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CAPÍTULO OCTAVO

LEGAL HISTORY IN SCOTLAND: A SHORT OVERVIEW

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SUMMARY: I. *Introduction*. II. *Scotland, Roman Law and (the Lack of) Codification*. III. *Undergraduate Teaching in Scotland: The Bachelor of Laws (LLB)*. IV. *Legal History Teaching in Present-Day Scottish Universities*. V. *Handbooks and Learned Societies on Legal History in Scotland*. VI. *Legal History Teachers and Scholars in Present-Day Scotland*. VII. *Conclusions*. VIII. *Bibliography*.

I. INTRODUCTION

If separating fully between past and present is never easy, in the case of history this is even harder. The tension between *status quo* and the historical path leading to it is visible in this chapter. A short account of the current state of both the teaching of and the research on legal history in the universities of Scotland could not fail to mention some among the most distinguished legal historians of the twentieth century in the English-speaking world, but at the same time (as this is a short survey of the present) it may not give a full account of their accomplishments —neither in their teaching, nor in their research. Doubtless, therefore, the outcome will not be satisfactory. It is very much hoped that this dissatisfaction will spur the reader to know more about some of the great scholars on whose shoulders today's students of the history of law are gratefully standing.

Other, far more accurate and thorough surveys on the teaching of legal history in Great Britain have been done in the past: a first (unpublished) one

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by Sir John Baker in 1979,[1] then a second one six years later by Michele Slatter and Richard Ireland,[2] followed by a third one by the same Richard Ireland in 2022.[3] The first two works were meant for circulation among legal historians across British universities and other institutions of higher education (so as to "take stock" of the current teaching situation of the subject). The third one was a short introduction meant for a far wider public: it is perhaps not fortuitous that it was published not in Britain but in Poland. The present survey will seek to combine those two approaches, providing specific, "down-to-earth" information, such as listing the legal history courses offered as well as their current lecturers and the main lines of legal-historical research being pursued in Scotland, together with a few more general features which any British —and, especially, Scottish— legal historian would know by heart, yet which a non-British reader might find of some little utility. This is also the reason why some words will be also spent, towards the end of this survey, not just on what is being taught but also on who is teaching it, so as to give a fuller account on the main lines of legal-historical research being pursued in present-day Scotland.

A final note on terminology. Today, the teaching of (and research on) Roman law in Scotland is very much undogmatic, and it takes into account the development of rules, practices and institutions across time and space, analysing them within the context of the society in which they applied. As such, no fundamental methodological distinction exists between scholars of Scottish legal history and of Roman law. I will therefore use "legal history" with regard to any legal-historical subject taught and studied in Scotland, whether focusing on Scotland itself, Rome, England, or indeed elsewhere.

II. Scotland, Roman Law and (the Lack of) Codification

Among the countries whose legal heritage may be traced to Roman law, the position of Scottish law is quite particular. This is not just because of the influences of the English common law over the last few centuries, which have

[1] Baker, John H., "The Teaching of English Legal History in the United Kingdom (excluding Scotland)", unpublished Discussion Paper, 1979.

[2] Slatter, Michele and Ireland, Richard, "Report on legal history in the universities and polytechnics of the United Kingdom", *Journal of Legal History*, vol. 6, 1985, pp. 214-232.

[3] Ireland, Richard, "A Legal History of Legal History in England and Wales", *Acta Universitatis Lodziensis*, Folia Iuridica, 2022, vol. 99, pp. 99-111.

contributed to making Scotland a "mixed" legal system.[4] But also, and moreover, it is because most civil-law countries, at some point or another, have codified their law, especially their private law.

The full extent of the change brought about by codification is sometimes not fully realised even by legal historians, and this might have something to do with the somewhat dogmatic approach to the study of Roman law which for a long time proved popular in some countries. This approach has contributed to the widespread perception that, in the end, the abstract rules derived from Roman law are not too dissimilar from the general rules found in private law codes. Scotland is an important case where this did not happen. The absence of codification means first of all the lack of a clear-cut solution of continuity between legal tradition and present law.

One of the consequences of the absence of codification is the fact that the casuistic approach so typical of early-modern Continental Europe has not given way to a full, taxonomical "systematisation" of the law, especially of private law. This perhaps explains the reason why a typical feature of early-modern law in Europe —namely, the work of the Institutional Writers— has received more attention in Scotland than in most other European countries. While in the latter their "institutes of the law" eventually gave way to actual codes, in Scotland they have remained for a long time the only handbooks containing the whole of the private law, or a good part of it, laying out its parts in a rational, coherent manner.[5]

On a practical level, the legal heritage of Scotland has two consequences on modern-law teaching in its universities. First, and quite obviously, Roman law matters more in Scotland than in England. Any private law scholar in Scotland is at least familiar with some fundamental Roman law concepts, whereas the same is not necessarily true for English private lawyers. To some extent, therefore, the reasons for teaching of Roman law in Scotland are the same as in any other country with a Roman legal heritage: Roman law is the basis of its (private) law. Most Scottish universities offer Roman law courses to their undergraduate students, as we shall see. A further reason for the popularity of Roman law teaching in Scotland is

[4] See *e. g.* Zimmermann, Reinhard *et al.* (eds.), *Mixed Legal Systems in Comparative Perspective: Property and Obligations in Scotland and South Africa*, Oxford, Oxford University Press, 2004. *Cfr.* also Reid, Kenneth and Zimmermann, Reinhard, *The Development of Legal Doctrine in a Mixed System*, in Zimmermann, Reinhard and Reid, Kenneth (eds.), *A History of Private Law in Scotland*, Oxford, Oxford University Press, 2000, vol. 1, pp. 1-13.

[5] See for all Cairns, John W., "Institutional Writings in Scotland Reconsidered", *The Journal of Legal History*, vol. 4, 1983, pp. 76-117.

that, to date, the Faculty of Advocates still requires its applicants to have passed a Roman law exam: those who did not study it at university are therefore required to sit it before they can qualify as advocates.

The second consequence is that courses on Scottish legal history typically look at the history of Scots law within its European (i. e., Continental) background. Until the end of the seventeenth century at least, it was common for Scots to read law at some European universities, often in France first, and then —especially after the Revocation of the Edict of Nantes (1685), as Scots were Calvinists— in the Netherlands.[6] The strong legal ties between Scotland and Continental Europe meant that, up to the eighteenth century, when a Scottish jurist spoke of the "common law", he would typically mean the *ius commune*, not the English common law.[7]

III. Undergraduate Teaching in Scotland: The Bachelor of Laws (LLB)

Both the kind of courses and the way they are taught differ significantly between England and Wales on the one hand and Scotland on the other. As the variety of courses offered is influenced by the duration of undergraduate studies, it is perhaps better to start with the latter.

While the Bachelor of Laws (LLB) takes normally three years in England and Wales, it takes four years in Scotland. Both LLBs are described as honours LLB, but this depends on the different meaning of "honours" in England and Wales on the one hand and in Scotland on the other. For the reader who is not very familiar with higher education in the English-speaking world, the easiest way to explain this is to start with an apparently altogether different question: what happens if a student fails a course? The student who fails the final exam of a course (or who is unable to sit it on the examination date) may sit the exam on another date, typically in the late Summer. Such second exams are informally called "re-sits." Should a student fail the re-sits, they might have to take the whole course again —if this is permitted by their university. Under certain conditions, however, a

[6] See for all Baston, Karen and Cairns, John W., "An Elegant Legal Education: The Studies of Charles Binning, a Scottish Pupil of Cornelis van Eck", *Tijdschrift voor Rechtsgeschiedenis*, vol. 83, 2015, pp. 179-201. On the influence of Civil law on Scottish (private) law see *e. g.*, Cairns, John W., "Ius civile in Scotland, ca. 1600", *Roman Legal Tradition*, 2004, vol. 2, pp. 136-170.

