

# THE STAIR SOCIETY – THE MIDDLE YEARS

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## Introduction

In an earlier article<sup>1</sup> the author undertook a selective review of the history of The Stair Society during its formative years, from its inauguration in 1934 up to 1947. In this article, again reviewing the administrative records which have been placed in the custody of the National Library of Scotland,<sup>2</sup> he considers aspects of the development of the Society over the following twenty years, up to 1967.

## The Publication Programme

In the twelve years up to 1947 the Society had published eleven volumes (and in addition the index to Volume 1, which was published separately in 1939), a remarkable achievement considering the stringencies which must have resulted from six wartime years and their aftermath. The pace of activity slowed slightly during the period under review although thirteen more volumes were published between 1949 and 1967. Some of these, such as the last five volumes of Baron Hume's Lectures, published between 1949 and 1958, *Selected Justiciary Cases 1624 – 1650*, the first volume of which appeared in 1953, and the *Introduction to Scottish Legal History*, which was published in 1958, occupied a great deal of time in meetings of the Society's Council. Others, such as Ian H Shearer's edition of the *Acta Dominorum Concilii et Sessionis, 27 May 1532 to 5 July 1533*, published in 1951, Balfour's *Practicks*, edited by Peter G B McNeill and published in two volumes in 1962 and 1963, and *The Origins and Development of the Jury in Scotland*, by Ian D Willock, being an expanded and partially rewritten version of his PhD thesis, appear to have been produced in short timescales and with little intervention being needed on the part of the Council. Balfour's *Practicks* is perhaps of particular interest in this context, since the original text (taken from an edition published in 1754) was produced using what in 1962 was a novel photographic process, calculated to reduce the cost of production and the otherwise lengthy process of editing and transcription.<sup>3</sup>

The history of the publication of Hume's Lectures has previously been noted in some detail.<sup>4</sup> The editing of volumes 2 to 6 by G Campbell H Paton and their publication comprise by far the biggest project undertaken during the period under review. During the time he undertook this work Campbell Paton was Lecturer in the History of Scots Law at the University of Glasgow, and there is no reference in the Society's minutes to his having received any remuneration for the massive amount of work which must have been involved in it. In 1954 he assumed the added responsibility of Literary

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<sup>1</sup> Stair Society Vol 53 - *Miscellany V*.

<sup>2</sup> The deposit is NLS Acc 12416.

<sup>3</sup> For a detailed commentary of the technique adopted by the editor, see the introduction to the first volume (Volume 21), lvii – "Method of this edition".

<sup>4</sup> In *Miscellany V*, pp 250-251.

Director in succession to A J Mackenzie Stuart and from then until its publication in January 1959 he was primarily responsible for co-ordinating preparation of the *Introduction to Scottish Legal History*. At the AGM in March 1958 the Society's President, Lord Normand, reported that the final volume of the Lectures had just been distributed to members and said that "he thought that Mr Paton had rendered a useful service in accomplishing his task and thus making available the series of lectures which Baron Hume had left unpublished". Sheriff McKechnie, Chairman of Council, was perhaps less restrained in his praise and "referred to the enormous amount of work accomplished by Mr Paton who during many years had devoted his energies to Hume's Lectures". He went on to say that "it was gratifying to note that the Bench had, on several occasions, made use of the Stair Society volumes, citing passages from the Lectures which were duly reported in the Session Cases".<sup>5</sup>

### Selected Justiciary Cases

The minutes of the Council meeting held on 15 July 1950 contain the first reference to a project which was to occupy the Society's energies for a period of more than twenty years. They record that Stair A Gillon, Advocate, attended the meeting and reported on progress in transcribing entries in the Register House relating to criminal trials between 1624 and 1650, which he was to edit. In doing so he was following in the steps of Robert Pitcairn who in his *Criminal Trials*, published in the early nineteenth century by the Bannatyne Club at the suggestion of Sir Walter Scott, its president, had extracted trials and other cases occurring from 1488 to 1624. Pitcairn's somewhat subjective principle of selection was adopted by Gillon, namely cases he conceived to be of importance as "elucidating some historical point or illustrating some features of national character, customs and manners, hitherto but imperfectly known".<sup>6</sup> According to the minutes, the transcription was being undertaken by Miss Moore, an arts graduate, in the Register, whose charges – 7/6d (37½ p) per hour - were considered unduly high, particularly as she was a slow worker. It was agreed to terminate her contract and to seek charitable funding for transcription. It appears, however, that by the time of publication of the first volume of *Selected Cases* in October 1953, covering the period 1624 to 1639, Gillon had made his peace with Miss Moore, since in the acknowledgments at the start of the volume, after paying warm tribute to staff at the Register House, he stated:

I was sorry to lose an old friend in Mr John MacLeod who died shortly after he had made a very few transcriptions. Miss M Moore, PhD, has worthily taken his place. Many revisions and re-examinations confirm my confidence in the accuracy of her texts.

The magic ingredient in this apparent dichotomy seems to have been Lord Macmillan, for, as Gillon narrates, when funds threatened to prove far short of the sum needed for publication Macmillan influenced the Pilgrim Trust to make a generous grant in aid.

At the Society's nineteenth AGM on 20 March 1954 Gillon was complimented on his work. The President, Lord Normand, stated that it was rare to find in legal works of

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<sup>5</sup> Quoted passages are from minutes of the twenty-third AGM, 16 March 1958.

<sup>6</sup> See the preface by I D Willock (who was then the Society's Literary Director) to Volume II of *Selected Justiciary Cases* (1972).

any kind anything so racy and virile as the introduction which Sheriff Gillon had written. He hoped that other authors for the Society would emulate his style. With the passage of more than half a century since this judgement was pronounced, Gillon's text may not now seem quite as racy and virile as Normand found it to be, but it is certainly stimulating. Perhaps these extracts convey the flavour of his style. Referring to the crimes tried in the cases he covers, he states that the selected cases:

.....start with a theft of jewels.... But we soon warm to piracy, culpable homicide and murder, matricide and fratricide, "hamesucken", mutilations, rape, plagium, illegal arrest, all forms of dishonesty, eg "thifts", reset of goods stolen, coinings, forgeries, false weights and measures, forestalling and regrating (one case in 1648), injury by forehand interest contrary to statute, cutting growing trees, thefts by landed men tried as petty treason under statute, housebreaking, shipbreaking, leasing-making, reset of rebels, adultery, incest, sorcery."

As regards punishment, he continues:

The punishments inflicted on conviction are so capriciously varied that the reader can only construct his theory of punishment by being satisfied that the selection made to enable him to do so is representative. I confess that I have failed to find a theory of my own. In particular the modes of execution by decapitation, hanging, strangling, burning quick, drowning, are so arbitrarily applied as to defy classification.

Gillon died in August 1954.<sup>7</sup> At the Council meeting on 29 February 1955, Normand paid tribute to him. He is recorded in the typed minute as stating that Gillon's introduction to Volume 16 "was by far the most brilliant exposition in the series of the Stair Society volumes"; but this was watered down in manuscript, presumably when the minutes came up for approval at the next meeting, so that it in its final form it reads ".....was a brilliant exposition".

Gillon's death meant that completion of the unfinished work had to be left to others. Sheriff McKechnie, Chairman of Council, agreed to take it on, but he had not completed it by the time of his own death in 1966. The work was then taken over by Irvine Smith, who was by that time a sheriff of Lanarkshire at Glasgow, and it was published in two further volumes in 1972 and 1974, these forming Volumes 27 and 28 of the Society's publications. The last volume contains an index to the whole series. Thus was brought to fruition a major project which had been initiated by the Society more than twenty years previously.

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<sup>7</sup> He was born in 1877. Educated at Haileybury, New College Oxford and Edinburgh University, he was called to the Bar in 1903. He served in the KOSB during the Great War and in 1917 he was appointed Private Secretary to John Buchan, who was Director of Information under Lord Beaverbrook. From 1919 to 1942 he was Solicitor in Scotland to the Board of Inland Revenue. From 1942 to 1948 he was Sheriff Substitute, Western Division, Dumfries & Galloway. His publications included *The Story of the 29<sup>th</sup> Division* (1925) and *The KOSB in the Great War* (1929). He was Captain of the Honourable Company of Edinburgh Golfers (Muirfield) 1925-26.

