

1972 D. Neil MacCormick

**Professors of Civil Law**

1968 W.A.J. (Alan) Watson

1981 Peter B.H. Birks

1987 Vacant

2012 John W. Cairns

**Professors of Constitutional Law**

1968 Anthony W. Bradley

1990 Colin R. Munro

2011 Christine Bell

**Professors of Scots Law**

1968 Sir Thomas B. Smith

1972 Gerald H. Gordon

1977 Eric M. Clive

1981 Robert Black

2008 Kenneth Reid

**Professors of Conveyancing**

1973 (to 1991) I. W. Noble

1991 Vacant

**Salvesen Professors of European Institutions**

1968 J.D.B. Mitchell

1985 David A.O. Edward

1990 William Patterson

1995 John Usher

2005 Jo Shaw

**Professors of Public International Law**

1966 (to 1983) Ian C. MacGibbon

1994 Alan E Boyle

**Professors of Criminal Law**

1969 (to 1972) Gerald H. Gordon

1999 Gerard Maher

**Professors of Criminology**

1974 Derick McClintock

1994 David J. Smith

2004 Richard Sparks

**Lord President Reid Professors of Law**

1972 William A. Wilson

1994 George L. Gretton

**Professor of Forensic Medicine**

1973-1985 John Kenyon French Mason

1988 Anthony Busuttil

**Dickson Minto Professor of Company Law**

1990-1999 John Murray

**Professor of International Criminal Law**

1996 William C. Gilmore

**Professor of Penology**

1992-1997 David W. Garland

2009 Lesley McAra

**Professor of Private Law**

1994 Hector L. MacQueen

**Professor of Legal Theory**

1994 - 2011 Zenon Bankowski

**Professor of Property Law**

1994 - 2008 Kenneth G.C. Reid

**Professor of Medical Law**

1995 - 2002 R. Alexander A. McCall Smith

**Professor of Administrative Law**

1999 - 2011 Christopher M.G. Himsworth

**Professor of Commercial Law**

1999 - 2007 William W. McBryde

**Professor of Legal History**

2000 - 2012 John W. Cairns

**Professor of Medical Jurisprudence**

2005 Graeme Laurie

**Professor of Anthropology of Law**

2007 Anne Griffiths

**Professor of Computational Legal Theory**

2010 Burkhard Schafer

**Professor of European Union Law**

2010 Niamh Nic Shuibhne

**Professor of Qualitative Criminology**

2010 Susan McVie

**Professor of Scottish Private Law**

2011 Elspeth Christine Reid

**Professor of International Banking Law and Finance**

2012 Emiliós Avgouleas



## APPENDIX A

### DEANS OF THE FACULTY OF LAW

The modern office of Dean of the Faculty of Law can be dated from reform of the University under the Universities (Scotland) Act 1858. From that date until 1965, Deans could serve for varying lengths of period. After 1965, it has been the practice for Deans (who are elected annually) to serve for three years.

1859 Archibald Campbell Swinton  
1862 Vacant  
1863 James Muirhead  
1869 Norman Macpherson  
1879 Aeneas J.G. MacKay  
1882 James Muirhead  
1883 John Kirkpatrick  
1894 Sir Ludovic Grant  
1910 James Mackintosh  
1939 William Wilson  
1944 Matthew G. Fisher  
1958 Archibald H. Campbell  
1965 Sir Thomas B. Smith  
1968 Ian C. MacGibbon  
1970 Gerald H. Gordon  
1973 D. Neil MacCormick  
1976 William A. Wilson  
1979 Anthony W. Bradley  
1982 Frederick (Derick) H. McClintock  
1985 D. Neil MacCormick  
1988 William A. Wilson  
1991 Robert D. Leslie  
1992 Colin R. Munro  
1994 John Murray  
1996 John Usher  
1999 Hector L. MacQueen  
2002  
2005 Bill Gilmore  
2008 Douglas Brodie  
2010 Lesley McAra

## APPENDIX B

### LORD PRESIDENT COOPER MEMORIAL PRIZE

This prize, awarded to the best Honours graduate of the year, was instituted by Professor T B Smith in honour of the memory of Lord Cooper of Culross (d. 1954), one of the greatest of Scottish judges (and an Edinburgh MA, LLB), and was first awarded in the year when the initial group of Honours students graduated. A complete list of the prize-winners follows:

1965 Robert D.D. Bertram  
1966 John P. Grant  
1967 Peter J.H. Simpson  
1968 Robert Black  
1969 Gordon I. Bennett  
1970 Joseph M. Thomson  
1971 Robert A. McCreadie and Isobel M. Thompson  
1972 Fiona M. MacLachlan  
1973 R. Bruce Wood  
1974 Robert B. Ferguson  
1975 Alistair J. M. Duff  
1976 Derek Blyth  
1977 Colin J. Tyre  
1978 Grant M. Findlay  
1979 David H Small and Peter A. Nicholson  
1980 Peter J. Braid  
1981 Jane D. Nairn  
1982 J. Douglas Brodie  
1983 not awarded  
1984 W. James Wolffe  
1985 Andrew F. Stewart  
1986 Alison P. Brown  
1987 Fiona M. McKechnie  
1988 David Bartos  
1989 Karen I. Hill  
1990 Aileen T. McHarg  
1991 Nicolas J.S. Lockhart  
1992 Craig F. Stevenson  
1993 John Finlay  
1994 Andrew J.M. Steven and Scott W. Wortley  
1995 Karen F. Taylor  
1996 Kevin R. Walton  
1997 Julie K. Hutchison  
1998 Lorna C. Barr

1999 Thomas P. Walsh  
2000 James D. Crawford and Lilian M. Moncrieff  
2001 Matthew J Hancock and Brendan Whitty







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