[7] See esp. the Inaugural Lecture of John W. Cairns, Chair of Civil Law at the University of Edinburgh, *An Uncommon Law?*, 22 November 2013, unpublished. I am very grateful to John Cairns for letting me read the typescript.

student might be allowed to graduate even if they have not passed all their exams. In such a case, in England and Wales a law student would graduate with an ordinary LLB —which is therefore the exception and not the rule. In Scotland, the distinction between ordinary and honours programmes is first of all based on the duration of the programme: the honours LLB lasts four, not three years. Re-sits, however, are normally allowed for ordinary courses only. As such, when a student fails a sufficient number of their honours courses, they will receive their LLB without honours, qualifying therefore with an ordinary LLB. A student can also choose to study for an ordinary LLB also from the beginning, in which case they will simply not take honours classes, and so the duration of their course of studies will be shorter. Nonetheless, very few students choose that route (unless, of course, they are already graduate students, in which case it is possible to opt for a two-year "accelerated" LLB).

Law students in Scotland, therefore, will typically study law at undergraduate level a year more than their English and Welsh counterparts. This gives greater flexibility to Scottish universities as to the subjects they can teach. Obviously enough, there will be a number of foundation subjects, which must be taught in any Scottish university accredited by the Law Society of Scotland (currently, ten universities have this accreditation).[8] Other than those subjects, however, each University has remarkable freedom in deciding what other elective subjects to offer.

By and large, most foundation subjects tend to be taught during the first two of the four years of the honours LLB in Scotland; the third year is spent teaching (in full or in part) elective subjects, and the fourth year is devoted to the final thesis and some more elective courses. Most Scottish universities call those elective courses, especially those taught during the third and the fourth years, "honours" courses. This is however not uniformly done by all Scottish universities teaching law. To avoid ambiguities, therefore, this survey will just distinguish between ordinary and advanced courses, the main difference being that most advanced courses are usually seminars on specific aspects of a subject: the student is expected to participate actively in the discussion, having already read some articles or book sections before the relevant seminar.

[8] Currently, The University of Aberdeen, The University of Abertay, The University of Dundee, The University of Edinburgh, The University of Glasgow, Glasgow Caledonian University, Edinburgh Napier University, Robert Gordon University, The University of Stirling, and The University of Strathclyde. List is available at this webpage: *https://www.lawscot.org.uk/qualifying-and-education/qualifying-as-a-scottish-solicitor/llb-degree-in-law/where-can-i-study-the-llb/* (last accessed: 25 July 2024).

With this background in mind, we may now proceed to look at the legal history courses offered in Scotland.

IV. Legal History Teaching in Present-Day Scottish Universities

Most LLB (honours) programmes in Scotland still teach Roman law. Some of these courses are meant to serve as an historical and conceptual introduction to Scottish private law. This means that their focus will be on those aspects of Roman law that bear a closer resemblance, *mutatis mutandis*, to present-day Scots law: property, contracts and delicts. Thus, the Law School of the University of Aberdeen offers a course called "Foundations of Private Law" which is mandatory for first-year students —one of the few cases where Roman law is still a mandatory subject in Scotland. The Law School of the University of Glasgow offers a similar course ("Roman Law of Property and Obligations"), yet it is a full-year course (covering both semesters); its accent is more on Roman law and less on its influence on Scots law and is not mandatory. The two things may be related to each other. The Law School of Edinburgh University offers a similar, elective and year-long course ("Civil Law"), where the influence of Roman law on Scots law is also discussed yet it does not inform too much the scope of the syllabus, which also includes the Roman law of persons.

Even some universities where Scottish legal history is not taught do teach Roman law: it is the case of the law schools of both Stirling University and Strathclyde University in Glasgow, as well as Napier University in Edinburgh. In all three cases Roman law is taught as an elective and advanced course, but at present none of the three universities also has a course on Scottish legal history.

The strong links of modern Scots law with its historical tradition, however, do not mean that legal history teaching is ubiquitous once crossed the Hadrian's Wall. Some law schools in Scotland do not offer specific courses on Roman law or legal history, but most provide an introduction to both within broader-scope introductory courses, normally taught in the first year and mandatory for all students. The Roman law element is still visible, but it no longer forms the core constituent of the subject. It is the case, for example, of Abertay University in Dundee, which offers the course "Legal Systems and Methods"; of Glasgow Caledonian University, with its course called "Introduction to Legal Systems and Study"; of Robert Gordon University in Aberdeen, with its course "Legal Systems"; and of the University of the West of Scotland in Paisley, offering a course called "Introduction to Legal Study".

Other than such introductory courses, several Scottish universities then offer a variety of legal history teaching as elective, one-semester long courses, normally reserved to undergraduate students in the final two years of their LLB. Let us start with the University of Aberdeen, the third-oldest university in Scotland (founded in 1495). In its Law School, two courses are offered at present on the history of Scots Law. The first ("Scottish Legal History") is more focused on medieval and early-modern law in Scotland; the second ("History of Scots Law in European Context") looks at the development of law in Scotland within its Civilian, Continental background. This background is then explored more in detail in another course ("European Legal History"), which looks at the medieval *ius commune* (in both its civil-law and canon-law components), as well as at its later developments. Finally, a further Roman-law course ("Civil Law honours") focuses on some aspects of the Roman law of property and obligations, while also looking at their sources as well as at their influence on Scots law. Legal history plays a significant role in other courses taught at Aberdeen Law School, especially in "History of Contract Law Theory", whose first part looks at the development of contracts from Roman law and the medieval *ius commune* to the modern period.

At present, the Law School of the University of Dundee offers a single legal-historical course ("Legal History"), an elective, one semester-long course that students may choose during the last two years of their LLB. This course provides an overview both of Scottish and of English legal history: its syllabus ranges from Stair's *Institutions of the Laws of Scotland* to Blackstone's *Commentaries on the Laws of England*. The wider scope of Dundee's approach to legal history might be due to the fact that Dundee is one of the few (and, historically, the first) Scottish universities to offer —either as an alternative to or in combination with the more ordinary training in Scots Law— an English-qualifying law degree as well.

Moving on to the University of Glasgow (the second-oldest Scottish University, established in 1451), its Law School offers a variety of advanced ("honours") undergraduate courses on legal history. A first course, devoted to the history of law in Scotland, focuses on the development of Scots law from the twelfth to the eighteenth century ("Scottish Legal History"). A second course ("Comparative Legal History") investigates the civilian and common-law traditions from the beginning of the seventeenth century to the end of the nineteenth. Two further advanced courses are offered on Roman law: one looks at trade and commercial law in Rome ("Roman Law of Commerce"), and the other ("Law in the Roman World") is an advanced, source-based course focusing especially on the Roman jurists and the devel-

opment of Roman legal thought, as well as on the legal profession and legal education in ancient Rome. Glasgow University Law School then offers three further advanced courses where legal history plays a significant part in the syllabus. One analyses Scots property law from a historical as well as a comparative dimension ("Property Law: History and Comparison"). Two further courses touch on the history of legal ideas. The first is called "Law, Justice and Morality", and a significant part of the syllabus is devoted to the history of natural law. The second is "Legal Theory", yet the approach taken is, at least in part, historical.

