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Introduction

Scottish Urban Archives and Histories

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This special issue of the *Journal of Irish and Scottish Studies* examines Scottish urban archives and Scottish urban histories. It does so with the aim of taking stock of the field of scholarship and archival collections relating to Scottish burghs, exploring potential new fields of research and, in particular, developing one such perspective by way of example. In this task it holds a broad chronological interest joining the medieval and the modern periods, albeit with a primary focus on the fifteenth, sixteenth, and seventeenth centuries. The latter emphasis concentrates attention on what has proven to be a historiographically dynamic period in the field, and is one into which we seek to make a useful interjection while also highlighting the commonalities and discontinuities that stretch back from the early-modern era into the medieval period and forward into the modern. The wider goal, with particular relevance to Scotland's history, is to consider how urban records can be put to use to address a range of topics and questions with relevance beyond that which may be considered distinctly or naturally urban. The particular viewpoint to be advanced in this collaborative exercise comes from a legal historical perspective.

This collection of essays arises from the Aberdeen Burgh Records Project, which is a shared endeavour between the Research Institute of Irish and Scottish Studies and the Aberdeen City & Aberdeenshire Archives to examine themes of continuity and transition, languages and geographies, and more generally the use of urban records for the study beyond 'urban history' itself.¹ Given Scotland's relatively low levels of urbanisation and its societal

¹ We wish to thank Professor Michael P. Brown, editor of the *Journal of Irish and Scottish Studies*, and an anonymous reviewer for their comments on this collection. We are grateful to all of the authors for their contributions and patience, and wish to acknowledge the contributions of all the participants in 'The Burgh in the North' symposium of November 2013, hosted by the Research Institute of Irish and Scottish Studies and funded by the Margaret Jones Bequest. We wish also to register our thanks to Mr Phil Astley, City Archivist, Aberdeen City and Aberdeenshire Archives, and his team, and Dr Edda Frankot, for their long-standing commitment to the Aberdeen Burgh Records Project.

concentration on agricultural production prior to the industrial revolution, it is unremarkable that the volume of surviving town records from the realm in the later middle ages is relatively small and fragmentary.² That said, it is Aberdeen's civic archive which proves the exception to the general rule, and which offers a series of surviving burgh records which are impressive in both a Scottish and northern European context for their continuity and for their richness. With extant council registers from 1398 onwards (excepting a gap in the series from c.1414-c.1434), Aberdeen's records are the most continuous of their kind in Scotland. For the fifteenth century alone, more survives for Aberdeen than for all other Scottish towns combined. The international significance of this archive resonates in that it provides a nearly unbroken record for a major regional nucleus of political and judicial power within the Scottish kingdom. Aberdeen (itself consisting of two neighbouring burghs; what came to be known as New Aberdeen on the River Dee and Old Aberdeen on the River Don – the latter with its own civic registers surviving from the seventeenth century) was also a major episcopal seat, the site of one of Europe's most northern seats of learning (King's College founded 1495 and Marischal College founded 1593), and a commercial entrepot with extensive hinter-lands and hinter-seas.³ The point of origin for most of the essays assembled here is a symposium held in 2013. They were subsequently prepared for publication in 2015; thus they reflect the state of the field at that time.⁴

Given the ambition to examine how urban records may be put to use for more than urban history alone, it is important to offer two different types of overview: archival and historiographical. This is the purpose of the contributions by Athol Murray and Alan R. MacDonald. In 1988 an appraisal and survey of the surviving source materials for study of medieval Scottish

For the Aberdeen Burgh Records Project, see <http://www.abdn.ac.uk/riiss/about/aberdeen-burgh-records-project-97.php> [accessed 3 July 2016]. For information on the Leverhulme Trust Research Project Grant which emerges from this collaboration, Law in the Aberdeen Council Registers, 1398–1511: Concepts, Practices, Geographies, see <http://aberdeenregisters.org> [accessed 1 December 2016].

