
THE FIRST EDINBURGH CHAIR IN LAW: GROTIUS AND THE SCOTTISH ENLIGHTENMENT

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1 Introduction

The influence of natural law in late-seventeenth and early-eighteenth-century Scotland is well known.¹ At a broad political level, the achievements of the modern school of natural law helped the Scots reach varied readings and understandings of contemporary political events such as the Glorious Revolution and the Union of 1707.² The work of these secular natural lawyers also provided a new way of approaching moral philosophy that came to dominate the curriculum in the eighteenth-century Scottish universities. A crucial figure here has generally been seen to be Gershom Carmichael in Glasgow, who adopted Pufendorf's textbook *De officio hominis et civis* as the basis of his classes on moral philosophy, providing editions with important notes founded on his teaching.³

It is also evident that natural law was much relied on in the presentation of arguments in court, which were mainly delivered in or reduced to writing in the elaborate written processes that developed in Scottish litigation of any

* The author is grateful for the comments of his colleagues and friends Drs Clare Jackson and Paul du Plessis and Professors Sir Neil MacCormick and Hector MacQueen. He is delighted to acknowledge the permissions of the Keeper of the Records of Scotland, the Keeper of the Advocates Library, the Trustees of the National Library of Scotland, the Librarian of the University of Edinburgh, and the Archivist of the City of Edinburgh to examine, cite and, in some instances, quote from unpublished material in their care.

1 See, eg, Haakonssen *Natural Law and Moral Philosophy: From Grotius to the Scottish Enlightenment* (1996). To consider current debates over contested understandings of the Scottish Enlightenment, see now the essays in Wood (ed) *The Scottish Enlightenment: Essays in Reinterpretation* (2000), especially the chapter by the editor, and Broadie (ed) *The Cambridge Companion to the Scottish Enlightenment* (2003). Shaw *The Political History of Eighteenth-Century Scotland* (1999) gives a good introduction to the politics of the period.

2 See, eg, Jackson "Revolution principles, *ius naturae*, and *ius gentium* in early-enlightenment Scotland: The contribution of Sir Francis Grant, Lord Cullen (c 1660-1726)" in Hochstrasser & Schröder (eds) *Early Modern Natural Law Theories: Contexts and Strategies in the Early Enlightenment* (2003) 107; eadem, *Restoration Scotland, 1660-1690: Royalist Politics, Religion and Ideas* (2003); eadem "Natural law and the construction of political sovereignty in Scotland, 1660-1690" in Hunter and Saunders (eds) *Natural Law and Civil Sovereignty: Moral Right and State Authority in Early Modern Political Thought* (2002) 155; Von Friedeburg "From collective representation to the right of individual defence: James Steuart's *Ius Populi Vindicatum* and the use of Johannes Althusius' *Politica* in Restoration Scotland" 1998 *History of European Ideas* 19; Cairns "Scottish law, Scottish lawyers and the status of the union" in Robertson (ed) *A Union for Empire: Political Thought and the British Union of 1707* (1995) 243.

3 Moore & Silverthorne "Gershom Carmichael and the natural jurisprudence tradition in eighteenth-century Scotland" in Hont & Ignatieff (eds) *Wealth and Virtue: The Shaping of Political Economy in the Scottish Enlightenment* (1983) 73; eadem "Natural sociability and natural rights in the moral philosophy of Gershom Carmichael" in Hope (ed) *Philosophers of the Scottish Enlightenment* (1984) 1. See now eadem (eds) *Natural Rights on the Threshold of the Scottish Enlightenment: The Writings of Gershom Carmichael* (2002).

complexity.⁴ This meant that Scots viewed their law within a framework drawn from the *ius naturale* and *ius gentium*. The first to articulate this clearly was Thomas Craig around 1600, who identified *ius commune* with *ius naturale* and *ius gentium* rather than *utrumque ius*.⁵ The classic account of Scots law understood in this way is that by James Dalrymple, Viscount Stair, first printed in 1681;⁶ but such an exposition of Scots law was normal for the following century.⁷ Stair depicted Scots law as a coherent and logical whole integrated as a hierarchical series of norms, justified and made obligatory by a higher authority, thereby providing a major synthesis comparable to those of other institutional writers in the era of the *usus modernus*.⁸

It was on the basis of this approach that, in the eighteenth century, judges could clearly debate issues such as copyright and slavery in Scotland using the language of the *ius naturale* and the *ius gentium*. Thus, in 1773, Lord Kennet gave his opinion that literary property was not found in the law of Scotland. He based this claim partly on the observation that it was “not in *the law of nature*, which is one great fountain of our law”. He argued that:

It is in vain to say, that it is founded on that part of the law of nature, by which we are not to hurt another, or take from him what belongs to him; for that is to apply a *petitio principii*. – It is not in the *law of nations*: there is not the *consensus gentium*

This meant that it was “only such a kind of right as particular states have, in some instances, conferred by a patent, or *privilegium*, for a limited time”. He then showed it was not found in Scots law.⁹ Five years later, the same judge

4 See now Parratt “The Development and Use of Written Pleadings in Scots Civil Procedure” unpublished PhD thesis, University of Edinburgh (2004) 18-83. For an example of use in a particular case, see Cairns “Stoicism, slavery, and law: Grotian jurisprudence and its reception” 2001/2002 *Grotiana* 197 at 216-230.

5 See Cairns “*Ius civile* in Scotland, ca. 1600” 2004 *Roman Legal Tradition* 136 at 150-158; *idem* “The civil law tradition in Scottish legal thought” in Carey Miller & Zimmermann (eds) *The Civilian Tradition and Scots law: Aberdeen Quincentenary Essays* (1997) 191 at 200-203.

6 Stair *The Institutions of the Law of Scotland: Deduced from its Originals, and Collated with the Civil, Canon and Feudal Laws, and with the Customs of Neighbouring Nations* (1681; 2nd ed 1693; new ed 1981).

7 See, eg, Cairns “The civil law tradition in Scottish legal thought” 204-220.

8 See Luig “The institutes of national law in the seventeenth and eighteenth centuries” 1972 *Juridical Review* 193. On Stair’s views of natural law, see, eg, Campbell, *The Structure of Stair’s Institutions: Being the Twenty-First Lecture on the David Murray Foundation in the University of Glasgow Delivered on 24th February, 1954* (1954); McCormick “Law, obligation and consent: Reflections on Stair and Locke” 1979 *Archiv für Rechts- und Sozial Philosophie* 387; *idem* “Stair’s general concepts. 2. Stair as analytical jurist” in Walker (ed) *Stair Tercentenary Studies* Stair Society vol 33 (1981) 187; *idem*, “The rational discipline of law” 1981 *Juridical Review* 146; Stein “Stair’s general concepts. I. The theory of law” in Walker (ed), *Stair Tercentenary Studies* 181; Ford “Stair’s title ‘Of liberty and servitude’” in Lewis & Ibbetson (eds) *The Roman Law Tradition* (1994) 135.

9 *The Decision of the Court of Session, Upon the Question of Literary Property; In the Cause John Hinton of London, Bookseller, Pursuer; Against Alexander Donaldson and*

stressed that the law on slavery in Jamaica was founded not on “equity” but “expediency”; Lord Monboddo noted that slavery was not of the *ius naturale* but of the *ius gentium*, and therefore just.¹⁰

Given the interest in natural law that existed in Scotland before familiarity with Grotius’ and then Pufendorf’s works developed (primarily after 1660), it is not possible to state that it was knowledge of *De jure belli ac pacis* that stimulated such concern with the modern movement in natural law.¹¹ There can be no doubt, however, but that the works of Grotius and Pufendorf and their commentators – Jean Barbeyrac in particular – at least enhanced and developed such interest, and pushed it in a particular direction. Reinforcing this was the Scottish practice of studying law in the Netherlands that reached a peak between 1680 and 1730, though attendance at Dutch universities remained strong until around 1750.¹² While it was in courses on Justinian’s *Institutes* and *Digest* that Scottish law students were most interested, they were also keen to attend a class on natural law – a *Collegium Grotianum* as such was commonly described.¹³ Such classes were taught by, among others, Ph R Vitriarius and Gerard Noodt in Leiden.¹⁴ If the Scots favoured Utrecht and Leiden among the Dutch universities, some went to Groningen to study natural law with Jean Barbeyrac.¹⁵ It was a matter of disappointment and regret if no classes on natural law were available.¹⁶

While the significance of both Grotius and Pufendorf in Scotland is generally recognised, there has been a tendency to emphasise the role of Pufendorf’s thought, with its focus on the rights and duties of the citizen, largely because of the intellectual significance properly attributed to Carmichael and his edition of

John Wood, Booksellers in Edinburgh, and James Meurose Bookseller in Kilmarnock, Defenders. Published by James Boswell, Esq; Advocate, One of the Counsel in the Cause (1774) 1-2.

10 *Knight v Wedderburn* Hailes’ Decisions (1826) vol 2 776 at 777, 779.

11 See Cairns “*Ius civile in Scotland*” 150-158; *idem*, “Scottish law, Scottish lawyers and the status of the union” 258-259.

12 Feenstra “Scottish-Dutch legal relations in the seventeenth and eighteenth centuries” in: *idem, Legal Scholarship and Doctrines of Private Law, 13th-18th Centuries* (1996), XVI at 33-36 (= de Ridder-Symoens & Fletcher (eds) *Academic Relations Between the Low Countries and the British Isles, 1450-1700. Proceedings of the First Conference of Belgian, British and Dutch Historians of Universities Held in Ghent, September 30-October 2, 1987* (1987) 25); Van Strien & Ahsmann “Scottish law students in Leiden at the end of the seventeenth century. The correspondence of John Clerk, 1694-1697” 1992 *Lias* 271 and 1993 *Lias* 1.

13 Van Strien & Ahsmann “Scottish law students in Leiden” 289-291.

14 *Ibid* 290-293, 297; Van den Bergh *The Life and Work of Gerard Noodt (1647-1725): Dutch Legal Scholarship Between Humanism and Enlightenment* (1988) 271, 283; Jansen “Over de 18e eeuwse docenten natuurrecht aan Nederlandse universiteiten en de door hen gebruikte leerboeken” 1987 *TvR* 103 at 106, 114.