## **An Introduction to Scottish Legal History**

Lord Cooper's contribution to the work of the Society up to 1947 has already been noted in some detail,<sup>8</sup> but arguably his greatest contribution was still to come. He was appointed Lord President in 1948, when he was Vice Chairman of the Society's Council. He was elected Chairman in succession to David Baird Smith at the fourteenth AGM, on 4 December 1948 and Vice President in 1953. Despite holding high judicial office he continued to take a detailed interest in the work of the Society and missed not a single meeting of Council nor an AGM from the time he was elected Chairman until his final illness. The last meeting he is recorded as attending was Council on 30 January 1954.

The first mention of a proposal to publish an introduction to Scottish legal history is in the minutes of the fifteenth AGM on 29 March 1950, which record that Cooper raised the subject. At the next Council meeting, on 15 July that year, he referred to a prospectus for such a work which had been circulated prior to the meeting. This is set out in full in the minutes of the meeting. It appears to have been prepared by Cooper himself as it carries his initials at the end. It seems appropriate to repeat the prospectus here, particularly as the notes it contains demonstrate the agility of Cooper's mind in a project of this kind. It is as follows:-

PROSPECTUS FOR  
An Introduction to Scottish Legal History  
From the earliest times to 1829

PART I  
The Development of Scots Law

1. Before David I (Celtic Law and pre-history)
2. From David to Bruce; 1150-1329 (the Scoto-Norman Law)
3. The Dark Ages 1329-1532
4. The Transition to the Modern Law 1532-1660
5. The rise of Modern Scots Law 1660-1707
6. The 18<sup>th</sup> and early 19<sup>th</sup> Centuries 1707-1829

PART II  
The History of Doctrine and Practice

1. The Law of Persons
  - (a) Husband and Wife
  - (b) Parent and Child
  - (c) Guardian and Ward
  - (d) Master and Servant
2. The Law of Property
  - (a) Heritable rights
  - (b) Moveable rights
  - (c) Succession
  - (d) Insolvency

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<sup>8</sup> See *Miscellany V*, 255-257 inclusive.

3. Contract and Quasi Contract
4. Delict and Quasi Delict
5. Criminal Law
6. The Law of Evidence
7. Civil Courts, Remedies and Procedure
8. Criminal Courts and Procedure

## NOTES

The line is drawn at the publication of Bell's Principles.

Part I might be attempted first. Nos 1 and 2 could be written now from already published material. No 3 will be very short. No 4 will require research. Nos 5 and 6 call for nothing but inspired selection and appraisal from a mass of readily available material.

Part II will be easier after Part I is complete. Severe compression will be necessary, since it would be simple to expand some chapters into formidable volumes. The aim should be the production of a balanced manual and not a Scottish Holdsworth. Where there are still gaps in our knowledge, these should be admitted instead of wasting time in trying to fill them.

For consideration  
TMC

29/6/50

It was agreed at the meeting that the prospectus should "lie on the table". Progress on carrying the project forward was slow. At the following meeting of Council, in January 1951, Cooper expressed "his hope of securing probably 35 contributors for the various sections". At the seventeenth AGM on 16 March 1952 he reported that a start had been made. At that meeting A J Mackenzie Stuart, who had recently been called to the Bar, was elected as Assistant Literary Director in place of Henry Paton and a year later, at the 1953 AGM, Mackenzie Stuart reported to Council that work was proceeding. At the same meeting he was elected sole Literary Director. However at a Council meeting on 30 January 1954 he tendered his resignation as Literary Director owing to his increasing practice at the Bar.<sup>9</sup> The main problem in progressing the *Introduction* seems to have been in chasing dilatory contributors. The relevant part of the original typed minutes of the meeting have been heavily altered in manuscript and as amended they read as follows:

The Council remitted to Lord Cooper and the Chairman [McKechnie] to find a suitable new literary director. Subsequently at the request of Lord Cooper Mr Paton [G Campbell H Paton] agreed to act as literary director and to take charge of the Introduction to the History of Scots Law, Lord Cooper undertaking to press dilatory contributors to the volume to finish their articles timeously.

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<sup>9</sup> He took silk in 1963. He was appointed a Senator of the College of Justice in 1972 and the following year the UK judge in the European Court of Justice, becoming President of the Court in 1984. He retired in 1988 and that year was created a life peer.

At the same meeting it was estimated that the *Introduction* would be published in the autumn of 1955. It is clear from the original wording of the minute that Campbell Paton's reluctance was based on pressure of work. He had just completed editing Volume 4 of Hume's Lectures, which was to run to nearly 600 pages and which was published the following year as the Society's seventeenth volume, and he was engaged in editing what was described as the final volume, but which turned out to be the fifth and sixth volumes, published in 1957 and 1958 respectively.

Progress on the *Introduction* remained slow, despite Lord Normand as President taking over from Cooper responsibility for chasing two remaining dilatory contributors, and the work was not published (as the Society's twentieth volume) until early in 1959. It runs to over 450 pages in length and contains thirty-four chapters, written by a total of twenty-one different authors, eight of whom wrote more than one chapter, Irvine Smith having written no less than five and Campbell Paton three. Cooper himself wrote two chapters, the opening one, covering the Scoto-Norman law and the twenty-fourth, "The Central Courts after 1532". He was also to have written the second chapter, the "Dark Age<sup>10</sup> 1329-1532", but sadly died before doing so. Instead, the chapter was written by Campbell Paton, who followed closely Lord Cooper's David Murray lecture on the subject, "with, however, the modifications which later writers have pointed out".<sup>11</sup>

The scheme of the work followed closely Cooper's original proposals, except that the first section, on Celtic law and pre-history, covering the period up to the accession of David I in 1124, was omitted. Although the prospectus referred to the need for "severe compression", the topics he listed are all covered quite fully and in particular the last two sections, covering the civil and criminal courts and court procedure, are expanded to twelve chapters, taking up about a third of the work.

Cooper died on 15 July 1955. He had, as Lord Normand stated in his introduction, "some years before his untimely death....foreseen that a survey of our law, which would take account of the work done by the Stair Society, ought soon to be attempted and would appropriately follow the completion of twenty-one years of the Society's existence. It was by his inspiration therefore that the preparation of [the] volume was undertaken and it is most fitting that it should be dedicated to his memory".<sup>12</sup>

Two interesting side issues concerning the preparation and publication of the *Introduction* arise from a study of the Society's records. First, at the AGM on 16 March 1958 (prior to publication) Professor T B Smith questioned why there were no footnotes in the work, as he felt these preferable to citations interspersed in the body of the text. The minute of the meeting records Campbell Paton's reply, "that in this he was obeying the rule laid down by Lord Cooper that no footnotes must be used in this work". As Smith was known to hold Lord Cooper in the highest regard,<sup>13</sup> this reply must have silenced him and it may have given some satisfaction to Campbell Paton, who had himself been rebuked for the length of the footnotes in the first volume of

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<sup>10</sup> Not "Dark Ages", as typed in the Proposal as quoted in the minute of 15 July 1950.

<sup>11</sup> See Editorial note to the volume, page xiii.

<sup>12</sup> As it was so dedicated.

<sup>13</sup> See his memorial lecture on Lord Cooper (1955) 67 *Juridical Review* 249, also published in his *Studies Critical and Comparative* (1962).

Hume's Lectures.<sup>14</sup> Smith raised the issue of footnotes again at the next AGM,<sup>15</sup> shortly after the *Introduction* had been published, but Campbell Paton is reported as again parrying by saying that “the late Lord Cooper had expressly ruled that no footnotes should be used in the Society's publications, and he, as editor, felt obliged to obey that ruling”. This seems to have finally silenced Smith on the subject.