² D. Ditchburn and A. J. Macdonald, 'Medieval Scotland, 1100–1560' in R. A. Houston and W. W. J. Knox (eds), *The Penguin History of Scotland: From the Earliest Times to the Present Day* (London, 2001), 145–6; I. D. Whyte, *Scotland's Society and Economy in Transition, c.1500–c.1760* (Basingstoke, 1997), 115.

³ D. Ditchburn and M. Harper, 'Aberdeen and the Outside World' in E. P. Dennison, D. Ditchburn and M. Lynch (eds), *Aberdeen before 1800: A New History* (East Linton, 2002), 377–407.

⁴ All excepting that by Wilson which was prepared in 2017.

towns offered the view that, although scattered and fragmentary, the range of relevant evidence in the form of burgh records themselves, as well as records from royal government, the church, and foreign sources, had ‘yet to be taken to its cultivation limits’.⁵ Considering the later middle ages in particular, and despite important contributions to the study of urban experience, that statement still holds true today.⁶ Murray’s contribution to the present collection advances significantly upon that older appraisal with an overview of the nature, creation and preservation of Scotland’s urban archives. In viewing urban record survival as essentially an issue of bureaucratic and archival culture, Murray shows how burgh records must be approached primarily as legal documents. Yet a striking feature of the origins, nature and content of these documents is the sheer inconsistency of record production, bureaucratic form, content, and modes of preservation. If the Scottish burghs existed as a coherent, constitutional and incorporated ‘estate’, then the wildly diverse methods for recording their proceedings point to the ongoing vigour of local customs and practice. Equally, the number of examples of individual record volumes that were sent to Edinburgh for legal reasons, never to reappear, underscores the extent to which Scottish towns did indeed function within a recognisably ‘national’ legal system from the mid-sixteenth century onwards. Again and again, the fate of town records reveals the extent to which Edinburgh functioned as the seat of national justice in the early-modern period.

Moreover, as Andrew Simpson’s article demonstrates, the personnel who sat on the burgh courts were usually imbued with the latest in legal thinking and, in the case of the Aberdeen canonists who framed the town’s response to a politically sensitive shipwreck in the 1530s, were kinsmen of the newly emerging judges responsible for the advancement of the king’s justice through the session. Given these trends, it might be tempting to view law as an innately homogenising force. But the extent to which each burgh kept its records in its own way while using different personnel and non-standardised bureaucratic assumptions warns against any hasty leap to this conclusion. In turn, Murray’s detailed survey of the growing legal requirements by the Scottish parliament to record property exchange and tax liabilities, especially after the 1560s, underscores how changes in the formal legal framework prompted

⁵ I. Flett and J. Cripps, ‘Documentary Sources’ in M. Lynch, M. Spearman and G. Stell, (eds), *The Scottish Medieval Town* (Edinburgh, 1988), 19.

⁶ For example, E. Ewan, *Townlife in Fourteenth-Century Scotland* (Edinburgh, 1990) and, more recently, M. Cowan, *Death, Life, and Religious Change in Scottish Towns c. 1350–1560* (Manchester, 2013); E. Patricia Dennison, *The Evolution of Scotland’s Towns: Creation, Growth and Fragmentation* (Edinburgh, 2017).

administrative change. This can be seen clearly not simply in the growth of surviving material but in the separating out of town records from generic volumes recording all manner of business into dedicated and separate streams of records.

The nature of the resultant material has shaped the trajectory of Scottish urban historiography. MacDonald's survey, taking as its starting place Michael Lynch's retrospect and prospect offered on Scottish urban history in 1987, traces how the subject has developed in some areas and has experienced relative neglect elsewhere in the time that has passed since Lynch's commentary.⁷ MacDonald ponders in highly suggestive ways how urban archives can be used to cast revealing light upon a variety of political, socio-economic and cultural themes.⁸ In doing so he sets an agenda for the further development of the field, part of which is to harness the prodigious potential of combining for study burgh court records with other legal sources – such as the records of the sheriff courts whose jurisdiction covered a head burgh's hinterland – in order to unlock new vantage points onto the interactions between rural and urban contexts. It is the dynamic and sustained nature of the Aberdeen records which make the focus on this burgh so tremendously valuable for seeking new points of view. The depth of Aberdeen's archival collections – whether those cared for by the City Council, by Aberdeen University or by private organisations such as the Incorporated Trades – readily enables the locality to speak to a Scotland-wide context.⁹ Indeed, it is of sufficient richness to enable meaningful avenues of European comparison to be pursued from the late medieval period onwards.¹⁰