15 See, eg, Dundas to Mackie, 10 Jan 1728 in Edinburgh University Library [hereafter EUL] MS La. II.91.B.59.

16 Kenneth Mackenzie to John Mackenzie, 9 Mar 1719, National Library of Scotland [hereafter NLS] MS 1209 fol 14. Vitriarius was still teaching, but the student considered him a “dotard”.

the German author.¹⁷ There is no reason to dispute this approach; but the direct and mediated influence of Grotius – especially on the lawyers – should not be forgotten. Before Carmichael produced his edition of Pufendorf's *De officio*, William Scott, one of the regents in philosophy (that is teacher of the general curriculum in arts) in the University of Edinburgh had published (in Edinburgh in 1707) a compend of Grotius' *De iure* for his students.¹⁸ Indeed, Scott appears to have been offering a private class on Grotius from the 1690s.¹⁹ It is always worth remembering that Adam Smith himself not only wrote in his *Theory of Moral Sentiments* of 1758 that "Grotius seems to have been the first who attempted to give the world any thing like a system of those principles which ought to run through, and be the foundation of the laws of all nations", but also expressed the view that Grotius' "treatise of the laws of war and peace ... is perhaps at this day the most complete work that has yet been given upon this subject".²⁰ This reflected what he told his class in his lectures on jurisprudence, which were viewed as complementary to classes on civil law.²¹

Smith's natural jurisprudence, however, was founded on an understanding of justice as a personal virtue. It had little place for the universal approach to justice and natural law found in Grotius or Pufendorf; instead justice was a historical and social creation that developed through individuals' dealings with each other and ability to enter into and appreciate each other's sentiments, combined with individuals' desire to conform their behaviour to those practices of which others would approve. Observing when another had been wronged allowed recognition that the other had a right not to be wronged in such a way. The science of legislation was to recognise such rights and to appreciate whether their inscription as laws was best achieved through legislation or by operation of the courts.²²

17 Robertson "The Scottish contribution to the Enlightenment" in Wood (ed) *Scottish Enlightenment* 37 at 46; Haakonssen *Natural Law and Moral Philosophy* 65.

18 *Hugonis Grotii de jure belli ac pacis librorum III. compendium, annotationibus & commentariis selectis illustratum. In usum studiosae juventutis Academiae Edinensis* (1707).

19 See Finlayson "Edinburgh University and the Darien scheme" 1955 *Scottish Historical Review* 97 at 99-100.

20 Smith *Theory of Moral Sentiments* ed by Raphael & Macfie (1976) 341-342 (VII.iv.37).

21 Smith *Lectures on Jurisprudence* ed by Meek, Raphael & Stein (1978) 397. See Erskine to Cardross 24 Nov 1762 EUL MS La. II.238.

22 Haakonssen *The Science of a Legislator: The Natural Jurisprudence of David Hume and Adam Smith* (1981) 154-189; Cairns "Ethics and the science of legislation: Legislators, philosophers and courts in eighteenth-century Scotland" 2000 *Jahrbuch für Recht und Ethik* 159; *idem* "Adam Smith and the role of the courts in securing justice and liberty" in Malloy & Evensky (eds) *Adam Smith and the Philosophy of Law and Economics* (1994) 31.

2 Scottish university education in law

From the 1690s, there had been considerable interest in Scotland in developing modern university legal education, in particular in Edinburgh. The main focus was on developing classes in Roman law to provide the education necessary to succeed in the private and public examinations for admission as an advocate.²³ From 1699, a few advocates started to teach such classes privately.²⁴ A chair to teach Roman law could not be erected in the University of Edinburgh until 1710, when the privilege of an exclusive right to be professor of civil law in Scotland, initially granted to Alexander Cunningham of Block by Parliament in 1698, finally expired.²⁵ This meant that the first chair in law to be erected in the University of Edinburgh was that of Public Law and the Law of Nature and Nations in 1707, a regius chair endowed by conversion of a number of bursaries in divinity.²⁶

This article will trace the history of that chair in the eighteenth century, showing how it tracks the development of thinking about justice and law in Scotland. Initially, the professors taught using Grotius' work or a compend of it; but, by the end of the century, the class had been transformed into an exercise in developing an essentially Smithian jurisprudence that inculcated in the students an understanding of justice as an essentially historical phenomenon. By the early 1800s, the chair had failed. If many factors brought this about, changing intellectual life had made the discipline it taught seem irrelevant in a new world in which Smith's jurisprudence had dissolved into a variety of different specialised disciplines. By 1830, it was proposed to suppress the chair.²⁷

23 Cairns "The formation of the Scottish legal mind in the eighteenth century: Themes of humanism and enlightenment in the admission of advocates" in MacCormick & Birks (eds) *The Legal Mind: Essays for Tony Honoré* (1986) 253; *idem* "Advocates' hats, Roman law and admission to the Scots bar, 1580-1812" 1999 (20, no 2) *Journal of Legal History* 24.

24 Cairns "John Spotswood, professor of law: A preliminary sketch" in Gordon (ed) *Miscellany Three Stair Society* vol 39 (1992) 131, 131-134; *idem* "Importing our lawyers from Holland: Netherlands' influences on Scots law and lawyers in the eighteenth century" in Simpson (ed) *Scotland and the Low Countries 1124-1994* (1996) 136.

25 Cairns "Alexander Cunningham's proposed edition of the *Digest*: An episode in the history of the Dutch elegant school of Roman law" (2001) *TvR* 81 (Part I) and 307 (Part II), at 109-110, 308; *idem* "Netherlands' influences on Scots law and lawyers" 146-149.

26 See, eg, Grant *The Story of the University of Edinburgh During its First Three Hundred Years* (1884) vol 1 232-233.

27 There is an account of the chair in Lorimer "The Story of the Chair of Public Law in the University of Edinburgh" 1888 *Law Quarterly Review* 139; that given here is somewhat different.

2.1 Charles Areskine, Professor 1707-1734

The man appointed to the new chair was Charles Areskine, MA (St Andrews) and regent in philosophy in the University of Edinburgh, and it has been suggested that the professorship was created solely for his benefit, or that the Regent William Scott also aspired to it.²⁸ This seems unlikely for a variety of reasons; but the topic is too complex to consider here.²⁹ It is enough to remark that Areskine's appointment was largely due to his relative, the Earl of Mar.³⁰

Given leave from the chair Areskine went to Leiden to study law, matriculating in February 1708.³¹ No information is available about his studies there, but, given the field of his professorship, it is likely that he attended a *Collegium on ius naturale*. Such were taught in this period by Noodt and Vitriarius. The former offered a private *Collegium Grotianum*; though he gave a "simple lemmatic explanation" of Grotius' *De jure belli ac pacis*, he addressed the text in a critical fashion.³² Vitriarius also founded his classes on Grotius, but had written his own textbook *ad methodum Hugonis Grotii*.³³ It may be significant that Areskine owned a copy of this work.³⁴ An intending advocate, George Mackenzie, a direct contemporary of Areskine at Leiden and a member of the Delvine family, had difficulty in deciding between the two professors' classes on natural law. He considered Vitriarius "lazy" and Noodt "malicious" (because he railed "at Grotius and these he cites").³⁵ These remarks perhaps reveal more about Mackenzie, a somewhat foolish and immature young man, than about those whom he criticised.³⁶ Vitriarius also offered a private college on the

28 Bower *The History of the University of Edinburgh; Chiefly Compiled from Original Papers and Records, Never Before Published* (1817-1830), vol 2, 65-66; Finlayson "Edinburgh University and the Darien Scheme" 100. The name is of course normally Erskine, but Areskine invariably spelled his name in the fashion adopted here, as did his brother Robert, MD, who became physician to Peter the Great: Paul (ed) "Letters and documents relating to Robert Erskine, Physician to Peter the Great Czar of Russia" in *Miscellany of the Scottish History Society*, vol. II (1904) 372.

29 See generally my unpublished paper: "Improving our lawyers through the study of natural law: The chair of Public Law and the Law of Nature and Nations in Edinburgh", delivered British Legal History Conference, Cambridge, July, 1997.

30 Mar to Nairne 1 Feb 1707 National Archives of Scotland [hereafter NAS] GD 124/15/487/3; Nairne to Mar 11 Feb 1707 NAS GD 124/15/487/14.

31 EUL MS Dc. 6.108; Areskine to Mar 24 Apr 1707 NAS GD 124/15/542/1. See *Album studiosorum Academiae Lugduno-Batavae MDLXXV-MDCCCLXXV* (1875) col 802.

32 Van den Bergh *Gerard Noodt* 283.

33 Vitriarius, *Institutiones juris naturae et gentium in usum Christiani Ludovici marchionis Brandenburgici ad methodum Hugonis Grotii conscriptae* (1692) (and many other editions: see Ahsmann & Feenstra *Bibliographie van Hoogleraren in de Rechten aan de Leidse Universiteit tot 1811* (1984), 327-330 (nos 1001-1011)).

34 See his library catalogue: NLS MS 3283 42, 216. The catalogue records the edition of 1704; at some stage, the date 1692 has been added (or substituted) in pencil. Both the import and date of this pencil alteration are unclear. The surviving Alva Collection contains only that of 1692: NLS pressmark Alva 262. The flyleaf records that this was a copy bought in Leiden on 11 Dec 1693 by John Paterson for 30 stuivers.

35 George Mackenzie to John Mackenzie 4 Mar 1708 NLS MS 1118 fol 65.

36 See Cairns "Alexander Cunningham's proposed edition of the *Digest*" 314-316.

increasingly popular topic of *ius publicum Romano-Germanicum*.³⁷ This could well have attracted Areskine.³⁸

Areskine followed his studies in Leiden with a version of the Grand Tour, certainly visiting Italy and Germany. He bought large numbers of books in Italy, some, no doubt, are among those Italian works later listed in his Library Catalogue.³⁹ After spending some time in London, he eventually returned north to be admitted as an advocate on 17 July 1711.⁴⁰ Designing himself “her Majesty’s Professor of Publick Law, in the University of Edinburgh”, he advertised that he would “begin his private Lecture [*sic*] on the Laws of Nature and Nations” on Friday 16 November 1711 at five p.m. “at his Lodgings in Frazer’s Land”.⁴¹ There can be little doubt but that this class was modelled on a private *Collegium Grotianum* that Areskine had attended in Leiden.