Not many universities in Scotland provide a variety of post-graduate courses on legal history (even though the number of research students who do work on legal history is quite significant). There are however two notable exceptions: the universities of St Andrews and of Edinburgh. The oldest university of Scotland (and the third oldest of the whole United Kingdom, founded in 1413),[9] St Andrews is at the same time both one of the best universities to study legal history in Scotland (and beyond) and among the few ones without a law faculty or school. Its School of History, however, is home to the Institute of Legal and Constitutional Research, one of the most vibrant hubs for genuine inter-disciplinary legal-historical research in Britain.[10] At St Andrews, most legal-history teaching is done at post-graduate level, with the significant exception of an elective undergraduate course called "Courtroom Dramas: Literature, Law and Lordship," an interdisciplinary law-and-literature course focusing on twelfth-century vernacular literature in northern France and England. Within the (post-graduate) Master of Letters in Legal and Constitutional Studies, a first (and mandatory) course on legal history is called "The Idea of Law": spanning from the French Revolution to contemporary legal world, it provides a methodological and critical overview of legal concepts in their historical evolution. Then, there are two further (elective) legal-history courses: the first, "Approaches to Legal History," focuses on different methodologies and approaches to legal history, with particular emphasis on some key-texts in the history of the (English) common law; the second, "Comparative Studies in

[9] Cant, Ronald G., *The University of St Andrews: A Short History*, St Andrews, St Andrews University Library (3rd ed.), 1992, pp. 3-7. *Cfr*. McGurk, Francis (ed.), *Papal Letters to Scotland of Benedict XIII of Avignon 1394-1419*, Edinburgh, Scottish History Society, 1976, pp. 276-278. It may be noted, though, that law teaching at St Andrews did take place, and very successfully so, in previous centuries: see *e. g.*, Cairns, John W., "Historical Introduction", in Zimmermann, Reinhard and Reid, Kenneth (eds.), *A History of Private Law in Scotland, cit.*, vol. 1, pp. 14-184, at p. 69, and the literature quoted *ibidem.,* note 350.

[10] Available at: *https://ilcr.wp.st-andrews.ac.uk* (last accessed: 26 July 2024).

Legal History," brings the Civilian legal-history tradition into a fruitful dialogue with the Common law.

The Law School of Edinburgh University also offers several semester-long, elective legal history courses available to undergraduate law students. Two courses focus on Roman law: one of them looks at trade and commercial law in ancient Rome, exploring how the law facilitated the growth of the Roman economy ("Trade, Commerce and Society in the Roman Empire"); in the second ("Civil law honours", to distinguish it from the "ordinary," or more introductory, first-year Roman law course), students are encouraged to examine several important Roman law texts (in English translation), so as to critically assess them and gain a better understanding of Roman legal institutions. Six further courses deal with Scottish legal history. A first one looks at the feudalisation of Scotland, from the introduction of Anglo-Norman institutions and structures of government to the creation of a Scots common law ("Lords and Vassals in Medieval Scotland"); a second one explores the development of central institutions of justice in Scotland during the early-modern period ("Centralizing Justice: Scotland in Early Modern Europe"); a third one ("Books, Law and Lawyers in Scotland: From Humanism through Enlightenment") examines the legal literature in Scotland during the early-modern period, and its links with legal literature in the Civilian tradition. A fourth course, as its title clearly represents, focuses on "Slavery in Eighteenth-Century Scotland," investigating the relationship between the origins of enslaved persons and the participation of Scotland in the British Empire, as well as the conditions of such persons and the legal rules applicable to them; a fifth course focuses on the way Civilian authorities have been used in courts of law in Scotland – and, to a lesser extent, also elsewhere ("Reasoning Using Civilian Authority"); a sixth and last course looks at the history of criminal law in Scotland from the late seventeenth century to the early nineteenth ("Crime and Punishment in Enlightenment Scotland").

There are some more legal-history courses offered at Edinburgh University. One looks at the development of the English common law from the Norman conquest to the modern period, covering the main parts of English private law: contracts, torts, land, equity and trusts ("History of English Private Law"). Two further courses cover specific aspects of legal history in western Europe: one follows the evolution of the concept of sovereignty from the early Middle Ages to the twentieth century ("Foundations of Modern Sovereignty"), and the other looks at the development of commercial law in Europe during the early-modern period ("The Origins of Modern Commerce"). Another and last undergraduate elective course is

even broader in its scope, as it focuses on the diachronic analysis of different legal cultures, with special attention to the influence that Civilian and common-law institutions have exercised and continue to exercise internationally ("Global Legal Histories"). Two more taught courses on legal history are then offered at post-graduate level. One explores the evolution of legal ideas during the Scottish Enlightenment ("Law and the Enlightenment"), the other focuses on the development of the concept of Natural law from Aristotle to modern times ("Natural Law: A Historical Introduction").

Edinburgh is also home to other universities. One of them, Edinburgh Napier University, offers a Roman-law advanced ("honours") course ("Civil Law"), exploring the main Roman-law institutions with particular emphasis on family law and obligations, as well as the influence of Roman law on Scotland.

All exams are written. Oral exams —in Scotland as well as in many other parts of the globe nowadays— are extremely rare (with the exception of the doctoral defence, which is still called today, in Scotland as well as in the rest of the United Kingdom, *viva voce* examination, or more briefly just "viva"). For each course, however, the specific form of (written) examination is left to its organisers. For introductory courses, such as the first-year Roman law courses offered by many Scottish universities, the final examination consists of a closed-book exam, which students have to sit within a certain number of hours (normally three). For more advanced courses, though, there is little uniformity: exams consist of any combination of written (and, normally, closed-book) exams and/or one or more essays to hand in within a specific date.

V. Handbooks and Learned Societies on Legal History in Scotland

At present, the wealth of legal history courses being taught in Scottish universities is not matched by a similar variety of handbooks for students, especially for the history of Scots law. A large study on the whole of the legal history of Scotland was published by David M. Walker (Regius Professor of Law at Glasgow University from 1958 to 1990) in seven volumes, between 1988 and 2004.[11] While the contribution was valuable, especially for the breadth of

[11] Walker, David M., *A Legal History of Scotland*, vol. 1: *The beginnings to A. D. 1286* (Edinburgh, Green, 1988); vol. 2, *The later middle ages* (Edinburgh, Green, 1990); vol. 3, *The Sixteenth Century* (Edinburgh, T&T Clark, 1995); vol. 4, *The Seventeenth Century* (Edinburgh, T&T Clark, 1996); vol. 5, *The Eighteenth Century* (Edinburgh, T&T Clark, 1998); vol. 6, *The Nineteenth Cen-*

its scope, its reception was not exempt from some criticism.[12] More recently, building on much scholarship carried out over the last few decades, a new attempt was undertaken by two younger yet already very well established and internationally renowned legal historians, Andrew Simpson and Adelyn Wilson, authors of the first volume of a more concise yet remarkably accurate volume on the early history of law in Scotland, ending with the Union Act of 1707.[13] It is very much hoped that a second volume will follow soon.

If handbooks on the history of Scots law are not as numerous as one would wish, for a fortuitous coincidence the most renowned Roman lawyers teaching today in Scotland, Paul du Plessis and Ernest Metzger, are both authors of some among the most well-known Roman law handbooks in English worldwide. Few are the lecturers of Roman law in English-speaking universities who are not familiar with them and who do not use them in their courses.[14] Two further Roman law handbooks have been recently published by Craig Anderson of Stirling University: one meant for English-speaking students in general,[15] and another especially meant for Scots Law students.[16]

Legal history manuals, however, are by no means the only way for the broader public to come into contact with the history of Scots law. Two excellent and very active societies contribute to this today: the Scottish Legal History Group[17] and the Stair Society.[18] Of them, the Stair Society is the

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tury (Edinburgh; Dayton, Ohio, Butterworths *LexisNexis*, 2001); vol. 7, *The Twentieth Century* (London, Lexis-Nexis UK, 2004).

[12] Such criticism encompassed both the methodology and the content of Walker's work. Among the critical voices, it is perhaps sufficient to cite a line from the review of the first volume by David Sellar: "The method reminds one more of the medieval Summae than of modern historical scholarship", Sellar, W. David H., "review of Walker, David M., *A Legal History of Scotland*, vol. 1, *The Beginning to A.D. 1286*, Edinburgh, W. Green, 1988", *Law and History Review*, 1992, vol. 10, pp. 188-194, at p. 189.

[13] Simpson, Andrew R.C. and Wilson, Adelyn L. M., *Scottish Legal History*, vol. 1, *1000-1707*, Edinburgh, Edinburgh University Press, 2017.