A Legal Historical Perspective

The purpose of the three essays by Jackson Armstrong, Andrew Simpson and Adelyn Wilson is to move the focus of this collection on from the overviews presented by Murray and MacDonald, and to prompt new work by offering a

⁷ M. Lynch, 'Introduction: Scottish Towns, 1500–1700' in Lynch (ed.), *The Early-Modern Town in Scotland* (London, 1986), 1–35.

⁸ An aspect of which he has explored in a full-length study: A. R. MacDonald, *The Burghs and Parliament in Scotland, c. 1550–1651* (Aldershot, 2007).

⁹ On the archives of the Incorporated Trades see A. Mackillop, 'Riots and Reform: Burgh Authority, the Languages of Civic Reform and the Aberdeen Riot of 1785', *Urban History*, 44 (2017), 402–23.

¹⁰ E. Frankot, *"Of Laws of Ships and Shipmen": Medieval Maritime Law and its Practice in Urban Northern Europe* (Edinburgh, 2012).

legal historical perspective on urban records. This is not a social or economic or administrative history of the urban experience. Rather, the very nature of the records, often being tools for litigants to register legal claims and legal process through the jurisdictions which pertained to the burgh, invites a legal approach. Equally, the sustained nature of the records just described allows us to see law not just as a set of static statements of intent, but to observe the law in action. While each paper contributes a novel analysis in its own right, together they serve as an experimental demonstration-piece of what may yet be done with urban archives in hand. The topics which are pursued are each grounded in Aberdonian records in some way, but at the same time each piece presents its analysis and discussion within wider local and national frameworks. These contributions might well be described as examples of ‘external’ legal history, or in other words the study of law in action in society. This is especially so with Armstrong’s approach to the social frameworks of arbitration, and to Wilson’s examination of a group within the legal profession. Simpson’s contribution is also concerned in this way with the role of law and its practitioners, and law courts and their officials in a wider social context, but in addition he has much to say about the wrong of ‘spuilzie’ in particular (in which possession of goods was seized without consent or the approval of the law) and thus on the ‘internal’ legal history of the law. Certainly the boundaries between ‘external’ and ‘internal’ legal history are imprecise, a point signalled by David Ibbetson’s important observation that the legal historian concerned with an ‘internal’ history of law ‘has to take into account not simply the rules but also the ideas lying behind the rules, and the doctrinal or conceptual framework joining the rules together.’¹¹ It is with regard to the ideas behind the law and its practice that all three papers engage in different ways.

In some regards it is nothing new to highlight the importance of law to the concept of the Scottish burgh, which is a point made in this issue’s sister collection, being a recent special section of *Urban History* on Communities, Courts and Scottish Towns’.¹² It was long ago observed that the ‘commercial intention’ behind the establishment of the earliest burghs was framed in legal terms by charters of foundation and the *Leges Burgorum*, a text of early town laws.¹³ Furthermore the first substantial study of Scottish burghs, the

¹¹ D. Ibbetson, ‘What is Legal History a History of?’ in A. Lewis and M. Lobban (eds), *Law and History, Current Legal Issues 2003*, vol. 6 (Oxford, 2004), 35.

¹² See J. W. Armstrong and A. Mackillop (eds), ‘Communities, Courts and Scottish Towns’, Special Section of *Urban History*, 44 (2017), 358-423.