Areskine failed to maintain a class; he certainly did not continue to teach.⁴² This means it is uncertain from what text he proposed to teach (or actually taught) in 1711. It is, however, a fair assumption that it was from Grotius’ *De jure belli ac pacis* or a compend of it. Areskine’s education at Leiden, where Grotius was the foundation of the courses of Vitriarius and Noodt, will have demonstrated the possibilities of the work. Further, the collection of books on natural law that may be traced in his extensive library contained eight editions of Grotius’ *De jure belli ac pacis* (including a first edition and the translations into French by Barbeyrac and Courtin), two compends or teaching manuals based on it, and four works of commentaries and notes on it.⁴³ In comparison, he had three editions of Pufendorf’s *De jure naturae et gentium* and two of his *De officio* (one of which was that of Carmichael).⁴⁴ Other works on natural law may be identified in his collection, but the dominance of that of Grotius is clear. If Areskine’s library is any guide to his thinking on natural law, the thought of Grotius was what mattered most, making it likely that he intended to teach from it or a suitable compend. Areskine owned a copy of Scott’s *Compendium*;⁴⁵ it is possible that he intended it as his textbook, but the copy recorded in his library

37 Ahsmann & Feenstra *Bibliographie* 320-327.

38 See NLS MS 3283 61 where there is a pencil entry for Vitriarius *Institutiones juris publici Romano-Germanici selectae* (1714), on which see Ahsmann & Feenstra *Bibliographie* 321 (no 991). The copy survives in the Alva Collection (NLS Pressmark Alva 263), but it bears the bookplate of Areskine’s son, James Erskine of Alva. Of course, he could have put his plate into one of his father’s books.

39 Areskine to Erskine 10 May 1710 NLS MS 5072 fols 8-9. See NLS MS 3283 *passim*.

40 Areskine to Erskine 7 and 20 April and 12 June 1712 NLS MS 5072 fols 11, 13, and 16; Grant (ed) *The Faculty of Advocates in Scotland, 1532-1943, with Genealogical Notes* (1944) 66.

41 *Scots Courant* 12/14, 14/16 Nov 1711.

42 See Scott to Anderson 7 Dec 1714 NLS Adv MS 29.1.2 (iv) fols 180-181.

43 NLS MS 3283 23, 24, 31, 32, 42.

44 NLS MS 3283 22, 23, 44.

45 NLS MS 3283 32.

was probably acquired long after he had given over teaching.⁴⁶ A number of the works recorded in his manuscript Library Catalogue survive in the Alva Collection in the National Library of Scotland, but they provide no definite guidance on the point. His copy of the 1651 edition of *De iure belli ac pacis* is partially underlined in blue or black as well as red ink, and has minor marginal annotations in the way of cross references, either internal or to other works such as the Bible or the *Digest*.⁴⁷ It is not possible to link these to Areskine: The hand is very careful and too unspecific to be identified as his.

If Areskine was unsuccessful in attracting a class, or unwilling to devote the necessary attention, there nonetheless was some interest in such classes, so that, in 1732, John Lookup, advocate, who taught Civil law privately at his lodgings, also offered weekly "Prelections upon the Law of Nature and Nations".⁴⁸ Instead, Areskine had a distinguished legal and political career, entering Parliament in 1722, and serving as Solicitor General (1725-1737) and Lord Advocate (1737-1742), before appointment to the bench as Lord Tinwald in 1742. In 1748 he became Justice Clerk.⁴⁹ In many ways he was a typical figure of the early Enlightenment in Scotland, interested in banking and economic development, a member of the Musical Society, and a founder member of that important intellectual club, the Philosophical Society of Edinburgh, the forerunner of the Royal Society of Edinburgh.⁵⁰

2.2 William Kirkpatrick, Professor 1734-1735

Areskine resigned the chair in 1734, to be replaced by William Kirkpatrick, advocate.⁵¹ A close associate of Areskine, Kirkpatrick was a younger son of the noted Dumfriesshire family of Kirkpatrick of Closeburn.⁵² Areskine had married Grizel Grierson, heiress of the estate of Barjarg in Dumfriesshire, where he later also acquired the estate of Tinwald. He built up an important political interest in the county, representing it in Parliament from 1722.⁵³ Kirkpatrick's father had died

46 The success of Scott's *Compendium* in Edinburgh is questionable, as the unsold sheets turn up, with the title page and preliminary matter cancelled, as the purported London edition of 1718: *Hugonis Grotii de iure belli ac pacis Librorum III. Compendium. Annotationibus & commentariis selectis illustratum. Londini, Impensis T. Ward in vico dicto Inner-Temple-Lane prope Fleet Street. 1718*. I hope to study these *compendia* further elsewhere.

47 Grotius *De iure belli ac pacis* (1651): NLS pressmark Alva 190.

48 *Edinburgh Evening Courant* 12/16 Oct 1732.

49 See, eg, Sedgwick (ed) *The House of Commons 1715-1754* (1970) vol 1 420.

50 Emerson "The Philosophical Society of Edinburgh 1737-1747" 1979 *British Journal for the History of Science* 154 at 190.

51 See, eg, Grant *University of Edinburgh* vol 2 314-315.

52 For some details, see C[okayne] *Compete Baronetage* (1900-1906) vol 4 329-331. Not all the details in this are accurate. [Kirkpatrick] *Kirkpatrick of Closeburn* (1858) and Kirkpatrick *Records of the Closeburn Kirkpatrick* [1954] give information about the family, but barely mention William Kirkpatrick.

53 Sedgwick (ed) *The House of Commons 1715-1754* vol 1 384, 420.

in 1720 when he and his older brother, Sir Thomas, were underage.⁵⁴ Under Areskine's guidance, Sir Thomas, along with Andrew Wauchope, had been educated at Utrecht and Leiden, with George Waddell as tutor to both.⁵⁵ It is probable that William Kirkpatrick's education in law at Leiden was also undertaken under Areskine's advice.⁵⁶ It may be that, like his elder brother, he there studied natural law with J J Vitriarius, who based his class on Grotius.⁵⁷ The closeness of the two men was sealed by Kirkpatrick's marriage to Areskine's daughter Jean in 1746.⁵⁸

Areskine had initially owed his seat in Dumfriesshire to the Duke of Queensberry; but the latter had gone into opposition in 1734, and, by the mid-1730s, Areskine had become close to the "Argathelian" whigs led by the Earl of Ilay (Duke of Argyll from 1743), whose Scottish manager was the judge Andrew Fletcher, Lord Milton, who became Justice Clerk in 1735.⁵⁹ Since the chair was in the patronage of the Crown, political support was necessary for Areskine to be able to resign in favour of Kirkpatrick with certainty that Kirkpatrick would be appointed. Milton and Ilay will have been instrumental in securing the necessary royal warrant. Though Lord Milton's surviving papers throw no light on the matter, he and Areskine were in close touch because of the election in May 1734.⁶⁰ Further, he and Ilay were anxious that Areskine should keep the Duke of Queensberry's candidates out of the Dumfries burghs' and Dumfriesshire seats.⁶¹ Appointing Kirkpatrick will have helped secure this aim, by keeping both men on side. Suffice it to say that, by 18 April 1734, Kirkpatrick had obtained a commission under the Privy Seal to be regius Professor.⁶² He was duly installed on 2 December.⁶³

There is no information on whether or not Kirkpatrick taught, and he held the chair for only a few months. This was because in May 1735 he contested, in Areskine's interest, the Parliamentary by-election for the Dumfries burghs (Areskine had been elected in 1734 for both the Dumfries burghs and Dumfriesshire, opting to

54 Commissary Court Records of Dumfries NAS CC 5/6/8/279.
 55 *Album Leiden* col. 892; see Kirkpatrick to Areskine 22 Oct 1723 NLS MS 5072 fols 147-148; Waddell to Areskine 23 Nov 1723 and 2 Mar 1725 NLS MS 5072 fols 154, 164.
 56 *Album Leiden* col 905. He is probably to be identified with the Edinburgh student of the same name: EUL (typescript) "Matriculation roll of the University of Edinburgh. Arts-law-divinity" (transcribed by Morgan), vol 1 171, 178.
 57 Waddell to Areskine 29 Feb and 28 July 1724 NLS MS 5072 fols 156, 160; Kirkpatrick to Areskine 30 Apr 1724 NLS MS 5072 fol 158; Jansen "18e eeuwse docenten natuurrecht" 106, 114.
 58 See, eg, Sedgwick (ed) *House of Commons 1715-1754* vol 2 190.
 59 See *ibid*, vol 1 397, 420, vol 2 190; Shaw *The Management of Scottish Society, 1707-1764: Power, Nobles, Lawyers, Edinburgh Agents and English Influences* (1983) 62-63, 86-113; Murdoch "*The People Above*": *Politics and Administration in Mid-Eighteenth-Century Scotland* (1980) 12-14.
 60 See Areskine to Milton 16 and 28 Apr 1734 NLS MS 16556, fols 148, 150.
 61 See Sedgwick (ed) *House of Commons 1715-1754* vol 1 397, 420, vol 2 190.
 62 Edinburgh City Archives [hereafter ECA] Town Council Minutes vol 55 277 (27 Nov 1734).
 63 EUL Da.1.35 College [Senatus] Minutes 1733-1790 22 (2 Dec 1734).

sit for the latter, so the former seat became vacant).⁶⁴ Kirkpatrick's standing had the support of Ilay.⁶⁵ Due to a dispute over the return he did not take up his seat until 1736. He served in Parliament until 1738, when he was appointed Clerk of Session.⁶⁶