[14] Du Plessis, Paul J., *Borkowski's Textbook on Roman Law* (6th ed.), Oxford, Oxford University Press, 2020; Nicholas, Barry and Metzger, Ernest, *Introduction to Roman Law*, Oxford, Oxford University Press, 2008. See also a concise yet very insightful handbook by the same du Plessis, more specifically meant for high-school students in their final years (i. e., Sixth form in England, Wales and Northern Ireland, and Fifth- and Sixth-year in Scotland), *Studying Roman Law*, London, Bristol Classics Press, 2012.

[15] Anderson, Craig, *Roman Law Essentials*, 2nd ed., Edinburgh, Edinburgh University Press, 2018.

[16] Anderson, Craig, *Roman Law for Scots Law Students*, Edinburgh, Edinburgh University Press, 2021.

[17] Available at: *https://www.gla.ac.uk/schools/law/research/themes/legalhistoryatglasgow/scottishlegalhistorygroup/* (last accessed: 26 July 2024).

[18] Available at: *https://www.stairsociety.org* (last accessed: 26 July 2024).

older (founded in 1934), and over the years it has promoted the study of Scottish legal history with a series of volumes, currently 69, covering the multifaceted and complex legal tradition of Scotland. From 1965, its annual lecture hosts scholars of international renown from both the United Kingdom and abroad.[19]

VI. Legal History Teachers and Scholars in Present-Day Scotland

Fascinating as it is for the legal historian, the absence of a clear-cut line of demarcation between past and present has admittedly some disadvantages as well. For one, it is difficult to provide a systematic introduction to Scottish private law without continuous recourse to its historical development. This is probably why a significant strand in the line of research conducted by some private lawyers in Scotland in recent times, especially from the 1980s onwards, has been the attempt to systematise the private law by providing a doctrinal background of its historical development that may rationally explain, and outline, its current morphology. To this complex task, some among the finest private lawyers in Scotland, such as George Gretton and Kenneth Reid, both professors at Edinburgh University, have devoted considerable efforts with remarkable success.[20] This line of research has been very fruitful, and over the years a whole series of studies, often built on doctoral theses,

[19] Most of such annual lectures have then been published in the volumes of the Stair Society. From 2013 the lectures have also been recorded and are available online on this webpage: *https://www.stairsociety.org/lectures/* (last accessed: 26 July 2024).

[20] George Gretton and Kenneth Reid are both very prolific scholars: listing all their contributions would require a contribution in its own right. With regard to their "systematizing" efforts, mention ought to be made at least of two important books edited by Reid together with Reinhard Zimmermann, in which the approach of Gretton, a contributor to both works, is just as manifest: Zimmermann, Reinhard, Reid, Kenneth *et al.* (eds.), *Mixed Legal Systems in Comparative Perspective: Property and Obligations in Scotland and South Africa*, Oxford, Oxford University Press, 2004; Zimmermann, Reinhard and Reid, Kenneth (eds.), *A History of Private Law in Scotland*, *cit.*

Among the works of both Authors in which private law met with legal history in Scotland, see at least the following volumes: Reid, Kenneth *et al.* (eds.), *Scottish Land Law* (3rd ed.), Edinburgh, W. Green, 2020; Steven, Andrew and Gretton, George (eds.), *Property, Trusts and Succession* (3rd ed.), Haywards Heath, Bloomsbury Professional, 2017; Reid, Kenneth, *The Abolition of Feudal Tenure in Scotland*, London, LexisNexis UK, 2003; Reid, Kenneth, Gretton, George, *et al.*, *The Law of Property in Scotland*, Edinburgh, Law Society of Scotland, 1996; Gretton, George, *The Law of Inhibition and Adjudication* (2nd ed.), LexisNexis, 1996.

have been published on specific aspects of Scottish private law: it is the series "Studies in Scots Law," published by Edinburgh University Press.[21]

Others have kept modern private law and its history more separated but have excelled in both. In this sense, perhaps the best example in contemporary Scottish Universities is Hector MacQueen, Professor of Private Law at the University of Edinburgh, and arguably among the most prolific legal scholars in recent times. MacQueen's contributions to private law are very numerous, embracing both general overviews of the whole subject and works on discrete segments of it, especially contracts and unjustified enrichment,[22] as well as more specialistic subjects such as intellectual property, and in particular copyright law.[23] The reader of any of his manifold contributions to private law would be easily forgiven if she imagined MacQueen to be a "pure" private lawyer, given the level of refinement —and the sheer number— of his works. But she would be quite mistaken, for MacQueen is indeed one of the most accomplished and distinguished legal historians of his generation too. From his first and path-breaking monograph in 1993[24] to his (so far) last

[21] The list (to date, 13 volumes) is available on the Edinburgh University press website, at *https://edinburghlawseminars.co.uk/book-series#* (last accessed: 26 July 2024).

[22] MacQueen has written more than two hundred articles and book chapters and written or edited (to date) 36 books. A full list of his publications would require an article, not a footnote. In this short work mention will be made only of the books he has written or edited (and, even then, only of the most recent edition, often very considerably updated and enlarged): MacQueen, Hector and the Right Hon. Lord Eassie (Mackay, Ronald) (eds.), *Gloag and Henderson: The Law of Scotland* (15th ed.), Edinburgh, W Green, 2022; *id.*, *Contract Law in Scotland* (5th ed.), Haywards Heath, Bloomsbury Professional, 2020; MacQueen, Hector, *et al.*, *Atiyah and Adams' Sale of Goods* (13th ed.), Harlow, Pearson, 2016; MacQueen, Hector *et al.* (eds.), *The Scottish Legal System* (5th ed.), London, Bloomsbury Professional, 2013; *id.*, *Unjustified Enrichment*, Edinburgh, W. Green, 2013; *id.*, *Studying Scots Law* (4th ed.), London, Bloomsbury Professional, 2012; MacQueen, Hector *et al*, *The Sale of Goods* (11th ed.), London, Pearson Longman, 2005; MacQueen, Hector *et al., Fundamentals of Scots Law*, Edinburgh, W Green, 2003; MacQueen, Hector and Zimmermann, Reinhard (eds.), *European Contract Law: Scots and South African Perspectives*, Edinburgh, Edinburgh University Press, 2010; *id.* (ed.), *The Reform of Civil Justice*, Edinburgh, Edinburgh University Press, 1998; *id.*, *Money Laundering*, Edinburgh, Edinburgh University Press, 1993.

[23] See MacQueen, Hector *et al.* (eds.), *Contemporary Intellectual Property: Law and Policy* (2nd ed.), Oxford, Oxford University Press, 2010; MacQueen, Hector and Waelde, Charlotte, *The Scope of Copyright*, London, Intellectual Property Institute, 2003; *id. et al.* (eds.), *On Scrolls, Artefacts, and Intellectual Property*, Sheffield, Sheffield Academic Press, 2001; *id.* (ed.), *Innovation, Incentive and Reward: Intellectual Property Law and Policy*, Edinburgh, Edinburgh University Press, 1997; *id.* (ed.), *Copyright, Competition and Industrial Design* (2nd ed.), Edinburgh, Edinburgh University Press, 1995. Again, only the most recent edition is cited.

[24] MacQueen, Hector, *Common Law and Feudal Society in Medieval Scotland*, Edinburgh, Edinburgh University Press, 1993. On its remarkably significant and enduring influence see

one 30 years later,[25] MacQueen has worked extensively on the history of Scots law, focusing especially (but not exclusively) on the medieval and late-medieval periods.