The second issue was this. It was reported at the Council meeting on 13 October 1958 that a member (unidentified) had written in objecting to the publication of the *Introduction* as being in violation of article 2 of the Society's constitution, which provided for the publication of “original works”. It was decided to overcome this hurdle by amending the constitution and this was done at the ensuing AGM on 14 March 1959, the amended object being “to encourage the study and advance the knowledge of the history of Scots Law, *especially* [author's italics] by the publication of original documents and by the reprinting and editing of works of sufficient rarity or importance”. Thus stood the Society's object until it was again expanded in 2007 to remove any doubt as to the Society's entitlement to undertake electronic publication and to award scholarships.<sup>16</sup>

### **A Matter of Protocol**

The question of publishing Darow's Protocol Book is an ongoing one which has occupied the Society for sixty years.

Protocol books had been kept by notaries public in the days before a system of public records was established, recording the transactions, cases and official functions in which they had been involved.<sup>17</sup> The earlier of these books are considered to be of much greater interest to the legal historian than the later ones, as after the Reformation the bulk of the entries are instruments of sasine. The Stirling protocol book is the earliest of these books known to exist in Scotland but its authorship in the period 1469 to 1484 was for long unknown. The mystery was solved by the Reverend Thomas Miller MA in an article published in the *Juridical Review* in 1925.<sup>18</sup> Miller narrates that nowhere in the book does the author give a clue to his identity but that a study of an index of Cumbernauld writs dated 1681, published by the Scottish Record Office in 1910 provided that clue. He continues:

The anonymous Stirling Protocol Book bears that the Notary on 4<sup>th</sup> January 1472-1473 made a transcript of Lady Bygar's will. The Index of Cumbernauld Writs (No 43) shows that a transcript of Lady Bygar's will was made on that date by a Notary Public, and the skilled framer of the Index added, as important information, the

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<sup>14</sup> See *Miscellany V*, 251. Indeed it is tempting to think that it was the experience of Hume's Lectures which caused Cooper to adopt the attitude he did to the use of footnotes.

<sup>15</sup> On 14 March 1959.

<sup>16</sup> The present constitution is published on the Society's website.

<sup>17</sup> The origins of the office of notary public in Scotland and the development of the use of protocol books are traced by Dr William Angus in chapter 25 of the Society's first publication, *The Sources and Literature of Scots Law*, published in 1936.

<sup>18</sup> (1925) 37 *Juridical Review* 162-177.

name of the Notary – Sir James Darow.<sup>19</sup> Here was the clue! On turning to the Protocol Book after discovering his name, I found that he frequently referred to himself by name, but always in the third person.

Millar states that Darow had an extensive notarial business, which he carried through for a wide clientele, acting frequently for the King and once for the Queen and having his office in Stirling, where he so dominated legal affairs in that county, acting in co-operation with the Sheriff, the Abbot of Cambuskenneth and the foremost barons of the shire, that the county of Stirling was a model of good administration and that the Lord Auditors and the Lords of Council could find nothing in its legal affairs which they could amend.

Darow's protocol book, which Miller describes as containing "a thousand well preserved protocols or more, in which there is nothing useless, nothing misplaced, but only what obtained in actual practice", must have been a strong candidate for the Society's attention. It was first mentioned in 1949, when Council decided<sup>20</sup> to refer it to Dr William Angus, Curator of Historical Records, HM General Register House, who had been a founder member of the Society, with a view to his editing the work if he considered it suitable.

After the reference to Dr Angus, the minutes are silent on the subject until 1953, when it was recorded<sup>21</sup> that Mr Shearer, presumably Ian H Shearer, Advocate, later Lord Avonside and the Society's President from 1976 until 1987, was engaged on it. By 1955 it was being progressed by Henry Paton,<sup>22</sup> and references to it in Council minutes after that time started to refer also to the Aberdeen Protocol Book. From 1958 these references also include the Denniston Protocol Book. At the Council meeting on 31 October 1955 the Literary Director, Campbell Paton, reported that the transcription of the Darow and Aberdeen Protocol Books was almost complete and that the writing of the introduction had been entrusted to Dr Gordon Donaldson. By 1958, publication was expected in 1959 but by 1959 this estimate had been revised to 1960. It was however reported early in 1960<sup>23</sup> that Dr Donaldson had been unable to complete the editorial work. By now there was a recurrent debate in Council as to whether the publication should include extracts or full text. Professor Anton<sup>24</sup> reported to Council on 1 February 1960 that there was a strong feeling among certain students against the principle of publishing extracts. At the AGM the following month, Peter McNeill suggested that the publication of extracts should be discontinued "in the interests of the historian who could not rely on mere selections".<sup>25</sup>

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<sup>19</sup> In the article, Miller uses the spelling "Darow", as used in the Inventory of Cumbenauld Writs, but in a later article [(1933) 45 *Juridical Review* 32-48], he states that his research shows that Darow consistently spelt his name with a single "r".

<sup>20</sup> Council minutes, 26 February 1949.

<sup>21</sup> Council minutes, 2 February 1953.

<sup>22</sup> Paton was a founder member of the Society and was Curator of the Historical Department, HM Register House. He was co-opted to Council in 1943 and was appointed joint literary director with McKechnie in 1946 on his retirement from Register House, at a salary of £100 *per annum*. He held the joint post until 1952 and died in 1958. At the following AGM the Society's President, Lord Normand, paid tribute to him, saying that his "services as palaeographer and transcriber of protocol books and other medieval writings of the Society extended over a period of years".

<sup>23</sup> Council minutes, 1 February 1960.

<sup>24</sup> A E Anton was elected to Council in 1959. He was appointed Professor of Jurisprudence at the University of Glasgow in 1959 and was the Society's Literary Director from 1961 to 1966.

<sup>25</sup> Minutes of twenty-fifth AGM, 19 March 1960.

At a Council meeting in July 1960, when Irvine Smith was appointed to succeed Campbell Paton as Literary Director, the former was asked “to investigate the whole question of the publication of the protocols and report to the Council thereon”.<sup>26</sup> It is clear that Smith wasted no time in undertaking this task because he reported to the next Council meeting, three months later, that the Denniston protocols were not worth publishing but that a volume could usefully be made of the Darow and Aberdeen protocols and that these should be presented in the same format, with a Latin text followed by an abstract in English. The preparation of the Darow protocols was entrusted to Professor Halliday<sup>27</sup> and the Aberdeen protocols to Dr C T McInnes, Curator, Historical Department, General Register House, and the Literary Director. Halliday reported to Council in October 1962 that he could no longer proceed with the work. There is no further mention of the Aberdeen Protocol Book in the minutes. It would be tedious to plot more fully the progress (or, more accurately, lack of progress) of Darow since 1962, but suffice it to say that at the Council meeting on 1 November 2008, just less than sixty years after Darow’s first mention in the minutes, a senior member of Council is recorded as asking what was the problem with Darow’s Protocol Book. It remains to be published.<sup>28</sup>

### **Other Projects**

It was natural that from time to time the Society would consider projects which did not reach fruition and some of these are recorded in the minutes. At the AGM in March 1952 Lord Cooper suggested that, as the Society’s volumes to date had been “on the heavy side”, an occasional volume with a popular appeal might be produced. A volume on witchcraft trials was suggested but this idea does not seem to have been pursued.

At a Council meeting in February 1962 Professor Anton, the Literary Director, referred to a proposal to publish a series of volumes giving a panorama of Scottish legal life and legal history, each to cover a century. Michael Topping, a young advocate and a lecturer in Civil Law at Edinburgh University, had been asked to prepare a work on these topics covering the eighteenth century. Anton stated that style and readability were to be of the greatest importance in such a work. This project was mentioned, and approved, at the AGM the following month but eighteen months later, in October 1963, Anton told Council that he had no progress to report on it. It does not appear to have been taken further.

At a Council meeting in October 1962 a memorandum by Mr I D (now Lord) McPhail<sup>29</sup> dealing with a proposed work on “Legal Life and Thought in 17<sup>th</sup> Century Scotland”, which had been circulated prior to the meeting, was considered. It was resolved that Council:

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<sup>26</sup> Council minutes, 11 July 1960.