2.3 George Abercromby, Professor 1735-1759

Kirkpatrick's successor was George Abercromby, advocate. This again was an appointment managed by Areskine through Milton and Ilay.⁶⁷ Areskine was still co-operating closely with both men at this period. Abercromby allegedly paid Kirkpatrick £1,000 for a resignation of the chair in his favour.⁶⁸ His father was Alexander Abercromby of Tullibody, advocate; his mother was Mary Duff of the family of Duff of Braco, later Earls of Fife.⁶⁹ Abercromby may have had an association with Areskine and his family, arising out of Tullibody's proximity to Alva and Alloa. While much later Milton was to consider Abercromby an enemy in the management of Perthshire elections, it is uncertain whether this was so in 1735.⁷⁰ It may well have suited Milton to oblige Abercromby since the estate of Tullibody entitled its holder to a vote in Perthshire. Thus, while it is conceivable that Areskine and Milton managed the appointment simply to oblige Kirkpatrick, it is possible that they also found Abercromby an acceptable candidate at this time. It may further be significant that Abercromby and Kirkpatrick, much of an age, were admitted as advocates within a few days of each other and that Abercromby's legal studies at Leiden had partly coincided with those of Kirkpatrick's elder brother.⁷¹

Born in 1705, Abercromby, after attendance at the University of Edinburgh, had studied in the Netherlands (along with his brother James) in 1724-1725, matriculating at Groningen as well as Leiden.⁷² It is fair to assume that the brothers will have matriculated at Groningen in order to study with Barbeyrac, the noted commentator on, and translator and editor of (among others) Grotius and Pufendorf.⁷³ Barbeyrac taught using Pufendorf as his textbook.⁷⁴ In Leyden,

64 Sedgwick (ed) *House of Commons 1715-1754* vol 1 397, vol 2 190.

65 See Campbell to Ilay 22 Apr 1735 NLS MS 16559 fols 198-199.

66 Sedgwick (ed) *House of Commons 1715-1754* vol 1 397, vol 2 190.

67 See Areskine to Milton 25 Sept 1735 NLS MS 16560 fol 253.

68 See Hume to Smith 8 June 1758 in Mossner & Ross (eds) *The Correspondence of Adam Smith* rev ed (1987) 24-25; Grant *University of Edinburgh* vol 2 315.

69 Grant (ed) *Faculty of Advocates* 1.

70 See Graeme to Gardiner 15 Feb 1764 NLS MS 16730 fol 206; Stuart Mackenzie to Milton 11 Feb 1764 NLS MS 16731 fol 80.

71 Grant (ed) *Faculty of Advocates* 1, 119; *Album Leiden* cols 895, 899 (25 Oct 1724, 3 Aug 1725) lists Abercromby's matriculations. Sir Thomas Kirkpatrick was still in Leiden in March 1725: Waddell to Areskine 2 Mar 1725 NLS MS 5072 fol 164.

72 EUL "Matriculation Roll of the University of Edinburgh" vol 1 178; *Album studiosorum Academiae Groninganae* (1915) col 172 (3 Nov 1724); *Album Leiden* cols 895, 899 (25 Oct 1724, 3 Aug 1725).

73 See Meylan *Jean Barbeyrac (1674-1744) et les débuts de l'enseignement du droit dans*

colleges on natural law were at this time taught by J J Vitriarius and J O Westenberg, the former, as noted, basing his class on Grotius.⁷⁵ Abercromby was admitted as an advocate on 11 November 1728.⁷⁶

Through the second half of the 1730s, Abercromby taught in Edinburgh, on the model of a private Dutch *collegium*, his class being described as “Lectures on *Grotius de Jure Belli ac Pacis*”.⁷⁷ He was still teaching Grotius in the early 1740s.⁷⁸ By the later 1750s, however, Abercromby had ceased to teach.⁷⁹ It is impossible to be certain when this happened, since he had given up the practice of advertising his lectures in the newspapers before he stopped teaching.

By the 1750s, however, education in the law of nature and nations was regarded as an important aspect of a legal training. In 1748 the new Lord President of the Court of Session had encouraged intending advocates “to learn thoroughly the principles of the Roman Law and the Laws of Nature and Nations”.⁸⁰ In 1758, an observer, noting that Abercromby did not teach, commented that “the young gentlemen of the law ... desire[d] of all things to have the Philosophical elements of their science ... well taught”.⁸¹ Given that, after 1750, it became rare for Scots to study law in the Netherlands, the lack of a class left a serious gap in the education of advocates in particular.⁸² (At this time the professor of law at Glasgow taught only civil law, although jurisprudence did feature in the class of moral philosophy.⁸³)

This background led to two similar projects to replace Abercromby with a more suitable candidate. The first plan was that of David Hume, who informed Adam Smith in 1758 that Lord Milton would be willing to exert pressure on the Town Council, patrons of the University, to require Abercromby “either to attend ... or dispose of the Office”. Hume proposed that Smith should pay Abercromby to

74 *l'ancienne académie de Lausanne: Contribution à l'histoire du droit naturel* (1937), although he is disappointing on Barbeyrac in Groningen.
See Jansen “18e eeuwse docenten natuurrecht” 107, 114. On Barbeyrac's defence of Pufendorf, see Korkman “Voluntarism and Moral Obligation: Barbeyrac's Defence of Pufendorf Revisited” in Hochstrasser & Schröder (eds) *Early Modern Natural Law Theories* 195.

75 Jansen “18e eeuwse docenten natuurrecht” 106, 114.

76 Grant (ed) *Faculty of Advocates* 1.

77 See eg *Caledonian Mercury* 27 July 1736, 11 Oct 1739.

78 See *Scots Magazine* 3 (1741) 371.

79 See Hume to Smith 8 June 1758 in *Correspondence of Adam Smith* 24-25.

80 See the remarks of Lord President Dundas reported in *The Minute Book of the Faculty of Advocates. Volume 2, 1713-1750* ed by Pinkerton, Stair Society vol 32 (1980) 225.

81 Home to Elliot (nd but 1758) NLS MS 11017 fol 54.

82 For the decline in studying in the Netherlands, see, eg, Cairns “Legal study in Utrecht in the late 1740s: The education of Sir David Dalrymple, Lord Hailes” in Van den Bergh (ed) *Summa Eloquentia: Essays in Honour of Margaret Hewett* (2002) 30-74 [= 2002 *Fundamina*] at 38-39, 69-74.

83 See Cairns “The origins of the Glasgow law school: The Professors of Civil Law, 1714-61” in Birks (ed) *The Life of the Law: Proceedings of the Tenth British Legal History Conference Oxford 1991* (1993) 151 at 185.

resign in his favour, so that Smith could be appointed in his stead.⁸⁴ The presumption was that Milton would be willing to secure the royal nomination for Smith in these circumstances. Hume's focus was on acquiring for Smith an income with an appointment in Edinburgh. Though nothing came of this, there can be no doubt of Smith's suitability for this post, given the content of his classes in moral philosophy in Glasgow, in which natural jurisprudence was central.⁸⁵ The second project was that of Lord Milton and John Home, author of *Douglas* and secretary to the Earl of Bute, Ilay's nephew. The proposal was that the chair be purchased from Abercromby for Adam Ferguson, then in search of an Edinburgh chair. Home reported to Gilbert Elliot, then an MP, and close to Bute, that Milton was "the great promoter of the scheme" and insisted on "advancing a part of the money".⁸⁶ Again this project came to nothing, although it was part of the general scheming of the moderate *literati* to place themselves in posts in the university.⁸⁷

2.4 Robert Bruce, Professor 1759-1764

Though neither plan came to fruition, they probably stimulated some movement on Abercromby's part, as he must have realised he was going to come under increasing pressure to give up the chair in a way he might not choose. He accordingly resigned it in 1759 in favour of his son-in-law, Robert Bruce of Kennet, who was admitted to it in June.⁸⁸ Bruce was the brother-in-law of the "Nabob of the North", Sir Lawrence Dundas of Kerse, the great businessman and landowner, whom Ilay (now Duke of Argyll) considered a political enemy.⁸⁹ How Bruce's appointment was worked is as yet unclear, though it may have suited those who advised the now aged Milton and Argyll, since Bruce obviously intended to be an active professor, and an active professor seems to have been desired.⁹⁰

Bruce had attended the University of Edinburgh; where he studied law is unknown, possibly also in Edinburgh.⁹¹

84 See Hume to Smith 8 June 1758 in *Correspondence of Adam Smith* 24-25.

85 See, eg, Haakonssen *Science of a Legislator* 99-177; Cairns "The influence of Smith's jurisprudence on legal education in Scotland" in Jones & Skinner (eds) *Adam Smith Reviewed* (1992) 168.

86 Home to Elliot (nd but 1758) NLS MS 11017 fol 54 (this is misplaced with letters of the mid-1760s in the Minto Papers).

87 See Sher *Church and University in the Scottish Enlightenment: The Moderate Literati of Edinburgh* (1985) 93-119.

88 EUL Da.1.35 College [Senatus] Minutes 1733-1790 127 (22 June 1759).

89 See, eg, Namier & Brooke (eds) *The House of Commons 1754-1790* (1964) vol 2 357-361; Sedgwick (ed) *House of Commons 1715-1754* vol 1 627-628.

90 On university patronage at this period, see Emerson, "Lord Bute and the Scottish universities 1760-1792" in Schweizer (ed) *Lord Bute: Essays in Re-interpretation* (1988) 147 at 151.

91 EUL "Matriculation Roll of the University of Edinburgh" vol 1 205, 208.

In October 1759, Bruce advertised that he would begin “his Course of Lectures upon *Grotius de Jure Belli ac Pacis*” on 20 November.⁹² Bruce continued to teach every year, eventually attracting large numbers of students to what was evidently a successful and worthwhile class.⁹³ In 1760, the publishing house of Hamilton and Balfour, as printers to the University of Edinburgh, published *Hugonis Grotii de jure belli ac pacis librorum III compendium in usum studiosae juventutis Academiae Edinensis*.⁹⁴ Presumably aimed at Bruce’s class, this textbook was based on, but not identical to, Scott’s *Compendium* of 1707, for example, excluding Scott’s annotations. Publication of this work indicated confidence in the continuing success of the class.