Legal history in Scotland is also associated with some of the most renowned English-speaking Roman law scholars of the second half of the twentieth century, from David Daube to Alan Watson, Peter Birks and Peter Stein. Daube, already a private student of the great (by then, retired) Otto Lenel in Freiburg, read his (in fact, second) doctorate[26] under the leading English Romanist William W. Buckland in Cambridge; prior to moving to Oxford in 1955, he held the newly-established Chair of Jurisprudence at Aberdeen University for four years. It was in Aberdeen that a young scholar went to read a doctorate in Roman law under Daube's guidance. It was Peter Stein. Upon completing his doctoral studies, prior to his return to Cambridge, Stein spent in Aberdeen another 15 years, first as Lecturer and then, when Daube moved to Oxford, as his successor in the Chair of Jurisprudence until 1968; this long experience in Scotland has doubtless influenced aspects of his research.[27]

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the foreword to the second edition of this book (published in 2016 by the same publisher) by Andrew R.C. Simpson, *ibidem*, pp. xxix-xli.

[25] MacQueen, Hector, *Law and Legal Consciousness in Medieval Scotland*, Leiden, Brill, 2023. Other recent books on legal history published by the same author include MacQueen, Hector and Borthwick, Alan, *Law, Lordship and Tenure: The Fall of the Black Douglases*, St Andrews, Strathmartine Press, 2022; *id*. (ed.), *Continuity, Influences and Integration in Scottish Legal History: Select Essays of David Sellar*, Edinburgh, Edinburgh University Press, 2022; MacQueen, Hector and Forbes, William (eds.), *The Institutes of the Law of Scotland*, Edinburgh, Edinburgh Legal Education Trust, 2012.

[26] Before emigrating to Britain, Daube passed the oral examination for his (first) doctorate in Göttingen in February 1932 (with *summa cum laude*, at the time —and especially in universities such as Göttingen itself— quite an exceptional grade), yet because of the rise of Hitler to power in January 1933 the degree could not be officially conferred. He received it only in 1961.

[27] To cite only some of his most renowned works, see Stein, Peter, *Fault in the formation of contract in Roman law and Scots law*, Edinburgh and London, Oliver and Boyd, 1958 (the subject of his doctoral thesis); *id*., *Regulae Juris: from Juristic Rules to Legal Maxims*, Edinburgh, Edinburgh University Press, 1966; *id*., *Legal Evolution: The Story of an Idea*, Cambridge, Cambridge University Press, 1980; *id*., *Legal Institutions: The Development of Dispute Settlement*, London, Butterworths, 1984; *id*. *The Character and Influence of the Roman Civil Law: Historical Essays*, London and Ronceverte, Hambledon Press, 1988; de Zulueta, Francis, and Stein, Peter, *The Teaching of Roman Law in England around 1200*, London, Selden Society, 1990. See also his short, simple yet profound introduction, still of great utility as a first introduction to the subject, *Roman law in European history*, Cambridge, Cambridge University Press, 1999. In 1963, Professor Stein also published a revised edition of Buckland's highly authoritative textbook on Roman law (*A Text-Book of Roman Law from Augustus to Justinian*), originally published in 1921.

Unlike Daube —a German Jew, who emigrated to England in 1933— Alan Watson was a Scot. Born in Glasgow in that same year, he studied with Daube and then served as Professor of Civil Law first in Glasgow (1965-1968) and then in Edinburgh (1968-1980). Upon Watson's departure from Scotland to the United States of America, his Edinburgh Chair went to Peter Birks, who held it until 1987. Perhaps with the exception of Peter Stein, none of those outstanding Roman lawyers was only a "pure" Romanist though: Daube was a very accomplished scholar of other ancient laws, and especially one of the finest scholars of Biblical law of the twentieth century;[28] Birks' name is indelibly associated with the law of restitution[29] and his keen interest in taxonomy;[30] Watson consolidated his fame also as a comparative legal historian,[31] so much so that even those jurists with little

[28] Among Professor Daube's very vast bibliography, one should mention at least a few of his many books: see *e. g.*, Daube, David, *Studies in Biblical Law*, Cambridge, Cambridge University Press, 1944; *id. The Defence of Superior Orders in Roman Law*, Oxford, Clarendon Press, 1956; *id.*, *The New Testament and Rabbinic Judaism*, New York, Arno Press, 1956; *id.*, *Forms of Roman Legislation*, Oxford, Clarendon Press, 1956; *id.*, *Sin, Ignorance and Forgiveness in the Bible*, London, Liberal Jewish Synagogue, 1960; *id.*, *The Exodus Pattern in the Bible*, London, Faber and Faber, 1963; *id.*, *The Sudden in the Scriptures*, Leiden, Brill, 1964; *id.*, *Roman Law: Linguistic, Social, and Philosophical Aspects*, 1969, Edinburgh, Edinburgh University Press, 1969; *id.*, *Civil Disobedience in Antiquity*, Edinburgh, Edinburgh University Press, 1972; *id.*, *Duty of Procreation*, Eugene (OR), Wipf & Stock Publishers, 1977; *id.*, *Typologie im Werk des Flavius Josephus*, München, Bayerische Akademie der Wissenschaften, 1977; *id.*, *Ancient Jewish Law*, Leiden, Brill, 1981; *id.*, *Die Geburt der Detektivgeschichte aus dem Geiste der Rhetorik*, Konstanz, Universitätsverlag Konstanz, 1983; *id.*, *Das Alte Testament im Neuen: Aus jüdischer Sicht*, Konstanz, Universitätsverlag Konstanz, 1984; *id.*, *Sons and Strangers*, Boston, University School of Law, Institute of Jewish Law, 1984; *id.*, *Appeasement or Resistance and other Essays on New Testament Judaism*, Berkeley (CA), University of California Press, 1987. See also Carmichael, Calum M. (ed.), *The Deed and the Doer in the Bible: David Daube's Gifford Lectures*, 2 vols., Philadelphia, Templeton Foundation Press, 2008-2010.

[29] Few modern jurists have had such an influence as Peter Birks, both in academia and in the courts of law, first of all for his work on restitution, on which see Birks, Peter, *Unjust enrichment* (2nd ed.), Oxford, Oxford University Press, 2005; *id.*, *Introduction to the Law of Restitution* (2nd ed.), Oxford, Clarendon Press, 1989. Among the very many books he edited, one could not fail to mention at least *English Private Law*, 2 vols., Oxford, Oxford University Press, 2000; *id.* (ed.), *Classification of Obligations,* Oxford, Clarendon Press, 1997; *id.* (ed.), *Wrongs and Remedies in the Twenty-First Century,* Oxford, Clarendon Press, 1996; *id.* (ed.), *New Perspectives in the Roman Law of Property: Essays for Barry Nicholas,* Oxford, Clarendon Press, 1989; *id.* (ed.), *Life of the Law: Proceedings of the Tenth British Legal History Conference*, London, Hambledon Press, 1993.

[30] This interest may be seen even in his lectures to first-year students of Roman law, on which see Descheemaeker, Eric (ed.), *Roman Law of Obligations: The Collected Papers of Peter Birks,* Oxford, Oxford University Press, 2014.

[31] Watson, Alan, *Contract of Mandate in Roman Law*, Oxford, The Clarendon Press, 1961; *id.*, *The Law of Obligations in the Later Roman Republic*, Oxford, The Clarendon Press, 1965; *id.*, *The Law of Persons in the Later Roman Republic*, Oxford, The Clarendon Press, 1967; *id.*, *The*

interest in legal history would remember him at least for his work on (and for coining the very term of) "legal transplants".[32]

To date, this apostolic succession in the Civilian tradition, leading from Lenel and Buckland to Daube, and from Daube to Watson is happily unbroken, for a student of Alan Watson holds the Chair of Civil Law at the University of Edinburgh: John W. Cairns. A valiant Roman lawyer in his own right,[33] Cairns has pursued research also in various other areas, such as comparative law[34] and slavery in eighteenth-century

law of Property in the Later Roman Republic, Oxford, The Clarendon Press, 1968; *id*., *The Law of the Ancient Romans*, Dallas, Southern Methodist University Press, 1970; *id*., *Society and Legal Change*, Philadelphia, Temple University Press, 1977; *id*., *Sources of Law, Legal Change, and Ambi-guity*, Philadelphia, University of Pennsylvania Press, 1984; *id*. *The Evolution of Law*, Baltimore, Johns Hopkins University Press, 1985; *id*., *Jesus and the Jews: The Pharisaic Tradition in John*, Athens (GA), University of Georgia Press, 1995; *id*., *Ancient Law and Modern Understanding: At the Edges*, Athens (GA), University of Georgia Press, 1998; *id*., *Legal History and a Common Law for Europe*, Stockholm, *Institutet för Rättshistorisk Forskning*, 2001. Among the volumes edited by Watson, mention should be made at least of the essays written in memory of his old mentor, David Daube - a volume featuring contributions from twenty-five among the most accomplished Roman lawyers of second half of the twentieth century (a veritable who's who of Roman law), and probably the best title this writer has ever seen in a Festschrift: *Daube noster. Essays in legal history for David Daube*, Edinburgh, Scottish Academic Press, 1974.