<sup>27</sup> 1909-1988, Professor of Conveyancing at the University of Glasgow. He was a member of the Society’s Council 1956-1960.

<sup>28</sup> Selkirk Protocol Books covering the years 1511-1547 were published jointly by the Society and the Walter Mason Trust as the Society’s fortieth volume in 1993.

<sup>29</sup> Lord McPhail died on 21 October 2009, as this paper was going to print

meantime express its deep interest in the project. The Literary Director would report to a later meeting, after he had seen some of Mr McPhail's work, whether Mr McPhail be formally invited by the Council to complete the project.

A year later Anton reported that Mr McPhail:

was doing useful work on this project, mainly in the field of criminal law. His work to date suggested the immensity and importance of the subject. It would certainly take a long time, and the final product might differ considerably from that planned.

Sadly there is no further mention of this project in the minutes.

In furnishing a copy of each published volume to each member, the Society has always adopted a policy of maintaining a small stock of surplus volumes, which has meant that some volumes have become unavailable relatively quickly. The possibility of reprinting the more popular volumes has arisen from time to time and was first mentioned in the minutes in 1966. In that year the firm of William Dawson & Sons Ltd asked permission to reprint out of date volumes, sell them and pay the Society royalties on sales. There was concern that this might make the Society liable to payment of income tax, despite its charitable status, and an opinion on the subject was obtained from A J Mackenzie Stuart. He advised that the sale of volumes to the public and the receipt of royalties were trading activities but that the Society would be exempt from tax under the relevant section of the Income Tax Act 1952. The possible reprinting of volumes for sale by either Dawson, University Microfilms Ltd, the Society itself, the Carswell Company of Toronto or the Kraus Corporation was discussed at a number of meetings in 1967 and 1968 without a decision being made to proceed and the matter seems to have been dropped. It has however been revived recently, with the possibility of the Society's works being made available in electronic format and published on the internet. At the time of writing (May 2009) detailed negotiations to this end are being conducted with a legal publisher.

### **The Glasgow Boys**

Although the Stair Society may be thought of as a traditionally Edinburgh institution, it has in fact had a strong Glasgow connection throughout its lifetime. Some fifty Glasgow solicitors, several Glasgow-based sheriffs, several university professors, the Principal of Glasgow University (Sir Robert Raitt), at least one Glasgow chartered accountant and four Glasgow libraries were amongst its founder members,<sup>30</sup> and the first Chairman of the Society's Council, Dr David Baird Smith, was a Glasgow solicitor. He held office from 1934 until he retired in 1948 on grounds of ill health. At the AGM on 4 December that year his resignation was noted with regret and Lord Cooper, who succeeded him as Chairman, paid tribute to his commitment to the Council and described his contribution to the Society's first volume (chapter 15, "Canon Law") as "a model of clarity".

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<sup>30</sup> See list of members published as an appendix to Volume 1.

Baird Smith died in February 1951 and at the sixteenth AGM the following month Cooper again paid tribute to him, and also to Dr John Cameron, who had died the previous August. Cameron, he said “had made Celtic law his own”,<sup>31</sup> referring to Cameron’s article on that subject – chapter 29 – in the Society’s first volume. Of Baird Smith, “he questioned whether anyone of this generation possessed so profound and massive a knowledge of the Civil Law, Canon Law and medieval law of Western Europe as he”. As recorded in the minutes of the meeting, Cooper went on to say that:

it was a curious fact that the leading legal historians of the previous fifty years had been amateurs – Glasgow solicitors, namely David Murray, George Neilson, David Baird Smith and John Cameron. This was at once a challenge and a rebuke to those of us who may have more leisure than they had, and with better facilities in the Register House and in the great libraries.

Baird Smith had been senior partner of the firm of Baird Smith, Barclay and Muirhead. He had been Vice-Chairman of the National Library of Scotland and had been Dean of the Royal Faculty of Procurators in Glasgow 1934-1937. He was awarded an honorary LLD by Glasgow University in 1920 and in the same year he was appointed CBE in recognition of his work for the French and British Red Cross. He contributed two chapters to the Society’s first publication, *The Sources and Literature of Scots Law* (chapter 14, “Roman Law”, and chapter 15, “Canon Law”) and in his *Who Was Who* entry<sup>32</sup> his publications are listed as articles in the *Scottish Historical Review*, the *Revue du Seizieme Siecle*, the *Juridical Review*, etc, and he is stated to have been the general editor of the Scottish Text Society.

Although Neilson and Murray both predeceased the founding of the Stair Society, some biographical information about them may be of interest in the present context. Neilson (1858-1923) was the son of a Dumfries-shire sea captain. He served a legal apprenticeship in Dumfries and studied law at Glasgow University, although he left without graduating. He qualified as a solicitor in 1881 and was in private practice in Glasgow until 1891, when he entered the procurator fiscal service. In 1910 he was appointed the first stipendiary police magistrate of Glasgow, holding that office until shortly before his death. He devoted most of his leisure to the study of Scottish law, history, archaeology and literature and he was an expert on the law of the Marches. His work on this subject, along with extensive biographical detail about him, was published as the first chapter of the Society’s Miscellany 1 volume,<sup>33</sup> which includes a fine photographic portrait of him. In the preface to the volume Lord Clyde, after mildly criticising some of Sir John Skene’s early work, commented:

There are no such reservations about the academic stature of George Neilson whose long lost monograph on the Laws of the Marches forms a “conspicuous contribution” – to use the words of the editor for whom it was intended seventy years ago. Then Neilson’s standing in the field of medieval studies was perhaps more fully appreciated south of the Border than in Scotland. The treatment of the texts which follow his collation of Border Laws in this volume show [sic] how far

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<sup>31</sup> Minutes of sixteenth AGM, 3 March 1951.

<sup>32</sup> *Who Was Who* 1951-1960.

<sup>33</sup> Volume 26 of the Society’s publications (1971).

Neilson's methods and techniques have now been accepted by modern Scottish scholars.

Glasgow University conferred an honorary LLD on Neilson in 1903. He died in 1923.

David Murray (1842-1928) was one of the founders of the firm of Maclay Murray & Spens. Educated at Merchiston Castle School and Glasgow University, where he graduated MA, he later qualified as a solicitor and was admitted to the Royal Faculty of Procurators in Glasgow in 1867, holding office as Dean of that Faculty 1895-1898. He was awarded an honorary LLD by Glasgow University in 1888. His best known work was *Memories of the Old College of Glasgow*, which described that institution before it abandoned its original site in Glasgow's High Street. He accumulated a huge library, most of which he bequeathed to Glasgow University. He died in 1928.<sup>34</sup>

John Cameron was born on the island of Mull in 1883, the son of a carpenter and was educated at Hutcheson's Grammar School and Glasgow University, from which he graduated MA in 1904 and LLB in 1908. He then qualified as a solicitor and was admitted to membership of the Royal Faculty of Procurators of Glasgow in 1921, later becoming a partner in the Glasgow firm of Kennedy Cameron & Allan. He was president of An Comunn Gaidhealach in the late 1940s and was also president of the Glasgow Highland Society and the Clan Cameron Society. He was awarded a PhD by Glasgow University in 1935, his thesis being *Celtic Law: (1) with special reference to the Senchus Mor and the Book of Aicill and (2) a critical examination of the traces of an early Gaelic system of law in Scotland*.<sup>35</sup> He contributed a chapter on Celtic Law to the Society's first publication and the following year he published a volume on Celtic Law based on his PhD thesis.<sup>36</sup> Lord Macmillan, Stair Society President at the time, wrote in the introduction:

In his contribution to Volume 1 of the Stair Society, Dr Cameron indicated his intention to demonstrate in a separate treatise the similarity between the ancient laws of Ireland and the ancient traces of law in Scotland. The legal pre-history of Scotland is characteristically wrapped in mist, difficult to penetrate and often apt to mislead. The courage of Dr Cameron in endeavouring to disperse this encircling gloom commands our admiration and it is creditable to his vision that he has been able to discern so much with reasonable certainty.