In 1760, the Faculty of Advocates resolved that, since “regular Colleges upon the law of Nature and Nations [were] now given in the University of Edinburgh” and since it was important that members should be “versant in every part of polite Literature and particularly in the law of Nature and Nations, the fountain of Justice and equity” and since they were “satisfied with the merit and abilities of the present Professor of that College”, all candidates for the office of advocate should attend these classes.⁹⁵ In 1762, perhaps to ensure that this was effective, the Faculty resolved that the private Examinators in Scots law and Roman law should examine candidates for admission “upon the Law of Nature & Nations in so far as it is connected with the Civil Law or with the Law of this Country”.⁹⁶

Despite his success, in February 1764, Bruce agreed to resign the chair in favour of James Balfour of Pilrig, advocate.⁹⁷ This was part of an elaborate scheme to remove Balfour from the chair of Moral Philosophy, which he had occupied without distinction – indeed he was regarded as a failure⁹⁸ – since 1754, the same year he was rejected as a candidate for admission to the Select Society, one of the intellectual clubs in the vanguard of Enlightenment in Edinburgh.⁹⁹ It was proposed that Adam Ferguson (who currently held the chair of Natural

92 See *Caledonian Mercury* 8 Oct 1759; *Edinburgh Evening Courant* 4 Oct 1759.

93 See, eg, his adverts in *Caledonian Mercury* 25 Oct 1760, 31 Oct 1761, 25 Oct 1762, 5 Nov 1763; *Edinburgh Evening Courant* 22 Oct 1760, 28 Oct 1761, 23 Oct 1762, 31 Oct 1763. Numbers are recorded for his classes only for 1762-1763 (5) and 1763-64 (40). See EUL “Matriculation roll of the university of Edinburgh”, vol 1 256, 262. The latter number meant he had a very large class indeed by the standard of the law classes in the 1760s. The first number is not necessarily the actual number of students: he may have had more.

94 See McDougall “A catalogue of Hamilton, Balfour and Neill publications” in Myers & Harris (eds) *Spreading the Word: The Distribution Networks of Print 1550-1850* (1998) 187 at 225 (no 290).

95 *The Minute Book of the Faculty of Advocates. Volume 3, 1751-1783* ed by Stewart, Stair Society vol 46 (1999) 94.

96 *Ibid.*, 119.

97 See ECA Town Council Minutes vol 79 283-285 (22 Feb 1764).

98 See, eg, Lind to Milton 19 Mar 1761 NLS MS 16721 fol 108.

99 Emerson “The social composition of enlightened Scotland: The Select Society of Edinburgh, 1754-1764” 1973 (114) *Studies in Voltaire and the Eighteenth Century* 291 at 328.

Philosophy) would replace Balfour in the chair of Moral Philosophy, Ferguson in turn being succeeded by James Russell.¹⁰⁰ Support for this had been arranged at the highest level. On 21 February 1764 William Robertson, Principal of the University, wrote to the Town Council as Patrons seeking their approval, which was granted on 22 February.¹⁰¹ By 5 March Milton had secured the necessary governmental support.¹⁰²

While this sequence of events has been discussed before, the reasons why Bruce, who was also Sheriff of Stirling, should have agreed to surrender this profitable office, in which he was a conspicuous success, have not previously been considered.¹⁰³ Balfour will have paid him what was reckoned to be the value of the chair.¹⁰⁴ By this date, Bruce's brother-in-law, Dundas, back in Parliament for an English constituency, supported the ministry, and had given his allegiance to the Duke of Bedford.¹⁰⁵ It is possible that Bruce's resignation in favour of Balfour was facilitated by a promise (or at least a hope) of some further preferment through this route. Certain it is that, shortly after, when a vacancy on the bench occurred, to which Milton and the Lord Privy Seal, James Stuart Mackenzie, intended that James Ferguson of Pitfour, Dean of Faculty, should be appointed, Bedford made a strong application to the king in favour of Bruce.¹⁰⁶ Two other vacancies on the Bench occurred and Bruce was appointed to one of them.¹⁰⁷ It is clear that there was a certain reluctance to appoint Bruce, but that both he and Dundas were able to make a claim that could not be ignored.¹⁰⁸ On Bruce's part, the way in which he had facilitated the change of chairs may have given him some entitlement.¹⁰⁹ Nonetheless, despite his success in the chair, he was disparaged and John Mackenzie, who favoured the appointment of Sir David Dalrymple to the Bench, described Bruce ("the Dreaded Rival") as "an inoffensive

100 See the letter of Ferguson to Milton 18 Feb 1764 NLS MS 16730 fol 139; Blair to Hume 6 Apr 1764 NLS MS 23153 103-105 (RSE 3/52). See Sher *Church and University* 119; *idem* "Professors of virtue: The social history of the Edinburgh moral philosophy chair in the eighteenth century" in Stewart (ed) *Studies in the Philosophy of the Scottish Enlightenment* (1990) 87-126 at 109-116.

101 ECA Town Council Minutes vol 79 283-285.

102 Milton to Stuart Mackenzie 23 Feb 1764 (copy) NLS MS 16731 95; Stuart Mackenzie to Milton 5 Mar 1764 NLS MS 16731 105.

103 See Sher *Church and University* 117-119; *idem* "Professors of virtue" 109-116.

104 There is no direct evidence, but it is certain.

105 See, eg, Murdoch "*People Above*" 113.

106 See Gray to Milton 13 April 1764 NLS MS 16730 fol 272; Stuart Mackenzie to Milton 5 May 1764 NLS MS 16731 fol 142.

107 See Milton to Bruce (copy) June 1764, Bruce to Milton 6 June 1764 NLS MS 16730 fols 58, 59.

108 See Murdoch "*People Above*" 113-114; Namier & Brooke (eds) *House of Commons 1754-1790* 359.

109 It is worth noting that the ministry was anxious about an election in Perthshire in the Spring of 1764 and an approach had been made to Abercromby, Bruce's father-in-law, to try to secure his vote for the ministry's candidate. This was happening about the time that the change in the chairs was proposed. This may also have led to some promises about Bruce. Abercromby, however, did not support the ministry's candidate: see Graeme to Gardiner 15 Feb 1764 NLS MS 16730 fol 206; Stuart Mackenzie to Milton 11 Feb 1764 NLS MS 16731 fol 80.

Lad, without experience for a Decreeing head[,] Little Genius and Less Dignity".¹¹⁰ Rather than a fair estimate of Bruce's talents, however, Mackenzie's comments may reflect the heat of all these rivalries for promotion. Bruce was after all to become a founder member of the Royal Society of Edinburgh in 1783 as a member of the Physical Class.¹¹¹ Later in 1764, he duly took his place on the Court of Session Bench as Lord Kennet.¹¹²

2 5 James Balfour, Professor 1764-1779

Balfour had received his commission as regius Professor by May 1764, and was admitted to the office by the University on 22 June.¹¹³ He is generally regarded as holding this chair as a sinecure. Given Bruce's evident success as a professor, and the aspirations of the Faculty of Advocates, it is possible that this was not the original intention behind the elaborate scheme of appointments that resulted in his securing this chair; rather, it may have been thought that this was a chair more suited to Balfour's talents, given his education in law at Leiden, after his preliminary studies in Edinburgh.¹¹⁴ However this may be, Balfour does not appear initially to have taught. In 1777 and 1778, however, classes to be taught by him from this chair were advertised in the general advertisements for the university entered in the Edinburgh newspapers.¹¹⁵ In 1779, Hugo Arnot nonetheless described Balfour as teaching "no class".¹¹⁶ It is possible that the advertisements were intended to put pressure on the aged Balfour to encourage him to resign, so that someone more effective could be appointed. His resignation was now obviously in the air, as, in 1777, the first year in which Balfour's classes were advertised, Gilbert Stuart believed himself, allegedly through the influence of Henry Dundas, to have secured a promise of the reversion of the chair. He must have believed that, if Balfour resigned in his favour, Dundas would ensure that he obtained the royal presentation.¹¹⁷ Principal Robertson blocked this proposal.¹¹⁸ Balfour was in difficulty elsewhere. Treasurer of the Faculty of Advocates since

110 Mackenzie to Elliot 5 May 1764 NLS MS 11017 fol 14.

111 "History of the Society" 1788 *Transactions of the Royal Society of Edinburgh* 3 at 83.

112 *Caledonian Mercury* 4 July 1764.

113 Balfour to Lord Provost 14 May 1764 ECA McLeod's Collection Bundle 11 Shelf 36 Bay C; EUL Da.1.35 College [Senatus] Minutes 1733-1790 153 (22 June 1764). See also ECA Town Council Minutes vol 80 3-4 (16 May 1764) 12-13 (23 May 1764).

114 *Album Leiden* col 919; EUL "Matriculation Roll of the University of Edinburgh" vol 1 174, 178, 180, 193. Some details of his time in Leiden are preserved in his correspondence with his father; they do not cover his legal studies, but we know he attended the classes of the classicist and antiquarian Burman that were popular with Scots law students: see Balfour to Balfour 27 May 1729 NAS GD 69/296/5.

115 See, eg, *Edinburgh Advertiser* 12 Sept 1777, 4 Sept 1778.

116 Arnot *The History of Edinburgh* (1779) 398.

117 See Zachs *Without Regard to Good Manners: A Biography of Gilbert Stuart 1743-1786* (1992) 105-107. On the role of Henry Dundas, his rise to power, and his control of Scottish patronage, see Fry *The Dundas Despotism* (1992).