¹³ A. Ballard, ‘The Theory of the Scottish Burgh’, *Scottish Historical Review*, 13 (1916), 16. On the *Leges Burgorum* see A. R. C. Simpson and A. L. M. Wilson, *Scottish Legal*

1949 publication of W. M. Mackenzie's Rhind Lectures for the Society of Antiquaries of Scotland, devoted significant attention to these matters.¹⁴ Scottish burghs were, in a sense, made real by their legal foundational charters and their court records. If the reason for which early-modern landowners placed high value 'on accurate genealogical trees in family archives was the practical necessity of determining nobility and clarifying lines of succession',¹⁵ then one might ask how far urban archives provided a comparable legal genealogy – a burgh's corporate pedigree expressed in legal idiom, preserved for future use and reference chiefly by its burgesses and officers, and held up as an attestation of authority and jurisdiction, and of rights and privileges.¹⁶ All the same, the main thrust of work on medieval and early-modern Scottish urban history to date has prioritised investigation neither of the significance of the law in town life, nor of the importance of urban archives as legal records and sources valuable for questions of legal historical consequence.¹⁷ A recent commentator, J. R. D. Falconer, has remarked upon scholarly trends towards the study of urban social history in Scotland, and 'the interconnections between town and country and between individual towns, the nature of Scottish urbanisation, and the relationship between the state and the burghs'.¹⁸ In all these fields, questions of law, society and the mechanisms of royal and communal government seem to be essential components. Investigation of how law courts were used in early-modern Scottish towns to negotiate power and manage conflict has at least begun, and for the medieval period the shape and practice of international maritime law has also been the subject of a major study which places Scotland in comparative context.¹⁹ Other recent work reminds historians of what they stand to gain from the perspectives offered by other disciplines on the sources with which they are familiar. The use of legal language in burghs as a particular tool for pursuing questions of

History. Volume 1: 1000–1707 (Edinburgh, 2017), 61–2.

¹⁴ W. M. MacKenzie, *The Scottish Burghs* (Edinburgh, 1949), chapter two: 'On Charters and Burgh Laws'.

¹⁵ K. M. Brown, *Noble Society in Scotland: Wealth, Family and Culture from Reformation to Revolution* (Edinburgh, 2004), 33.

¹⁶ A point also suggested by Alan R. Macdonald's essay (see below at p. 42).

¹⁷ The chief exception to this general statement is H. L. MacQueen and W. J. Windram, 'Laws and Courts in the Burghs' in M. Lynch, M. Spearman and G. Stell (eds), *The Scottish Medieval Town* (Edinburgh, 1988), 208–27.

¹⁸ J. R. D. Falconer, 'Surveying Scotland's Urban Past: The Pre-Modern Burgh', *History Compass*, 9 (2011), 41.

¹⁹ J. R. D. Falconer, *Crime and Community in Reformation Scotland: Negotiating Power in a Burgh Society* (London, 2013); Frankot, "Of Laws of Ships and Shipmen".

linguistic development offers a window onto the conceptual framework of legal ideas, as much as onto wider lived experience in towns; it is also a telling reminder of the vital legal character of urban records.²⁰

These essays devote considerable space to investigating the use of the law, and of law courts, both in urban and non-urban contexts, and on local and national levels. Armstrong's consideration of late medieval arbitrations brings this forward most explicitly. 'Use' here relates not only to the instrumental deployment of law, as a party might do in raising a specific claim in a particular court, but also to the use of concepts shaped by law – such as privilege, kinship, neighbourhood or community – within the argumentation of claims, or within the framework of the remedy applied. In the selection of arbiters, burgh elites tended to use substitutes over kinsmen (as was usual among the rural nobility), an alternative focus falling on the worthies of the burgh, and on 'neighbours'. Thus arbitration, a practice common to the legal-political culture of both town and countryside, took on a particular inflection in its urban manifestation. In this essay, the focus of which is the problem of *who* conducted arbitrations, it is suggested that the late medieval courts of Aberdeen made some effort to distinguish between composition by neighbours and determination by bailies or councillors. The precise nature of this conceptual distinction is a matter raised for further investigation, a matter all the more pertinent given the emphasis observed in a 'rural' context on ties of kinship in the selection of arbiters, who were frequently of lower social status than the principal disputants. In this way Armstrong places urban sources (Aberdeen's local records) into a national (and largely non-urban) interpretative and historiographical context. In doing so the differences and similarities detected stimulate new questions about the significance of kinship, and the role of magnates as peacemakers, in the current understanding of Scottish concepts of justice.