Cameron went on to transcribe and edit the first volume of the justiciary records of Argyll and the Isles, covering the period 1664 to 1705, which was published as the Society's twelfth volume in 1949. This work was to have been undertaken by Professor James Watson, who had been appointed Professor of Celtic at Edinburgh University in 1938 but was killed in action in 1942. It is perhaps a reflection of Dr Cameron's industry and skill that little mention is made of this publication in the Society's minutes, although it was noted in the minutes of the fifteenth AGM, in March 1950, that it had been published. The second volume, covering the period from November 1705 to 1742, was edited by John Imrie and published as the Society's

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<sup>34</sup> For fuller biographical details on both Neilson and Murray, see the *Oxford Dictionary of National Biography* (2004).

<sup>35</sup> Biographical detail on Dr Cameron provided by Glasgow University Archive Services and the Royal Faculty of Procurators in Glasgow. See also *Glasgow Herald* obituary, 12 August 1950.

<sup>36</sup> *Celtic Law – The Senchus Mor and The Book of Aichill and the Traces of an early Gaelic System of Law in Scotland* (1937).

twenty-fifth volume in 1969. In the preface Imrie noted with praise Cameron's "excellent" introduction to the earlier volume.

But the Society's connections with Glasgow did not end with the passing of David Baird Smith and John Cameron. Hector McKechnie, the Society's first Literary Director and Chairman of Council from 1953 to 1964, was a graduate of that University and held a fellowship in law there before being called to the Bar. Campbell Paton was Lecturer in the History of Scots Law at Glasgow University until he was appointed to the same post at Edinburgh University in 1960 and Professor A E Anton, who joined the Council in 1959 and was appointed Professor of Jurisprudence at Glasgow University in the same year, was Literary Director from 1961 to 1966.

As a postscript to the Society's links with Glasgow University, it is interesting to note the links between the University and Stair himself. Stair was a student at the University from 1633 to 1647, mixing his studies with military activity,<sup>37</sup> and Regent there from 1641 to 1671. At the Society's fifteenth AGM, in 1950, Professor Andrew Dewar Gibb, Regius Professor of Law at Glasgow University and a Council member, mentioned that it was the University's intention to erect a statue of Stair at the University at a cost of £2000. The proposal was not implemented, apparently on grounds of cost, but instead a plaque in Stair's memory was erected in the Scots Law classroom. It was later moved to its present position at the foot of the stairs leading to the Senate Room.<sup>38</sup>

## Money Matters

It is apparent from a study of the Society's records that the amount of the annual subscription was a bone of contention for much of the period under review. The notice calling the inaugural meeting in 1934 contained a note that a number of members had agreed to join only if the subscription did not exceed one guinea (£1.05) and that is the level at which it was set for individual and institutional members based both in the UK and abroad. In all but six years up to the early 1950s income exceeded expenditure and by 1950 a modest reserve of £2000 had been accumulated. In 1951 a grant of £1000 was received from the Pilgrim Trust and in 1953 a legacy of £500 was received from the estate of Lord Macmillan. While these sums seem small by today's standards they must have given the members at the time a feeling of some financial security. But heavy expenditure was incurred in 1952 in the publication of Volume III of Hume's Lectures and at the AGM in 1953 Lord Cooper, who at that meeting moved up from Chairman of Council to Vice President, pointed out that the cost of producing that volume was three times the annual subscription per member. It was agreed that subscriptions for institutional members and members in the United States should be increased.

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<sup>37</sup> See his entry in the *Oxford Dictionary of National Biography* (2004)

<sup>38</sup> The author is grateful to Professor William Gordon, sometime Professor of Civil Law at Glasgow University and a former Literary Director of the Society, for providing information about the plaque. At the time of writing (May 2009) it is reported to be hidden behind a large wall hanging commemorating the Glasgow University Women's Centenary.

At the next Council meeting<sup>39</sup> Cooper reported that he had asked the Law Society and the Faculty of Advocates for financial support and that the Law Society had donated £50 and the Faculty £10. Even by the standards of the day these sums must have been a disappointment. Cooper also reported on a comparison he had made with subscriptions for the Selden Society. He reported that against the Stair Society's uniform subscription of one guinea for all members Selden charged two guineas for individuals, three guineas for institutions and \$10 (then equivalent to £3.67) for all members in the United States, but that Selden only had 63 UK members out of a total of 411. Selden's total subscription income was therefore much higher. It was agreed at that meeting that the subscription for individuals should be held at one guinea but that it should be increased to two guineas for institutions and \$7.50 (about £2.75) for all members in the United States. But agreeing these increases in Council and implementing them at an AGM seem to have been two entirely different matters and nothing happened for eight years, during which time the Society's reserves reached a peak of £3500 in 1954 but dropped to under £1500 in 1959.

At the AGM in March 1961 a proposal was put to increase the subscription for individuals to 1½ guineas and that for UK institutions to three guineas, no mention being made of subscriptions for United States members. It is apparent that there was something of a disagreement at that meeting because the minutes record that several members criticised the size of the *honoraria* paid to the Literary Director (£100) and the Secretary and the Treasurer (£50 each – the two roles were not combined until 1982). Lord Normand, in the chair, reminded members that these were matters for Council and not for the Society in general meeting but that members' views would be considered. No action was taken on the levels of the Secretary's and Treasurer's *honoraria* but in the accounts between 1960 and 1966 inclusive no figure is shown for the Literary Director's *honorarium*. In the 1967 accounts £50 is shown as paid to John Imrie, joint Literary Director, but none to his colleague, Professor Willock. The minutes are silent on the level of the Literary Directors' *honoraria* during this period and one is led to the conclusion that the Society took advantage of the other earnings of Irvine Smith and of Professors Anton and Willock to keep costs down.

Action on subscriptions was however at last taken in 1961. At a special general meeting of the Society held in October that year it was agreed by a large majority that responsibility for fixing subscriptions should be transferred from the Society to Council and an amendment to the contrary, which was put to the meeting, was defeated.<sup>40</sup> None of the dissidents are identified in the minutes.

Council moved swiftly to exercise its new powers. At a meeting immediately following the special general meeting it was agreed to increase subscriptions as follows:

Individual members	From £1.1/-d to £2.2/-d	USA and Canada \$6
Institutions	From £1.1/-d to £4.4/-d	USA and Canada \$15

At the same meeting it was resolved to introduce the student category of membership which still exists.

<sup>39</sup> On 25 May 1953.

<sup>40</sup> Minutes of Special General Meeting held on 14 October 1961.

Thus Council eventually achieved its objective over subscriptions but it had taken more than eight years to do so. There must have been a fear that higher subscriptions would lead to a reduction in membership, but as will be seen from the membership figures set out in Appendix 1, that fear was not justified.

A brief summary of the Society's financial profile from 1934 to 1967 is set out in Appendix 2. It will be seen from this that from the time the subscription increases took effect in 1961 to 1967 there was a consistent annual surplus and that the Society's reserves rose from £2880 to about £10,000 between these years – although it should also be noted that in 1964 and 1965 only limited publication costs were incurred.

### **The Annual Lecture**

The annual lecture is now the focal point of the Society's annual general meeting. The idea of a lecture at the AGM was first mentioned in the minutes of the 11<sup>th</sup> AGM, held in January 1946, when it is recorded that Professor A H Campbell, a member of the Society and the then newly appointed Professor of Public Law at the University of Edinburgh, addressed the Society on the subject of "Jurisprudence and its relevance to the Law of Scotland in a historical context". The minutes of the meeting contain a summary of the address and as information about it is not known to have been published elsewhere, it may be of interest to provide it here. The minute reads as follows:

Professor Campbell, in the course of his address, expressed his opinion that the Stair Society might deem the following subjects to be within their province as historians of Scots Law:-

- (1) The views of Lord Stair and other institutional writers about the general law, studied against the contemporary background of legal thought, particularly of Continental thought.
- (2) The classification of legal concepts in our Scottish writers. Sir Archibald C Black in the first volume of the Society's publications,<sup>41</sup> commenting on Stair's definition of right and of action, namely, that "A right is a power given by the law disposing of things or exacting from persons that which they are due; an action is a prosecution by any party of their right in order to [obtain] a judicial determination thereof, observes: "This analysis seems to have escaped the notice of the writers on jurisprudence, in this country at any rate." W G Miller, in 1895, said that "nothing has been done in Scotland" on the classification of legal rights and rules. By 1903 he himself had done something in his *Data of Jurisprudence* but I am sure there is much still to be done.
- (3) The views on the nature of law held by our Scottish philosophers: Hutcheson, Hume, Reid, Dugald Stewart, the Scottish Hegelians of the 19<sup>th</sup> century; Lorimer and Miller, lawyers, were of a philosophical cast. This work would call for one who was both a lawyer and a philosopher.