118 Zachs *Without Regard to Good Manners* 105-107; Sher *Church and University* 140 n 200.

1739, problems and incompetence had latterly marked his stewardship of the Faculty's funds, and two reports of Faculty dated 22 December 1777 and 12 January 1778 precipitated his tender of his resignation as Treasurer on 19 December 1778; this took effect on 18 December 1779.¹¹⁹ These troubles must have weakened Balfour's position more generally, rendering him susceptible to pressure to resign the chair. By the summer of 1779, he had resigned in favour of Allan Maconochie, in return for two promissory notes, each to the value of £500 and dated 6 July 1779, payable by 20 November 1779 and 6 March 1780 respectively. Another bill of 19 January 1780 ordered payment from Maconochie of £412.18.2 on the order of Balfour.¹²⁰ Maconochie was a relative of Principal Robertson; and he had recently supported the latter and Henry Dundas' liberal policy of Catholic relief in the Church Courts.¹²¹ The chair was his reward. Robertson, however, must have intended that Maconochie should be active. At this period, the law school at Edinburgh was facing very stiff competition from Glasgow under John Millar, a pupil of Adam Smith, and enrolments had been falling during the 1770s.¹²² Maconochie's appointment was to help revive the school.

2.6 Allan Maconochie, Professor 1779-1796

Between 1762 and 1769, Maconochie was educated at the University of Edinburgh, following the usual undergraduate curriculum, before devoting three years to the study of civil law.¹²³ He was a founder member of the Speculative Society in 1764.¹²⁴ A man of wide-ranging interests, including the natural as well as the moral sciences, all his life he maintained a serious, practical interest in chemistry.¹²⁵ Around 1778 he became a member of the Philosophical Society, and he was a member of the Royal Society of Edinburgh from its foundation in 1783.¹²⁶ It is no surprise that, though normally active in the Literary Class of the

119 *Advocates' Minute Book, Volume 3*, xxxviii-xxxix; 292-297 (22 July 1778), 298 (19 Dec 1778), 307 (18 Dec 1779).

120 See the documents in EUL Mic M 1070 (Meadowbank Papers); EUL Da.1.35 College [Senatus] Minutes 1733-1790 289 (16 July 1779). See Grant *University of Edinburgh* vol 2 315-316.

121 Sher *Church and University* 140; [Maconochie] *Memoir of the Late Hon. Allan Maconochie of Meadowbank: One of the Senators of the College of Justice in Scotland* (1845) 6-7.

122 See Cairns "'Famous as a school for Law, as Edinburgh ... for medicine': Legal education in Glasgow, 1761-1801" in Hook & Sher (eds) *The Glasgow Enlightenment* (1995) 133 at 149-150; *idem*, "The face that did not fit: Race, appearance, and exclusion from the bar in eighteenth-century Scotland", in 2003 *Fundamina* 11 at 18-19.

123 "Matriculation Roll of the University of Edinburgh" vol 1, 251, 260, 266, 273, 275, 283, 290, 297.

124 *The History of the Speculative Society 1764-1904* (1905) 59.

125 See Ferguson to Maconochie 12 Oct 1779 in EUL Mic M 1070; Meadowbank *Directions for Making Compost Dunghills from Peat-Moss* (1802); *idem* *Directions for Preparing Manure from Peat. Instructions for Foresters* (1815).

126 Emerson "The Philosophical Society of Edinburgh 1768-1783" 1985 *British Journal for the History of Science* 255 at 300; "History of the Society" 1788 *Transactions of the Royal Society of Edinburgh* 3 at 86.

Royal Society, he was also active in the Physical Class, which he sometimes chaired.¹²⁷

Maconochie continued a successful career at the bar, allegedly earning £1,400 a year from his practice and the office of Sheriff of Renfrew (to which he was appointed at the end of 1787), not counting his income from the chair.¹²⁸ He was nonetheless determined to be an active professor, and his classes were advertised from 1779 until he resigned the chair in 1796.¹²⁹ This ambition led him and his close friend Alexander Tytler, appointed Professor of Universal History and Greek and Roman Antiquities in 1780, to petition the Town Council in 1781 requesting that, as Patrons of the University, they should provide a proper classroom in which both could teach. The difficulty was that, having no allocated room, they had to teach in other professors' classrooms "on which account they are obliged to confine themselves to hours of lecturing very disadvantageous both to themselves and their students".¹³⁰

Maconochie's general class was described thus by a contemporary:

He traces the rise of political institutions from the natural characters and situation of the human species; follows their progress through the rude periods of society; and treats of their history and merits, as exhibited in the principal nations of ancient and modern times, which he examines separately, classing them according to those general causes to which he attributes the principal varieties in the forms, genius, and revolutions of governments. In this manner he endeavours to construct the science of the spirit of laws on a connected view of what may be called the natural history of man as a political agent; and he accordingly concludes his course with treating of the general principles of municipal law, political economy, and the law of nations.¹³¹

127 Campbell & Smellie *The Royal Society of Edinburgh (1783-1983): The First Two Hundred Years* (1983) 22.

128 Maconochie to Lord Advocate Hope [nd but 1804] in EUL Mic M 1070.

129 See, eg, *Edinburgh Evening Courant* 1 Sept 1779, 28 Oct 1780, 20 Oct 1781, 31 Aug 1782, 6 Sept 1783, 2 Oct 1784, 1 Oct 1785, 9 Sept 1786, 20 Sept 1787, 20 Sept 1788, 7 Sept 1789, 13 Sept 1789, 17 Sept 1791, 15 Sept 1792, 14 Sept 1793, 13 Sept, 1794, 3 Oct 1795. Oddly enough, he still is advertised in *Edinburgh Evening Courant* 15 Sept 1796: This is probably a mistake and his successor Hamilton's name should have been inserted. *Caledonian Mercury* 17 Sept 1796 advertises Hamilton as professor.

130 Petition of Mr Allan Maconochie ... and of Mr Alex Tytler with Tytler to Lord Provost 13 Feb. 1781 both in ECA McLeod's Collection Bundle 11 Shelf 36 Bay C.

131 Arnot *History of Edinburgh* 2nd ed (1788) 398. *The Summary Catalogue of the Advocates' Manuscripts* (1971) 72 (no 902) states that Adv MS 25.6.4 is a set of lectures on actions possibly by Allan Maconochie. These two, continuously paginated, volumes contain the dates 10 Oct 1783 (at 1) and 15 Nov 1783 (at 559) which must indicate dates of copying rather than of lecturing. It is unclear why the *Catalogue* considers these to be lectures, as they much more resemble a treatise on actions, and why it attributes them to Maconochie. They are certainly not in his hand.

Henry Brougham gave a full description of Maconochie's lectures, based on some level of examination of the manuscript:

They are arranged under two great divisions - the State of Nature and the Political State. Under the first, by which is meant the earlier state, are treated, the savage state; the origin of the political union; the first structure of government; language, and the origin of its grammatical structure; the agricultural and pastoral state; the rise of religion and mythology; women and their domestic relations in uncultivated society. The other and principal branch begins with the gradual changes and transitions from the rude to the polished state. ... We are thus [after a comprehensive account of history and government], by slow degrees, but from a most comprehensive view of the world and its history led to the origin, predominancy, and decline of the feudal institution; and then comes the present state of the European governments.¹³²

This course gave rise to the first paper to be delivered to the Literary Class after the foundation of the Royal Society of Edinburgh in 1783, when, on 15 December in that year, Maconochie read the first part of his "Essay on the Origin and Structure of the European Legislatures". The second part was delivered on 19 July 1784.¹³³

It is evident that by now the nature of what was taught from the chair had changed from the rational type of natural law associated with Grotius and his immediate successors. Instead, Maconochie started with examination of human nature, a natural history of man:

In the line of Study, to which my profession in the university carried me, I had occasion to examine into the Origin of Government and therefore to consider the circumstances in human nature, which rendered our species alone of all the races of animals susceptible of that progress which in its course gave birth to political society.¹³⁴

132 [Brougham] *Memoir of the late Hon Allan Maconochie of Meadowbank, One of the Senators of the College of Justice ... in Scotland* (1845) 10-12; see appendix for Brougham's full account of Maconochie's lectures.

133 "History of the Society" 1788 *Transactions of the Royal Society of Edinburgh* 17, 26. This was also issued as an offprint or reprint with the slightly different and less accurate title: *Essay on the Origin and Progress of the European Legislatures, from the Transactions of the Royal Society of Edinburgh* [1784]. See the copy in NLS Pressmark Nha M121(5).

134 (MS) *Treatise on what distinguishes Man from Brutes* [1], in EUL Mic M 1070. It is likely that this work was written for delivery to the Royal Society of Edinburgh; the ideas developed in his lectures can be traced in it. The MS appears to be a fair copy not in Maconochie's hand and is generally unpaginated.

He also saw morals generally, and the virtue of justice in particular, arising from the strongly social nature of man. In this he followed Adam Smith, explicitly rejecting Rousseau's view of man in a state of nature. Thus, he argued that human beings observe the actions of others, which arouse in them "a variety of agreeable or disagreeable sentiments". Acts of injustice and cruelty "outrage" and acts of ingratitude and intemperance are "disagreeable to the cool or impartial spectator". He pointed out that human beings seek the approval of others and when about to act consider third parties' views of their conduct. In sum, he explicitly approved Smith's opinions on how from this origin, principles of duty and propriety formed the basis of "Codes of Laws and Systems of Morality".¹³⁵ His aim was to give a course on jurisprudence developed on the same basis as that of Adam Smith.¹³⁶ Brougham noted Maconochie's lectures on women. Among the latter's papers can be recognised a fragment of these lectures, in which he discussed the changing position of women in a way reminiscent of John Millar's account in the *Origin of Distinction of Ranks*. Indeed, he cited Millar approvingly to his class.¹³⁷

Maconochie's aim seems to have been to develop a modern course on the science of legislation. Despite his adoption of Smith's theory of morals, his natural jurisprudence seems to have been comparative, historical and explanatory rather than critical, in this resembling that of John Millar, rather than that of the author of *The Wealth of Nations*. It was this comparative, conjectural history that required his use of maps in his class.¹³⁸ We can assume that the paper he read to the Royal Society in 1788 – "Observations respecting the country, religion, political institutions, and sciences of the Hindoos" – reflected his interests in his class.¹³⁹ Nonetheless, it cannot be doubted that his aim was to inculcate in his pupils an understanding of the historical relationships between society, law and government, so that they

135 *Ibid.*

136 It is worth noting that the first known possessor of the second set of notes from Smith's student class in jurisprudence was Maconochie's son: see the remarks of Canaan in his introduction to *Lectures on Justice, Police, Revenue and Arms, Delivered in the University of Glasgow by Adam Smith, Reported by a Student in 1763* (1896) xv-xvii. On Smith in this respect, see, eg, Cairns "The influence of Smith's jurisprudence on legal education in Scotland".