[32] Watson, Alan, *Legal Transplants: An Approach to Comparative Law*, Charlottesville, University Press of Virginia, 1974. On its influence see first of all Cairns, John W., "Watson, Walton, and the History of Legal Transplants", *Georgia Journal of International and Comparative Law*, vol. 41, 2014, pp. 637-696.

[33] Just to mention a few contributions distant in time from each other, see *e. g*., Cairns, John W., "The early historiography of the Lex Aquilia in Britain: Introducing students to the Digest", in du Plessis, Paul (ed.), *Wrongful Damage to Property in Roman Law: British Perspectives*, Edinburgh, Edinburgh University Press, 2018, pp. 3-45; *id*., "The de la Vergne Volume and the Digest of 1808", Tulane European and Civil Law Forum, vol. 24, 2009, pp. 31-81; *id*., "Tiberius Coruncanius and the Spread of Knowledge about Law in Early Rome", *Journal of Legal History*, vol. 5, 1984, pp. 129-135.

[34] Cairns, John W., "Civil-law systems, judges, and the British Empire", *Tulane European and Civil Law Forum*, 2022, vol. 37, pp. 81-105; *id*., "Subjects, citizens, and persons: Natural law and the drafting of the digest of the civil law of the territory of Orleans", *Loyola Law Review*, vol. 66, 2020, pp. 249-278; *id*., "The Development of Comparative Law in Great Britain", in Reimann, Mathias and Zimmermann, Reinhard (eds.), *The Oxford Handbook of Comparative Law* (2nd ed.), Oxford, Oxford University Press, 2019, pp. 111-147; *id*., "Spanish Law, the Teatro de la legislación universal de España e Indias, and the background to the drafting of the Digest of Orleans of 1808", *Tulane European and Civil Law Forum*, vol. 31-32, 2017, pp. 79-120; *Id*., *Codification, Transplants and History: Law Reform in Louisiana (1808) and Quebec (1866)*, Lawbook Exchange, Clark (NJ), Talbot Publishing, 2015 (a revised version of Professor Cairns' doctoral thesis, defended in 1980); *id*., "Employment in the Civil Code of Lower Canada: Tradition and Political Economy in Legal Classification and Reform", McGill Law Journal, vol. 32, 1987, pp. 673-709; *id*., "Comparative Law, Unification and Scholarly Creation of a New ius commune", *Northern Ireland Legal Quarterly*, vol. 32, 1981, pp. 272-283.

Scotland;[35] but his lifelong research interest has been, and continues to be, the relationship between legal and intellectual history in early-modern Scotland, especially from the sixteenth to the eighteenth century, but also beyond that period. In this vast field, the significance of Cairns' contribution would be hard to overstate, for in large part the contemporary understanding of the field is the result of his tireless efforts. While occasionally writing a monograph or editing a book,[36] most of Cairns' work was published as articles or book chapters[37]

[35] Cairns, John W., "Runaway Announcements and Narratives of the Enslaved", in Brownlees, Nicholas (ed.), *The Edinburgh History of the British and Irish Press*, vol. 1, Edinburgh, Edinburgh University Press, 2023, pp. 564-574; *id*., "Importing Enslaved Africans into Eighteenth-Century Scotland", in Paal, Boris O. *et al.* (eds.), *Deutsches, Europäisches und Vergleichendes Wirtschaftsrecht: Festschrift für Werner F. Ebke zum 70. Geburtstag*, Munich, Verlag C. H. Beck, 2021, pp. 155-163; *id*., "Maintaining Slavery without a Code Noir: Scotland, 1700–78", in Dawson, Norma and Larkin, Felix M. (eds.), *Lawyers, the Law and History: Irish Legal History Society Discourses and other Papers, 2005-2011*, Dublin, Four Courts Press, 2013; *id*., "John Millar and Slavery", in Walker, Neil (ed.), *MacCormick's Scotland*, Edinburgh, Edinburgh University Press, 2012, pp. 73-106; *id*., "The Definition of Slavery in Eighteenth-Century Thinking: Not the True Roman Slavery", in Allain, J. (ed.), *The Legal Understanding of Slavery: From the Historical to the Contemporary*, Oxford, Oxford University Press, 2012, pp. 61-84; *id*., "Slavery and the Roman Law of Evidence in Eighteenth-Century Scotland", in Burrows, Andrew and Rodger, Alan (eds.), *Mapping the Law: Essays in Memory of Peter Birks*, Oxford, Oxford University Press, 2006, pp. 599-618.

[36] *E. g*., Cairns, John W. and Du Plessis, Paul J. (eds.), *Reassessing Legal Humanism and its Claims: Petere Fontes?*, Edinburgh, Edinburgh University Press, 2015; *id*., *The Creation of the Ius Commune: From Casus to Regula*, Edinburgh, Edinburgh University Press, 2010; *id*., *Beyond Dogmatics: Law and Society in the Roman World*, Edinburgh, Edinburgh University Press, 2008; McLeod, Grant and Cairns, John W. (eds.), *The Dearest Birth Right of the People of England: The Jury in the History of the Common Law*, Oxford, Hart, 2002; Cairns, John W. and Robinson, Olivia F. (eds.), *Critical Studies in Ancient Law, Comparative Law and Legal History: Essays in Honour of Alan Watson*, Oxford, Hart Publishing, 2001.

[37] To mention only some of the most significant ones, see Cairns, John W., "Henry Goudy, Hannis Taylor, and Plagiarism Considered as a Fine Art", *Tulane European and Civil Law Forum*, vol. 30, 2015, pp. 1-79; Baston, Karen and Cairns, John W., *op. cit*.; Cairns, John W., "English Looters and Scottish Lawyers: The Ius Commune and the College of Justice", in Dondorp, Harry *et al*. (eds.), *Ius Romanum - Ius Commune - Ius Hodiernum: Studies in Honour of Eltjo Schrage on the Occasion of his 65th Birthday*, Amsterdam and Aalen, Scientia Verlag, 2010, pp. 49-59; *id*., "Attitudes to Codification and the Scottish Science of Legislation, 1600-1830", *Tulane European and Civil Law Forum*, vol. 22, 2007, pp. 1-78; *id*., "The Origins of the Edinburgh Law School: The Union of 1707 and the Regius Chair", *Edinburgh Law Review*, vol. 11, 2007, pp. 300-48; *id*., "From Claves Curiae to Senators of the College of Justice: Changing rituals and symbols in Scottish Courts", Schulze, Reiner (ed.), *Symbolische Kommunikation vor Gericht in der Frühen Neuzeit*, Duncker & Humblot, 2006, pp. 251-67; *id*., "Revisiting the foundation of the College of Justice", in MacQueen, Hector (ed.), Miscellany Five by Various Authors, Edinburgh, Stair Society, vol. 52, 2006, pp. 27-50; *id*., "Scottish Law, Scottish Lawyers and the Status of the Union", in Robertson, John (ed.), *A Union for Empire: Political Thought and the British Union of 1707*, Cambridge, Cambridge University Press, 1995, pp. 243-68; *id*., "The development of Comparative Law in Great Britain", in Reimann, Mathias and Zimmer-