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<sup>41</sup> Chapter 5, "The Institutional Writers, 1600-1829", by A C Black, KC, Sheriff of Stirling, Dumbarton and Clackmannan, Assistant Editor of [Green's] Encyclopaedia of the Laws of Scotland.

- (4) The influence of English law on Scots law (and, possibly, of Scots law on English law). This would require a lawyer trained in both systems.
- (5) The history of various branches of Scots law seen against their social and economic background. This would require a Scots lawyer who was also a historian.

On the motion of the Lord Advocate, the Meeting cordially thanked Professor Campbell for his address.

The matter of an annual lecture then lay dormant until the AGM in March 1964 when Peter McNeill suggested that it would encourage a larger attendance at meetings. The idea was remitted to Council for consideration and as a result at the next AGM, held on 6 November 1965, Professor Halliday gave an address with the title *A Lawyer Looks at Stair*. His text was published in the Scots Law Times.<sup>42</sup> An address has been given every year since then and a full list, with references for those which have been published, can be found on the Society's website.

## Canon Law

At the Society's inaugural meeting in 1934 Lord Clyde had noted the importance of canon law as one of the primary constituents of Scots law, along with Roman law and the law of the feu and, as has already been noted, David Baird Smith contributed a chapter on canon law to the Society's first volume. The *St Andrews Formulare* had been published by the Society in two volumes (Volumes 7 and 9 of the Society's publications) in 1942 and 1944, edited by Dr (later Professor) Gordon Donaldson. The *Formulare* contains over 600 ecclesiastical styles and copy documents compiled by Master John Lauder in the course of his career as an ecclesiastical notary and secretary in the first half of the sixteenth century.<sup>43</sup> Its importance is well summarised by Baird Smith in a prefatory note to the second volume, in which he wrote:

Lauder was a Papal Notary and belonged to the more dignified and authoritative class of that profession. In respect of its range and variety, the *Formulare* stands out from any similar collection with which I am acquainted. The Register of Cardinal Wolsey, Administrator of the See of Winchester, compiled by John Cooke, a notary public of the diocese, covers the years 1529/30 but it has nothing like the scope of Lauder's work.....In Lauder's *Formulare* and the *Copiale Prioratus Sancti-Andree*<sup>44</sup> Scotland has made interesting contributions to legal history.

No further interest in canon law is referred to in the Society's minutes until January 1963, when Peter McNeill raised the question of his collaborating with "the work on

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<sup>42</sup> 1966 SLT News 1.

<sup>43</sup> In the introduction to the first volume, Donaldson states that Lauder was the son of a priest and a married woman. Born in 1490, in the autumn of 1504 he became a student at the University of St Andrews, where he graduated bachelor in 1506 and master in 1509. While a student he had obtained a papal dispensation allowing him to be ordained notwithstanding "defect of birth".

<sup>44</sup> Ed J H Baxter (1930).

Hay's manuscript" and it was agreed that the Literary Director (Professor Anton) should explore this with the Reverend J C Barry.

Little is known of Hay's early life and his date of birth is unknown. He was brought up in Angus. It is known that he studied philosophy in Paris around 1490 but although he also studied theology and canon law, it is not known when he did so. He returned to Aberdeen in or shortly before 1500. He is thought to have been the first sub-principal of King's College when it was founded in 1505 and he became principal in 1536. He lectured in theology at Aberdeen between these dates, for more than 30 years. It is thought that he died in 1542, but even this is not certain.<sup>45</sup>

At a Council meeting in October that year the Literary Director reported that he

... had communicated with the Rev John C Barry from whom he had had a courteous reply.<sup>46</sup> The matter was, however, one for the Scottish Catholic Historical Committee to decide and it was agreed that it should be left over until the next meeting.

There appears to have been some delicacy in this matter, which is not transparent from the minutes, and it seems to have progressed only slowly. It was agreed at a Council meeting in November 1964, on the suggestion of David Smith, then a young Council member, that Monsignor Barry be asked to agree to the Society publishing only that part of the lectures relating to marriage, and this seems to have unlocked the situation. The minutes of the next meeting of Council, in January 1965, record the position in some detail, as follows:

It was reported that the Scottish Catholic Historical Association had agreed in principle to collaborate with the Society in publishing the Hay manuscript. The Literary Director explained that this dealt with three topics - marriage, baptism and extreme unction - and assumed that the Society would wish to publish only that part relating to marriage. He informed the Council that he had proposed to the Association:-

- (a) that the Society should bear the whole cost of typesetting the portion relating to marriage;
- (b) that the Society share with the Association the costs of the paper and of printing the portion relating to marriage in proportion to the number of copies taken by each; and

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<sup>45</sup> The above biographical information on Hay is gleaned from Barry's introduction to the Lectures, which is referred to for fuller details.

<sup>46</sup> Barry (correctly designated the Right Reverend Monsignor John C Barry) was Rector of St Andrews College, Drygrange, Melrose and Consultor to the Pontifical Commission for the Revision of the Code of Canon Law. He was born in Edinburgh in 1917. He graduated from Cambridge University with first class honours in French and German and later studied at the Gregorian University in Rome, where he took a doctorate in canon law. Having been ordained as a priest in 1944, after parish work in Edinburgh he was appointed as a lecturer in philosophy, moral theology and canon law at Drygrange in 1953 and rector of the college in 1960. In the early 1960s he spent a period in Rome at the Second Vatican Council as adviser to Cardinal Gordon Gray. He retired from Drygrange in 1977 and became parish priest of St Mark's, Oxcgangs, in Edinburgh. He is said to have taken to parish work, from which he had been absent for so long, and to have been an enthusiastic and popular parish priest. He retired to the small parish of Our Lady, Star of the Sea, in North Berwick in 1989 and died in 2003 - biographical detail kindly provided by The Rt Hon Lord Gill.

- (c) that the Association pay the whole costs relating to the portions on baptism and extreme unction.

The Council approved this action on the part of the Literary Director and authorised him to continue negotiations with the Association with a view to early publication of the Lectures.

With the passage of another ten months, the minutes of the thirty-first AGM, in November of the same year, record that the Literary Director “had learned on entering the Meeting that the long negotiations with the [Association] for the publication of the [Lectures on Marriage] had been crowned with success”. It was, however, not until May 1966 that Professor Anton was able to report on printing and binding estimates he had received from Aberdeen University Press and William Hodge & Co. Although the Aberdeen estimate, at £1953, was some 13% higher than Hodge’s, it was agreed to accept it “in view of possible collaboration with Aberdeen University”. Although Professor Anton retired as Literary Director in November 1966, the work seems to have proceeded to publication during 1967 without any further problems. The total printing costs are shown in the 1968 accounts as £2318 but it is not clear from the accounting records now available how the agreed sharing of expenses was finalised.

The *Lectures* were transcribed, translated and edited by Monsignor Barry, the Society’s role apparently having been only to oversee the printing and production of the volume. Barry’s task must have been a complex one: a transcript of Hay’s Latin text is printed on one side of the page, with Barry’s English translation facing it, the combined texts covering 355 pages. There are some 40 pages of Barry’s introductory material.