Simpson's case study of the wreck and salvage of the *Jhesus* of Gdansk in 1530 demonstrates the potential of urban records to illuminate the history of law concerning a particular type of wrong ('spuilzie', as noted above) and a type of ruinous event (shipwreck), all of which highlights the relationships of authority and jurisdiction between the town, the crown, and Aberdeen's hinter-land and hinter-sea. This study is concerned with legal process, the use of law, and the use of particular language and legal concepts, across multiple and often overlapping jurisdictions. The case of the *Jhesus* is at once a story of a local urban legal-political culture that was *au fait* with international

²⁰ J. Kopaczynk, *The Legal Language of Scottish Burghs: Standardization and Lexical Bundles (1380–1560)* (Oxford, 2013).

and national law, and of a Scottish burgh preserving its independence and autonomy from the interventionist hand of the crown.

The final essay, by Wilson on Nicolson of Cockburnspath and his associates in the early seventeenth century, presents a social-legal history – primarily through a short study of a network of men of law – in order to enrich and add to our understanding of burgh society. Wilson does this in part by placing Old Aberdeen's burgh registers into dialogue with wider categories of records, including those of King's College and Marischal College. There is much of importance noted here about a 'provincial' professional grouping, as much as about the urban links between Aberdeen and Edinburgh, and the importance for the nation as a whole of the demise and re-establishment of law teaching at King's. Wilson examines the role of legal learning and expertise in urban society, and in this regard her piece bears some similarity to that of Simpson. Social networks, especially those defined by kinship, are vital for understanding this professional and scholarly world. In this regard there is common thematic attention to those networks treated by Armstrong concerning arbitrations. In highlighting the enduring role of kinship in the professionalising milieu of early seventeenth-century Aberdeen's legal circles, Wilson points to the need for ongoing reassessment of the compatibility of these two forms of social phenomena.²¹ But in reconstructing the world of a lawyer-academic this paper takes a reverse approach from that of Armstrong and Simpson. The latter focus on using burgh records as provender for legal history whereas Wilson primarily builds upon a rich array of source materials in order to tell us something new about legal society and about urban society's legal flavour.

It is hoped that this collection will prompt fresh work and new questions. If it advances an understanding of urban archives as essentially legal in nature, and places these historical records in dialogue with other legal sources, then it will in some measure have succeeded. More generally, in such a way we hope this special issue will advance Scottish history as well as other comparative contexts.²² The clear focus here on the interaction of 'legal' and 'urban' history

²¹ It may be possible to draw comparisons with eighteenth-century Edinburgh's legal elites: N. T. Phillipson, 'The Social Structure of the Faculty of Advocates in Scotland 1661–1840' in A. Harding, (ed.), *Law-Making and Law-Makers in British History* (London, 1980), 146–56; idem, 'Lawyers, Landowners and the Civic Leadership of post-Union Scotland', *Juridical Review*, ns, 21 (1976), 97–120.

²² To point to just three (late medieval) examples of urban archives used in wider political histories, see: P. Lantschner, *The Logic of Political Conflict in Medieval Cities: Italy and the Southern Low Countries, 1370–1440* (Oxford, 2015); B. Smith, *Crisis and Survival in Late Medieval Ireland: The English of Louth and their Neighbours, 1330–1450* (Oxford,

is one which, particularly in the Scottish historical context, will hopefully provoke critical thought as to what sources and topics of study might usefully and legitimately be considered 'legal'. Similarly, it is hoped that the category of 'urban' might be made more openly problematic, considering the conceptual boundaries between towns and other types of locality, the records they generated, and the interaction of this level with others, chiefly that of the 'national'. These essays offer what we consider to be an important new appreciation of the legal world in the urban world and, for these purposes, Aberdeen offers an exemplary starting place.

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2013), 159–82; E. Hartrich, 'Rebellion and the Law in Fifteenth-Century English Towns' in J. Firnhaber-Baker and D. Schoenaers (eds), *The Routledge History Handbook of Medieval Revolt* (London, 2017), 189–207.