mann, Reinhard (eds.), *The Oxford Handbook of Comparative Law,* Oxford, Oxford University Press, 2006, pp. 131-173; *id*., "Droit écossais, ius commune et le développement du droit privé européen", in Wijffels, Alain (ed.), *Le Code Civil Entre Ius Commune et Droit Privé Européen*, Bruxelles, Bruylant, 2005, pp. 117-47; *id*., "The First Edinburgh Chair in Law: Grotius and the Scottish Enlightenment", *Fundamina*, vol. 11, 2005, pp. 31-57; *id*., "Ius civile in Scotland, ca. 1600", *Roman Legal Tradition*, 2004, vol. 2, pp. 136-170; *id*., "Stoicism, Slavery, and Law: Grotian Jurisprudence and its Reception", in Blom, Hans W. and Winkel, Laurens C. (eds.), *Grotius and the Stoa*, Assen, Koninklijke Van Gorcum, 2004, pp. 197-232; *id*., "Legal Theory", in Broadie, Alexander (ed.), *The Cambridge Companion to the Scottish Enlightenment*, Cambridge, Cambridge University Press, 2003, pp. 222-242; "The Face that Did not Fit: Race, Appearance, and Exclusion from the Bar in Eighteenth-Century Scotland", *Fundamina*, vol. 9, 2003, pp. 11-43; *id*., "Legal Study in Utrecht in the Late 1740s: The Education of Sir David Dalrymple, Lord Hailes", *Fundamina*, vol. 8, 2002, pp. 30-73; *id*., "Alexander Cunningham's Proposed Edition of the Digest: An Episode in the History of the Dutch Elegant School", *Tijdschrift voor Rechtsgeschiedenis*, vol. 69, 2001, pp. 81-117 and 307-360; *id*., "The Moveable Text of Mackenzie: Bibliographical Problems for the Scottish Concept of Institutional Writing", in Cairns, John W. and Robinson, Olivia F. (eds.), *Critical Studies in Ancient Law, Comparative Law and Legal History: Essays in Honour of Alan Watson*, Oxford, Hart Publishing, 2001, pp. 235-248; *id*., "Ethics and the Science of Legislation: Legislators, Philosophers, and Courts in Eighteenth-Century Scotland", *Jahrbuch für Recht und Ethik*, vol. 8, 2000, pp. 159-180; Cairns, John W. and McLeod, Grant, "Thomas Craig, Sir Martin Wright and Sir William Blackstone: The English Discovery of Feudalism", *Journal of Legal History*, vol. 21, 2000, pp. 54-66; *id*., "Advocates' Hats, Roman Law, and Admission to the Scots Bar, 1580-1812", *Journal of Legal History*, vol. 20, 1999, pp. 24-61; *id*., "Academic Feud, Blood Feud and William Welwood: Legal Education in St Andrews, 1560-1611", *Edinburgh Law Review*, vol. 2, 1998, pp. 158-179, and 255-287; *id*., "The Civil Law Tradition in Scottish Legal Thought", in Miller, David L. C. and Zimmermann, Reinhard (eds.), *The Civilian Tradition and Scots Law: Aberdeen Quincentenary Essays*, Berlin, Duncker & Humblot, 1997, pp. 191-223; *id*., "Three Unnoticed Editions of Pieter Burman's Antiquitatum Romanarum brevis descriptio", *The Bibliotheck*, 1997, vol. 22, pp. 20-33; *id*., "Importing our Lawyers from Holland: Netherlands' Influences on Scots Law and Lawyers in the Eighteenth Century", in Grant G. Simpson (ed.), *Scotland and the Low Countries, 1124-1994,* East Linton, Tuckwell Press, 1996, pp. 136-153; *id*., " 'As Famous a School for Law as Edinburgh for Medicine': The Glasgow Law School, 1761-1801", in Hook, Andrew and Sher, Richard B. (eds.), *The Glasgow Enlightenment*, Edinburgh, Tuckwell Press, 1995, pp. 133-159; *id*., "Lawyers, Law Professors, and Localities: The Universities of Aberdeen, 1680-1750", *Northern Ireland Legal Quarterly*, vol. 46, 1995, pp. 304-331; *id*., "From «Speculative» to «Practical» Legal Education: The Decline of the Glasgow Law School, 1801-1830", *The Legal History Review*, vol. 62, 1994, pp. 331-56; *id*., "The Influence of the German Historical School in Early Nineteenth Century Edinburgh", *Syracuse Journal of International Law and Commerce*, vol. 20, 1994, pp. 191-203; *id*., "The Law, the Advocates and the Universities in Late Sixteenth-Century Scotland", *The Scottish Historical Review*, vol. 73, 1994, pp. 171-190; *id*., "Adam Smith's Lectures on Jurisprudence: Their Influence on Legal Education", in Mizuta, Hiroshi and Sugiyama, Chuhei (eds.), *Adam Smith: International Perspectives,* New York, St Martin's Press, 1993, pp. 63-83; *id*., "The Origins of the Glasgow Law School: The Professors of Civil Law, 1714-1761", in Birks, Peter (ed.), *The Life of the Law: Proceedings of the Tenth British Legal History Conference*, Oxford, Hambledon Press, 1991, pp. 151-195; *id*., "Rhetoric, Language and Roman Law: Legal Education and Improvement in Eighteenth-Century Scotland", *Law and History Review*, vol. 9, 1991, pp. 31-58; *id et al*., "Legal Humanism and the History of Scots Law: Sir John Skene and Thomas Craig", in MacQueen, John (ed.),

—with the caveat that some of his book chapters are in fact monographs in disguise.[38]

The study of Roman law in Scotland continues to flourish. To date, two among the most accomplished Roman law scholars hold chairs in Scotland: Paul J. du Plessis in Edinburgh, and Ernest Metzger in Glasgow. Metzger's research focuses especially on the procedural aspects of Roman law, which he has studied in his monographs[39] as well as in many other contributions.[40]

Humanism in Renaissance Scotland, Edinburgh, Edinburgh University Press, 1990, pp. 48-74; *id.*, "Craig, Cujas, and the Definition of feudum: Is a Feu a Usufruct?", in Birks, Peter (ed.), *New Perspectives in the Roman Law of Property: Essays for Barry Nicholas*, Oxford, Oxford University Press, 1989, pp. 75-84; *id.*, "John Millar's Lectures on Scots Criminal Law", *Oxford Journal of Legal Studies*, vol. 8, 1988, pp. 364-400; *id.*, "The Breve Testatum and Craig's Ius Feudale", *The Legal History Review*, vol. 56, 1988, pp. 311-332; *id.*, "Institutional Writings in Scotland Reconsidered", *cit.*

A selection of Cairns' essays was published in 2015 in two volumes: Cairns, John W., *Law, Lawyers, and Humanism*: *Selected Essays on the History of Scots*, vol. 1, Edinburgh, Edinburgh University Press, 2015; *id.*, *Enlightenment, Legal Education, and Critique: Selected Essays on the History of Scots Law*, vol. 2, Edinburgh, Edinburgh University Press, 2015.

[38] See for instance Cairns, John W., "Historical Introduction", in Zimmermann, Reinhard and Reid, Kenneth (eds.), *A History of Private Law in Scotland, cit.*, vol. 1, pp. 14-184.

[39] Especially Metzger, Ernest, *Litigation in Roman Law*, Oxford, Oxford University Press, 2005; *id.*, *A New Outline of the Roman Civil Trial*, Oxford, Clarendon Press, 1997. See also *id.* (ed.), *A Companion to Justinian's Institutes*, Ithaca (NY), Cornell University Press, 1998.