Council decided in May 1967 that an evening symposium should be held in the Edinburgh University Staff Club during November of that year to discuss the Lectures, after they had been published, and that Barry would be invited to lead the discussion. The Society’s records do not contain a record of the meeting but Lord Gill, then a young advocate, remembers attending it, that A J Mackenzie Stuart acted as chairman and that Barry struck those present as being an outstanding scholar in his field.

### **Lighter Moments**

A proposal to hold a dinner in Parliament House in November 1939 was abandoned because of the War but the idea was resurrected in 1947, when at the thirteenth AGM, in December of that year Lord Birnam suggested that an annual dinner be held, with a view to attracting younger members into the Society. Lord Cooper agreed to take the matter forward. Arrangements for a dinner in 1948 were abandoned because of the illness of the President, Lord Macmillan, and because Lord Greene, Master of the Rolls, who was to have been the principal guest, was unable to attend. At a meeting in March 1950 Council decided not to proceed with the idea of holding a dinner.

The matter was however again raised in 1955, when it was agreed at the AGM in March that a dinner would be held in March 1956 on the eve of the AGM and of the Scotland v. England rugby international at Murrayfield, to celebrate the Society’s

twenty-first anniversary. The Secretary reported to Council on 12 March 1956 that the dinner was to be held in the De Guise room of the Caledonian Hotel the following Friday and that 106 members and guests had bought tickets. The minutes of the twenty-first AGM, held on the Saturday morning, make no mention of the dinner the previous evening, although many of those present at the AGM must have attended it. We are however fortunate in having a detailed contemporary and pithy account of it in the journal of Sir Randall Phillip QC, a member of the Society and at the time Sheriff (what would now be Sheriff Principal) of Perth and Angus.<sup>47</sup>

Phillip records that Lord Normand was in the chair and that Lord Evershed, Master of the Rolls, was the principal guest. There were copious speeches and toasts. Evershed proposed the toast of the Society, to which Normand replied. Phillip considered that Evershed's speech was the best of the evening, describing him as having "an unusually soft mellow voice.....not a word is wasted and each sentence is deftly constructed and there is always a humorous flavour which kindles rather than sparkles". Hector McKechnie spoke too. Phillip, who was a close friend of McKechnie, described his speech as being clever, and full of puns,<sup>48</sup> "though perhaps too consciously smelling of midnight oil". Sir Leslie Farrer, The Queen's solicitor in London and President of the Selden Society, proposed the toast of the Legal Profession in Scotland. Lord Milligan "proposing The Chairman, was, as always, entertaining and low-brow". Phillip was less complimentary about the speeches of Lord Clyde, who proposed The Guests, and Harry Whitley, Minister of St Giles, who replied, though he records that Whitley mentioned that "the great Lord Stair was buried, none knew where, in St Giles". Phillip concluded his description of the dinner thus:

Everyone agreed that Evershed was pre-eminent, with Normand a good second. The rest of the speaking was not what one might expect from a legal dinner. I was rather surprised at the small representation of the bar; though most of the bench were there.

Phillip does not mention that England won the Calcutta Cup, beating Scotland 11-6.

## **Personalities**

A review of the Society's development, particularly in the early years, is inevitably dominated by the involvement of the senior judiciary. Although Lord Macmillan was instrumental in the Society's inauguration and in providing strong leadership as President for nearly twenty years, he did not contribute scholarly input to its publication programme and, based in London, was not in his later years a regular attender at meetings, the last one he attended being the AGM in 1940. The same could not be said of the first Lord Clyde and Lord Cooper, both of whom were scholars, as well as judges, of the first rank and both of whom devoted considerable time to the

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<sup>47</sup> *Journal of Sir Randall Phillip OBE, QC*, 528-529. The Journal, edited by his grand-daughter, Fiona Craddock, Advocate, was published by The Portland Press in 1998 and provides a fascinating insight into legal and public life in Scotland in the decade 1947-1957. The author is grateful to Ms Craddock for permission to quote from it.

<sup>48</sup> Phillip records McKechnie's description of an imaginary tramway accident, in which an old lady descending the Stair had Bankton the conductor sounding the Bell and had fallen, just saving Er-skin.

Society's affairs, Lord Clyde in retirement but Lord Cooper while also holding the office of Lord President. As has been seen, Lord Cooper, as Vice Chairman and then Chairman, was an assiduous attender of meetings and Lord Clyde, as Vice President, regularly took the chair at the AGM and also frequently attended Council meetings. Following Lord Macmillan's death in 1952, Lord Normand became President and Cooper handed over the chairmanship of Council to Sheriff McKechnie, remaining as Vice President until his death in 1955.

Lord Normand had succeeded Lord Clyde as Lord President of the Court of Session in 1935 and he held that office until 1947, when he was appointed as a Lord of Appeal. He retired from the House of Lords in 1953 and was elected as President of the Society that year in succession to Lord Macmillan, having been Vice President since 1945. Although he did not contribute to the Society's publication programme, he was very active in his duties as President and regularly attended the AGM and meetings of Council until his death in October 1962.<sup>49</sup>

Despite the leadership provided by the judges, much of the Society's early success can be attributed to the hard work of others, notably David Baird Smith, the first chairman of Council, whose contribution and whose standing as a legal historian has already been noted in some detail, Hector McKechnie, the first Literary Director and later Chairman, and Campbell Paton, editor of Hume's Lectures, *de facto* editor of the *Introduction to Scottish Legal History* and Literary Director from 1954 to 1960.

Hector McKechnie was born in 1899, the son of a Professor of Conveyancing at Glasgow University<sup>50</sup>. He was educated at Winchester, New College Oxford and Glasgow University and served as a lieutenant in the Northumberland Fusiliers 1918-1919. He was an apprentice solicitor in Glasgow 1922 to 1925, was called to the Bar in 1925 and from 1926 to 1928 was Faulds Fellow in Law at Glasgow University. He was the Society's first Literary Director from 1935 to 1953, when he succeeded Lord Cooper as Chairman of Council, holding that office until 1964, two years before his death. McKechnie was standing junior counsel to the Board of Trade in Scotland 1937 to 1945. He was a trustee of the National Library of Scotland from 1931 and a member of the Scottish Records Advisory Council from 1941. In 1953 he was appointed Sheriff (what would now be Sheriff Principal) of Inverness, Moray, Nairn and Ross and Cromarty, a post he held until 1958, when he was appointed Sheriff of

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<sup>49</sup> Lord Normand was born in Aberdour, in Fife, in 1884. The youngest of five brothers, he was educated at Fettes and Oriel College Oxford, graduating with first class honours in Arts and Humanities in 1906. After graduating LLB at Edinburgh University, he was called to the Bar in the same year and took silk in 1925. He was elected as Unionist MP for Edinburgh West in 1931. In that year he was appointed Solicitor General and in 1933 Lord Advocate. He had been editor of the *Juridical Review* in the early 1920s. Writing of him in the *Dictionary of National Biography*, Professor T B Smith said that although he might at first impression seem reserved and austere he could be most courteous and charming in public and in private and warmed in scholarly circles. Smith also described him as being somewhat fastidious in extrovert society but as enjoying the company of scholars old and young.

<sup>50</sup> William Sharp McKechnie (1863-1930), who was Professor of Conveyancing from 1916 to 1927. He was awarded an LLD in 1927. Born in Paisley, McKechnie senior graduated MA from the University in 1883 with first class honours in Philosophy, and went on to obtain an LLB (in 1887) and a DPhil (1897). In 1890 he became a solicitor in Glasgow and was a lecturer in Constitutional Law and History at the University from 1894 until his appointment to the Chair of Conveyancing – see *The University of Glasgow Story* on the University's website. He was also author of *Magna Carta: A Commentary on the Great Charter of King John with an Historical Introduction* (1914).

Perth and Angus. As well as his work as Literary Director, he contributed to the Society's first volume (chapter 3, "Practicks, 1469-1700"), its twentieth (chapter 20, "Delict and Quasi Delict") and to Green's *Encyclopaedia of the Laws of Scotland*.