137 These notes (in Maconochie's hand) are scattered towards the end of the Treatise on what distinguishes Humanity from Brutes, where the papers are clearly disorganised: EUL Mic M 1070. See Millar *Observations Concerning the Distinction of Ranks in Society* (1771). On Millar's teaching, see Cairns "Legal education in Glasgow"; *idem* "John Millar, Ivan Andreyevich Tret'yakov, and Semyon Efimovich Desnitsky: A legal education in Scotland, 1761-1767" in Artemieva, Jones & Mikeshin (eds) *Scotland and Russia in the Enlightenment: Proceedings of the International Conference 1-3 September 2000, Edinburgh* [= *The Philosophical Age*, Almanac 15] (2001) 20.

138 Petition of Mr Allan Maconochie ... and of Mr Alex Tytler with Tytler to Lord Provost 13 Feb. 1781 both in ECA McLeod's Collection Bundle 11 Shelf 36 Bay C.

139 "History of the Society" 1790 *Transactions of the Royal Society of Edinburgh* 3 at 25.

could see how laws could be developed and improved through legislation and the work of the courts.

Bower alleged in 1830 that Maconochie only lectured for two sessions, as his success at the bar prevented him from having time to teach.¹⁴⁰ Bower's claim is questionable. First, lectures by Maconochie from his chair were continuously advertised for nearly two decades until his demission of the office. In principle, this would seem an odd practice on the part of the University if Maconochie had given up teaching around 1781 or so. It is worth noting, however, that there is some variation in the advertisements. In academic years 1779-1780, 1780-1781, 1781-1782, 1782-1783, the general advertisements for the whole university just advertised that the law classes were beginning at a specific date.¹⁴¹ In 1780 and 1781, Maconochie also inserted in the *Caledonian Mercury* a specific advertisement for his classes, the second of which gave a different date for the start of his course from that in the general advertisement for the law classes.¹⁴² From 1783-1784 until academic year 1790-1791, the general advertisement for the University gave either a specific time or, from 1785, date and time or, from 1786, date for Maconochie's class.¹⁴³ On 25 March 1786, Maconochie specially advertised a class after the end of his usual winter course, on the "Origin of Government", in which he stated he would deal with "the Rise and Characters of the different Forms it has assumed – and, particularly, of the Modern European Governments, the Revolutions which they have undergone, and the various causes to which they owe their present Form".¹⁴⁴ This is presumably just an abbreviated description of his usual course, and the general advertisements show that from then on he started his course on a specific date in March, rather than November.¹⁴⁵ It may be that more such advertisements in February await discovery. From 1791 until his resignation of the chair, the general advertisements placed by the University leave blank the space for time and date for the commencement of his class.¹⁴⁶ If the specific times and dates inserted in the advertisements mean anything, it must be that, in those years at least, Maconochie aimed to teach and continued to have sufficient encouragement to plan a date on which his

140 Bower *History of the University of Edinburgh* vol 3 215.

141 *Caledonian Mercury* 4 Sept 1779 (17 Nov), 30 Sept 1780 (22 Nov), 5 Sept 1781 (22 Nov), *Edinburgh Evening Courant* 31 Aug 1782 (18 Nov).

142 *Caledonian Mercury* 28 Oct 1780, 20 Oct 1781 (15 Nov).

143 *Edinburgh Evening Courant* 6 Sept 1783 (2 pm), 15 Sept 1784 (2 pm), 1 Oct 1785 (23 Nov 1 pm), 9 Sept 1786 (12 Mar 1787), 20 Sept 1787 (11 Mar 1788), 20 Sept 1788 (9 Mar 1789), 7 Sept 1789 (8 Mar 1790), 13 Sept 1790 (9 Mar 1791).

144 *Caledonian Mercury* 25 Feb 1786.

145 *Edinburgh Evening Courant* 9 Sept 1786 (12 Mar 1787), 20 Sept 1787 (11 Mar 1788), 20 Sept 1788 (9 Mar 1789), 7 Sept 1789 (8 Mar 1790), 13 Sept 1790 (9 Mar 1791).

146 *Edinburgh Evening Courant* 17 Sept 1791, 15 Sept 1792, 14 Sept 1793, 13 Sept, 1794, 3 Oct 1795.

classes should commence. It is also worth noting that, from 1786 onwards, he taught his class in the Spring, rather than Winter term. This may have been a reflection either of his own growing practice at the bar, or to enhance the attractiveness of his course to students. If Maconochie gave up teaching, it would seem to have been in or around 1791, when he was probably already thinking of resigning the chair.

2.7 Robert Hamilton, Professor 1796-1831

By the session from 1795-1796, Maconochie had resolved to give up the chair and had agreed to resign in favour of Robert Hamilton, a close relative of Lord Braxfield the Justice Clerk, in return for the same payment he had made to purchase the chair from Balfour. The agreement of Henry Dundas, then Secretary of State for War and in control of Scottish patronage, and Robert Dundas, the Lord Advocate, was secured.¹⁴⁷ Meanwhile, Maconochie was offered a position on the bench of the Court of Session, which he accepted, though anxious to ensure that his arrangement with Hamilton would still be upheld; his appointment, taking his seat on the bench as Lord Meadowbank, dated from 11 March.¹⁴⁸ This preferment perhaps came because of his energetic activity in being one of the leaders of the campaign to ensure that Henry Erskine was not re-elected as Dean of the Faculty of Advocates in 1796.¹⁴⁹

In April 1796, Robert Hamilton was duly appointed to the chair.¹⁵⁰ Hamilton had followed the usual undergraduate curriculum at Edinburgh between 1780 and 1784, before matriculating at the University of Glasgow in 1785, almost certainly to study law with Smith's pupil Millar.¹⁵¹ This suggests that, initially at least, he was well qualified to continue the approach to teaching that Maconochie had initiated from the chair.¹⁵² His membership of the Speculative Society and election to the Royal Society of Edinburgh in 1795 both suggest

147 Maconochie to Dundas 27 Feb 1796 EUL Mic M 1070.

148 Grant (ed) *Faculty of Advocates* 141; Maconochie to Dundas 27 Feb 1796 EUL Mic M 1070.

149 This event can be traced in *Caledonian Mercury* 3 and 10 Dec 1795, 14 Jan 1796. For a discussion see, eg, Omond *Lord Advocates of Scotland From the Close of the Fifteenth Century to the passing of the Reform Bill* (1883) vol 2 167-169. Maconochie later considered that he did not get further promotion that he deserved. In 1799, he thought he should have been made a Lord of Justiciary (he eventually became one in 1804); in 1811, he considered that he had an entitlement to the office of Justice Clerk. His papers contain some bitter correspondence about this and he threatened to resign from the bench in 1799: see, eg, Maconochie to Dundas 25 May 1799; Bruce to Dundas 20 June 1799; Maconochie to Melville 15 Oct 1811; Melville to Maconochie 19 Oct 1811; Dundas to Maconochie 28 Oct 1811 EUL Mic M 1070.

150 EUL Da.1.35 College [Senatus] Minutes 1790-1811 121 (2 Apr 1796).

151 EUL "Matriculation Roll of the University of Edinburgh" vol 2 388, 389, 396, 398, 408, 412, 423, 424.

152 *Matriculation Albums of the University of Glasgow from 1728 to 1858* ed by Addison (1913) 144 (no 4546).

intellectual liveliness and interests.¹⁵³ It also perhaps worth noting that he was one of thirty-eight members of the Faculty of Advocates who voted to re-elect Henry Erskine as their Dean.¹⁵⁴

It is not certain, however, that Hamilton ever taught. His classes certainly were continually advertised through to the end of the century and well beyond; but, as with the last classes advertised for Maconochie, and in contrast to the other classes in law, a specific time and date for the class to start was never mentioned.¹⁵⁵

He apparently informed the Royal Commission of inquiry into the Universities of Scotland in 1826 that:

[H]e had fully determined to teach his class, and even previously to his appointment had directed his attention and studies to prepare himself for doing so; but from bad health after his induction, and afterwards from the arduous official duties which in another capacity he was called to perform, he abandoned his design ...¹⁵⁶

Given that this purports to be based on information from Hamilton himself, without further research, it must at the moment be accepted that he never taught, despite the continued advertisements for his class. It may be relevant to note that, in 1802, augmentation of the stipend of the minister of St Cuthberts, from the lands of which parish the salary of the chair had been allocated, reduced Hamilton's salary to around a quarter of what it had been. Although the Treasury in lieu allocated an annual sum of £200 from Crown revenues in 1806 for so long as Hamilton held the office, it is plausible that the dramatic reduction of salary for four years may have removed whatever motivation to teach Hamilton ever had.¹⁵⁷

3 Conclusions

The Report (1830) of the Royal Commissions of inquiry into the Scottish Universities of 1826 and 1830 roundly condemned the chair of Public Law and the Law of Nature and Nations:

153 *History of the Speculative Society* 82; "History of the Society" 1798 *Transactions of the Royal Society of Edinburgh* 1 at 33.

154 *Caledonian Mercury* 14 Jan 1796.

155 See, eg, *Caledonian Mercury* 17 Sept 1796, 16 Sept 1797, 15 Sept 1798, 16 Sept 1799, 25 Sept 1800, 19 Sept 1801, 18 Sept 1809, 20 Sept 1810. I have not traced this through continuously.

156 *Report Made to His Majesty by a Royal Commission of Inquiry into the State of the Universities of Scotland* 1831 Parliamentary Papers XII 141. He became a Principal Clerk of Session.

157 *Ibid* 109, 159.