When Campbell Paton, who was a founder member of the Society, published the first volume of Hume's Lectures in 1939 he had qualified as a solicitor in Glasgow and was described as "Assistant to Professor of Law in University of Glasgow". He served in the Royal Navy during the war and by the time the third volume of the Lectures was published in 1952 he had been called to the Bar and had been appointed as lecturer in the history of Scots Law at Glasgow University.<sup>51</sup> He remained at Glasgow until 1961, when he was appointed to a similar post at Edinburgh University. He agreed to take on the role of Literary Director in 1954, but as has been noted above with reference to the preparation of the *Introduction*, it is apparent that he did so with some reluctance, probably because at that time he still had to complete the editing of the last three volumes of Hume's Lectures and as Literary Director he would have to play a major part in the preparation of the *Introduction*.

There is no evidence that Paton received any remuneration from the Society for his work on the *Lectures* and this would be consistent with the Society's established policy of not paying its authors or volume editors. The Council minutes of 13 March 1958 record that he was asked to withdraw from the meeting while there was a discussion about the remuneration due to him:

The President, having requested Mr Paton to withdraw from the meeting, consideration was given to the question of remuneration due to [him] for his extraordinary labours in the preparation of the Introductory History and also of the amount of honorarium to be given annually in respect of the ordinary editorial work. It was decided that he should have £250 for his work on the Introductory History and £100 yearly as literary director. Mr Paton on being informed of this expressed his appreciation and thanks.

Paton retired as Literary Director in 1960, having served the Society faithfully for more than twenty years. He died in 1984.

In an assessment of the Society's records over the twenty years following the end of World War II the dominant literary figure which emerges is Campbell Paton, editor of all six volumes of Hume's Lectures, the last five of which were published in the period under review, *de facto* editor of the *Introduction*, author of three of its chapters (chapters 2, "The Dark Age"; 5, "The Eighteenth Century and Later"; and 9, "Husband and Wife: Divorce, Nullity of Marriage and Separation"), and the Society's Literary Editor for six years. But Campbell Paton was self-effacing by nature.<sup>52</sup> It seems likely from the minutes that he sought little recognition for his labours and, as has been indicated above, it is apparent that that is what he received.

The towering figure that emerges is Lord Cooper and it would be hard to overstate Cooper's contribution to the work of the Society, his commitment to the study of Scottish legal history or the leadership in this field which he gave to others. In a

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<sup>51</sup> He qualified as a solicitor in 1932 and was called to the Bar in 1951

<sup>52</sup> Personal recollection of the author as one of his students.

memorial lecture at the University of Aberdeen following Cooper's death,<sup>53</sup> Professor T B Smith made this assessment:

In such leisure as he allowed himself from modern law, Lord Cooper researched deeply into the history of Scottish law – especially that of medieval times – and into questions of mutual interest to historians and lawyers. He did not accept the existence of rigid frontiers in the empire of the mind and cheerfully disregarded the maxim *ne supra crepidam sutor judicaret*. Those brief and lucid passages in his judgements by which he was wont to put the modern law in its historical perspective were the bi-product of his research. Probably of greater value even than the published fruits of his own scholarship – such as the Stair Society volumes and his contributions to *The Juridical Review* and *Scottish Historical Review* – is the inspiration which he has given to others to continue where he left off. He has put questions to the historians and to the lawyers which will, I earnestly hope, provoke answers of importance to both. He felt deeply the reflection that Scottish law had never produced its Pollock, Maitland or Holdsworth. Had he been granted a longer life, he might well have laid down judicial office to devote himself to the writing of a comprehensive work on Scottish legal history.

By the mid-1960s a new generation of legal historians was becoming active in the Society's work – Irvine Smith, Peter McNeill and Ian Willock notable amongst them. All would play an active part in the next phase of the Society's development and it may perhaps be left to a later historian to assess their contributions.

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<sup>53</sup> See footnote 13, above.

## APPENDIX 1

## Membership Statistics 1935 - 1967

Year	Individuals	Students	Institutions	Total
1935	630		52	682
1936	623		79	702
1937	633		87	720
1938	See note 1			690
1939	576		91	667
1940	552		91	643
1941	518		90	608
1942	488		90	578
1943	481		90	571
1944	469		90	559
1945	447		89	536
1946	438		89	527
1947	430		91	521
1948	429		98	527
1949	416		96	527
1950	413		102	515
1951	408		103	511
1952	394		105	499
1953	392		116	508
1954	383		124	507
1955	381		127	508
1956	374		128	502
1957	365		131	496
1958	370		130	500
1959	406		136	542
1960	411		143	554
1961	402		145	547
1962	386	4	139	529
1963	406	8	127	541
1964	398	7	140	545
1965	404	1	147	552
1966	384	6	149	539
1967	409	See note 2	154	563

## Notes

1. The annual report for 1938 does not give a split between individual and institutional members.
2. The membership numbers for 1967 are shown in the annual report in a different format from previous years, as 409 ordinary members in the United Kingdom, 69 institutions in the United Kingdom and 85 foreign members. No separate figure is given for student members.

3. Student membership was introduced in 1962.

### Financial Overview 1935 – 1967

Year	Income £	Expenditure £	Surplus / (deficit) £	Cumulative reserves £	Publication
1935	786	271	515	515	Vol 1
1936	810	836	(25)	489	Vols 2 & 3
1937	801	618	183	672	
1938	766	912	(145)	526	Vol 4
1939	721	385	336	862	Index Vol 1, Vol 5
1940	713	747	(34)	828	Vol 6
1941	641	230	411	1239	
1942	630	560	70	1309	Vol 7
1943	626	511	115	1424	Vol 8
1944	634	584	50	1474	Vol 9
1945	617	236	381	1856	
1946	620	551	69	1925	Vol 10
1947	599	706	(107)	1818	Vol 11
1948	715	208	507	2325	
1949	613	684	(71)	2254	Vols 12 & 13
1950	625	806	(181)	2073	
1951	*1549	687	862	2935	Vol 14
1952	667	1387	(720)	2215	Vol 15
1953	**1243	775	468	2683	Vol 16
1954	906	115	791	3474	
1955	704	789	(85)	3389	Vol 17
1956	1077	1203	(126)	3263	
1957	1048	1270	(222)	***2811	Vol 18
1958	1005	1651	(646)	2194	Vol 19
1959	1009	1760	(751)	1452	Vol 20
1960	1412	309	1103	2340	
1961	980	412	568	2880	
1962	1964	1420	544	3233	Vol 21
1963	1875	671	1204	4429	Vol 22
1964	1932	170	1762	5932	
1965	2067	477	1590	7611	
1966	2135	1763	372	7927	Vol 23
1967	2273	355	1915	9999	Vol 24

\* Includes grant of £1000 from Pilgrim Trust

\*\* Includes legacy of £500 from Lord Macmillan's estate

\*\*\* From 1958 the reserve figure is adjusted to reflect market value of assets held at year end

**APPENDIX 3****Office Bearers 1934 - 1967****President**

1934	Lord Macmillan
1953	Lord Normand
1963	Lord (James L) Clyde

**Vice President**

1934	Lord (James A) Clyde
1945	Lord Normand
1953	Lord Cooper of Culross
1956	Lord (James L) Clyde
1963	Lord Keith of Avonholm
1966	Lord Avonside

**Chairman of Council**

1934	David Baird Smith
1950	Lord Cooper
1953	Hector McKechnie QC
1964	Professor T B Smith

**Vice Chairman**

1934	Lord Normand
1945	Lord Cooper
1950	Professor W Croft Dickinson
1961	Dr Gordon Donaldson
1963	Professor T B Smith
1964	Lord Hunter

**Literary Director**

1934	Hector McKechnie
1946	Hector McKechnie KC and H M Paton
1952	Hector McKechnie KC and A J Mackenzie Stuart
1953	A J Mackenzie Stuart
1954	G Campbell H Paton
1960	J Irvine Smith
1961	Professor A E Anton
1967	Professor I D Willock and John Imrie

**Secretary**

1934 Dr C A Malcolm  
1961 Dr G R Thomson

**Treasurer**

1934 Hugh Watson  
1954 D C Scott Moncrieff  
1967 I R Guild