[A]s far as we have been able to learn, it never was successful; and it is certain that in the last fifty years it has been found impracticable, even by Professors of high genius and attainments, to render it a class of general attraction, or even to obtain for it a moderate attendance of Students. It has not been taught at all during the time that the office has been held by the present Professor, and had not been taught for many years before he entered on it.¹⁵⁸

Two pieces of evidence led the Commissioners to this conclusion. The first was that of Francis Jeffrey, who stated of the class:

It was taught by a succession of able persons in this University, — among others by the late Lord Meadowbank, than whom no man was more full of discursive knowledge and originality; yet in his hands, as well as those of his successors, it proved in practice a complete failure, so that they could hardly get through the course with a larger attendance than is now round the table of the Commissioners.¹⁵⁹

The second was a written return by the *Senatus Academicus* to a query about whether any chairs were held as sinecures:

The present incumbent [of the chair of Public Law and the Law of Nature and Nations] has not delivered any lectures on public law. His predecessor gave a course of lectures in the year 1780 or 1781: but the study of that branch of the law having fallen into neglect, he gave it up; and though in 1795 he resumed the subject, yet the result being the same, he after giving a few lectures, desisted so that there has been no regular course for about forty-six years.¹⁶⁰

Papers relating to the funding of the chair supported this general view. Thus, in 1806, in recommending an annual sum of £200 from Crown revenues to replace the diminution of Hamilton's salary in 1802, the Barons of Exchequer stated that "arising from the neglect of the study of that branch of law in this country ... no lectures have been read by [Professor Hamilton] or by his predecessors in that Chair for a considerable number of years".¹⁶¹

158 *Ibid* 55.

159 *Report of the Royal Commission of Inquiry into the Universities of Scotland. Minutes of Evidence vol. 1. University of Edinburgh* 1837 Parliamentary Papers XXXV 398.

160 *Ibid* appendix 121.

161 Grant *University of Edinburgh* vol 2 317; *Report ... by a Royal Commission of Inquiry into the State of the Universities of Scotland* 109, 159.

If we accept the evidence that Hamilton never taught, it is still clear that – at the very least – some of the assertions made about Maconochie’s classes in the Report of 1830 and in the evidence before the Commissioners were simply wrong. While it is just conceivable that his classes were continuously advertised in general advertisements for the University without his teaching, close study of the changing nature of those advertisements, as well as of his own specific advertisements, in particular of that in 1786, suggests that he did in fact continue to teach well past the date of 1781. Further supporting this is his letter to the Lord Advocate, Charles Hope, in 1804, in which he stated that the latter attended his class.¹⁶² Hope first matriculated at the University of Edinburgh in 1777, progressing through a fairly regular arts curriculum until 1781.¹⁶³ In 1782-1784 Hope matriculated in Civil law and Scots law.¹⁶⁴ It seems likely that it was in this period that he studied with Maconochie and we should note that Maconochie still specially advertised in 1786.¹⁶⁵ All of this suggests that individuals in the later 1820s, discussing a period of over forty years earlier, projected Hamilton’s lack of teaching back to the period of his predecessor. The evidence as it currently stands suggests that Maconochie either taught or made a serious attempt to teach from 1779 to 1790 or 1791.

It is also possible that there was a desire among the Commissioners to suppress the chair, especially since the fund originally allocated to support it was no longer available, and the special allocation made by the Crown to Hamilton would expire with his death. The Commissioners commented on what they considered to be the remit of the chair:

At one period, it was thought the most important perhaps of all branches of liberal instruction, and for a century after the time of Grotius, it attracted more attention than any other part of Philosophy; and yet for many years, although entrusted to men whose talents would have qualified them to do it ample justice, it has been regarded with complete and with hopeless indifference.¹⁶⁶

In this, they were greatly guided by Francis Jeffrey, of whose evidence to them in 1826 the above is a very close paraphrase.¹⁶⁷ He had been dismissive of the

162 Maconochie to Hope [nd but 1804] EUL Mic M 1070.

163 EUL “Matriculation Roll of the University of Edinburgh” vol 2 360, 371, 382, 383, 385, 392, 393.

164 *Ibid* vol 2 412, 421.

165 *Caledonian Mercury* 25 Feb 1786.

166 *Report ... by a Royal Commission of Inquiry into the State of the Universities of Scotland* 141.

167 *Minutes of Evidence vol. 1. University of Edinburgh* 398: “Public Law was at one time thought the most important, perhaps, of all branches of liberal instruction; and everybody knows, that for a century after the time of Grotius, it attracted more notice than any other

class, and the Commissioners had copied his tone. Implicit in all of this was the notion that time had moved on and somehow left behind the discipline of public law and the law of nature and nations. The obvious inference from the wording of the report implies was that, about 1750 or so, public law and the law of nature and nations had become redundant as a university subject. It is also notable how much Jeffrey and the Commissioners identified the topic with the work of Grotius. This understanding of the work of the chair and its lack of success is particularly interesting, since Charles Hope, the former pupil of Maconochie in the early 1780s, and now Lord President, was appointed to the Royal Commission in both 1826 and 1830.¹⁶⁸

The work of Grotius had indeed provided the foundation for the teaching of the professors up to the appointment of Balfour in 1764, whether they taught from the actual work or from a compend. Its impact on legal thinking and legal practice had thus been profound. There may have been problems in sustaining teaching from the chair in its first half century, but it nonetheless had played an important role in disseminating the thought of the school of modern natural law to lawyers. Bruce's resignation in 1764, however, marked the end of the direct teaching of Grotius's work as the foundation of legal philosophy in Scotland. This said, by defining and developing the field of the law of nature and nations, it was Bruce's success as a teacher that probably indicated to Millar in Glasgow that a similar class might be worthwhile.¹⁶⁹

Millar did not teach from Grotius' work or a compend of it, but unfolded his own Smithian account of the nature of law and its progress in a course that followed the structure of Justinian's *Institutes*.¹⁷⁰ The evidence of Maconochie's teaching shows that what was taught in his day from the chair of Public Law and the Law of Nature and Nations was comparable to what Millar taught in Glasgow. The class had moved on from expositions of a Grotian natural law to classes that had assimilated the lessons – and reflected the concerns – of the Scottish Enlightenment. Legal theory was now, as in Glasgow, concerned with a science of legislation founded on the natural history of humankind.

The proposal in 1830 that the chair should be suppressed (it was in fact left vacant on the death of Hamilton in 1831) does seem to have proceeded on a misunderstanding of the effectiveness of Maconochie. The focus, however, on

part of philosophy.”

168 *Ibid* 1, 3. It is worth noting that he did not attend as frequently as some of the other Commissioners, and was not present when Jeffrey was questioned: *ibid* 7, 69 and 13. He nonetheless signed the General Report: *Report ... by a Royal Commission of Inquiry into the State of the Universities of Scotland* 89.

169 Cairns “John Millar, Ivan Andreyevich Tret'yakov, and Semyon Efimovich Desnitsky” 30.

the claim that the discipline was in a way outmoded was perhaps a fair one. By the 1820s, the type of unified Enlightenment social project that Maconochie expounded was no longer accepted. The Scottish school of “common sense” philosophy, developed by Thomas Reid and his important disciple, Dugald Stewart, was now dominant. In their hands the science of legislation had become a more restricted, narrower discipline. The strongly historical Smithian approach, which unified economics, politics, history, government and law, was rejected, and was certainly incompatible with Reid’s and Stewart’s realist approach to morals. Disciplines were separating and specialising.¹⁷¹

The chair of Public Law and the Law of Nature and Nations was only to revive when reforms in legal education, as part of the general reforms of the Scottish universities, gave it a new role;¹⁷² meanwhile the changing intellectual project which it had supported in the eighteenth century was over.

170 Cairns “Legal education in Glasgow” 139-141.

171 See on this Haakonssen *Natural Law and Moral Philosophy* 179-181, 226-260.

172 Scottish Universities Commission, *General Report of the Commissioners under the Universities (Scotland) Act, 1858. With an Appendix, containing Ordinances, Minutes, Reports on Special Subjects, and Other Documents* (1863) xxxv-xxxvi, Ordinance No 23 XVII (Appendix 47). The professor was to deliver lectures on international law. In fact, the chair became one from which classes were given on legal philosophy and international law: see Lorimer “Story of the Chair of Public Law” 152-158.

Appendix

Brougham's account of Maconochie's lectures¹⁷³

They are arranged under two great divisions – the State of Nature and the Political State. Under the first, by which is meant the earlier state, are treated, the savage state; the origin of the political union; the first structure of government; language, and the origin of its grammatical structure; the agricultural and pastoral state; the rise of religion and mythology; women and their domestic relations in uncultivated society. The other and principal branch begins with the gradual changes and transitions from the rude to the polished state. It then treats of the various pastoral nations with movable habitations; the nomadic tribes; the origin and nature of the Tartar and Arabic governments; the Nomadic conquests, and the governments thus formed – those of the Israelites, of Persia, of Hindostan, of Turkey. He then treats of the pastoral nations with fixed habitations. This leads to a consideration of the rise and progress of European Society, the Celto-Iberian governments and the Gothic governments of the conquered provinces of the Roman empire. Then comes the progress of government, where the ancient confederacies of pastoral nations have been dissolved. Under this head we have the governments of Greece, especially of Lacedaemon and Athens, and of Italy. Next we have the progress of government where those pastoral confederacies have been consolidated. Those that have been consolidated by the neighbourhood of Nomadic tribes, are Egypt, Assyria, China, Russia, all of which are fully treated. Those which have been consolidated by other causes, as form of country, superstition, wants of cultivated nations, are Macedon, the monarchies of Western Asia, Thibet, India. The head follows of nations not fully within any of the foregoing descriptions – and, first, nations that never have been pastoral, yet have made progress in civilisation; Mexico, Peru, Japan, and all nations that have made no such pro-gress, and yet have formed a political union; the African tribes, those nations which have acquired knowledge of property, with little or no political union; the Laplanders and Siberians. Next comes a general view of the revolutions in political society; and out of this arises a treatise on the principles of the different forms of government. We are thus, by slow degrees, but from a most comprehensive view of the world and its history led to the origin, predominancy, and decline of the feudal institution; and then comes the present state of the European governments.

173 [Brougham] *Memoir of Maconochie* 10-12.