[40] *E. g.*, Metzger, Ernest, "Formularprozess: Verfahrenseinleitung", in Babusiaux, Ulrike *et al.* (eds.) *Handbuch des römischen Privatrechts*, Tübingen, Mohr Siebeck, 2023, pp. 350-371; *id.*, "Republican Civil Procedure: Sanctioning Reluctant Defendants", in du Plessis, Paul J. *et al.* (eds.), *Oxford Handbook of Roman Law and Society*, Oxford, Oxford University Press, 2016, pp. 245-256; *id.*, "Litigation", in Johnston, David (ed.), *The Cambridge Companion to Roman Law*, Cambridge, Cambridge University Press, 2015, pp. 272-298; *id.*, "Cum servo agere", Hallebeek, Jan *et al.* (eds.), *Inter cives necnon peregrinos: Essays in Honour of Boudewijn Sirks*, Goettingen, V&R Unipress, 2014, pp. 533-543; *id.*, "An Outline of Roman Civil Procedure", *Roman Legal Tradition*, 2013, vol. 9, pp. 1-30; *id.*, "Agree to Disagree: Local Jurisdiction in the Lex Irnitana", in Burrows, Andrew *et al.* (eds.), *Judge and Jurist: Essays in Memory of Lord Rodger of Earlsferry*, Oxford, Oxford University Press, 2013, pp. 207-226; *id.*, "Obligations in classical procedure", in Thomas A. J. McGinn (ed.), *Obligations In Roman Law: Past, Present, And Future*, Ann Arbor (MI), University of Michigan Press, 2012, pp. 158-173; *id.*, "Remedy of prohibition against Roman judges in civil trials", Brand, Paul and Getzler, Joshua (eds.), *Judges and Judging in the History of the Common Law: From Antiquity to Modern Times*, Cambridge, Cambridge University Press, 2012, pp. 177-191; *id.*, "Lawsuits in context", in Cairns, John W. and du Plessis, Paul J. (eds.), *Beyond Dogmatics: Law and Society in the Roman World*, Edinburgh, Edinburgh University Press, 2007, pp. 187-205; *id.*, "A Fragment of Ulpian on acceptilatio and intertium", *Studia et Documenta Historiae et Iuris*, vol. 72, 2006, pp. 111-137; *id.*, "Absent Parties and Bloody-Minded Judges", in Burrows, Andrew and Rodger, Alan (eds.), *Mapping the Law*: *Essays in Honour of Peter Birks*, Oxford, Oxford University Press, 2006, pp. 455-473; *id.*, "Roman Judges, Case Law, and Principles of Procedure", *Law and History Review*, 2004, vol. 22, pp. 243-275; *id.*, "The Current View of the Extra-Judicial Vadimonium", *Zeitschrift*

Metzger is also the editor-in-chief and founder of the Roman law journal *Roman Legal Tradition*.[41] Established in 2002, the Journal —the only Roman law journal entirely written in English— is of significant importance for the study and the "living tradition" of Roman law, as most contributions published in it (from 2008 onwards) are easily and freely accessible on the internet.

The work of du Plessis is more focused on substantive Roman law (especially property and obligations), as well as on the relationship between law and society.[42] With regard to this second strand of his research, du Plessis'

der Savigny-Stiftung für Rechtsgeschichte (Romanistische Abteilung), vol. 117, 2000, pp. 133-178; *id*., "Interrupting Proceedings in Iure: Vadimonium and Intertium", *Zeitschrift für Papyrologie und Epigraphik*, vol. 120, 1998, pp. 215-225.

Metzger is not only a scholar of Roman legal procedure: see *e. g*., *id*, "Adam Smith's Historical Jurisprudence and the «Method of the Civilians»", *Loyola Law Review*, vol. 56, 2010, pp. 1-31; *id*., "Clytaemnestra's Watchman on the Roof", *Eranos*, vol. 103, 2005, pp. 38-47; *id*., "Adam Smith and Roman Servitudes", *Tijdschrift voor Rechtsgeschiedenis*, vol. 72, 2004, pp. 327-357; *id*., "Quare? Argument in David Daube, after Karl Popper", *Roman Legal Tradition*, 2004, vol. 2, pp. 27-58; *id*., "The Case of Petronia Iusta", *Revue Internationale des Droit de l'Antiquité*, vol. 47, 2000, pp. 151-165.

[41] Available at: *https://www.romanlegaltradition.org* (last accessed: 26 July 2024).

[42] Paul du Plessis is one of those rare examples of talented scholars whose scientific production is remarkably prolific yet always of the highest scholarly standards. This makes it extremely difficult to provide a selection of his works. Among his monographic studies, mention should be made at least of du Plessis, Paul J., *Letting and Hiring in Roman Legal Thought: 27 BCE - 284 CE*, Leiden, Brill, 2012, and *id*., *A History of Remissio Mercedis and Related Legal Institutions*, Alphen aan den Rijn, Kluwer, 2003.

Among his many articles and chapters, see at least the following ones: du Plessis, Paul J., "Actiones Locati und Conducti", in Babusiaux, Ulrike *et al.* (eds.), *Handbuch des Römischen Privatrechts*, Tübingen, Mohr Siebeck, 2023, pp. 2289-2314; *id*., "The Nature of the Mule", *Revista Internacional de Derecho Romano*, 2022, vol. 29, pp. 1-22; *id*., "Classical and Post-Classical Roman law: The Legal Actors and Sources", in Pihlajamäki, Heikki *et al.* (eds.), *The Oxford Handbook of European Legal History*, Oxford, Oxford University Press, 2018, pp. 186-200; *id*., "Damaging a Slave", in Burrows, Andrew *et al*. (eds), *Judge and Jurist: Essays in Memory of Lord Rodger*, Oxford, Oxford University Press, 2013, pp. 157-166; *id*., "Theory and Practice in the Roman Law of Contracts", in McGinn, Thomas A.J. (ed.)., *Obligations in Roman Law: Past, Present and Future*, Ann Arbor (MI), University of Michigan Press, 2013, pp. 131-157; *id*., "The Historical Evolution of the Maxim «Sale Breaks Hire»", in Van Der Merwe, Cornelius and Verbeke, Alain-Laurent (eds.), *Time Limited Interests in Land*, Cambridge, Cambridge University Press, 2012, pp. 19-32; *id*., "The Structure of the Theodosian Code", in Aubert, Jean-Jacques and Blanchard, Philippe (eds.), *Droit, Religion et Société dans le Code Théodosien*, 2009, Paris, Librairie Droz, 2009, pp. 3-17; *id*., "The Hereditability of Locatio Conductio", in Cairns, John W. and Du Plessis, Paul J. (eds.), *Beyond Dogmatics: Law and Society in the Roman World*, Edinburgh, Edinburgh University Press, 2008, pp. 139-154; *id* "The Creation of Legal Principle", *Roman Legal Tradition*, vol. 4, 2008, pp. 46-69; *id*., "The Interdictum de Migrando revisited", *Revue Internationale des droits de l'Antiquité*, vol. 53, 2007, pp. 219-44; *id*., "Between

tireless efforts have led to the establishment of the research network "Ancient Law in Context", whose seminars (normally held every six months) are an important, interdisciplinary and truly international forum for lawyers, classicists and historians interested in the Roman society and, more broadly, ancient institutions. Another merit of du Plessis is doubtless that of having edited[43] a large number of important volumes on Roman law in the English language.[44]

Theory and Practice: New Perspectives on the Roman Law of Letting and Hiring", *Cambridge Law Journal*, vol. 65, 2006, pp. 423-37; *id.*, "The Roman Concept of Lex Contractus", *Roman Legal Tradition*, vol. 3, 2006, pp. 79-94; *id.*, "Subletting and the Roman law of Letting and Hiring: Interpreting C.4.65.6", *Revue Internationale des Droits de l'Antiquité*, vol. 52, 2005, pp. 133-146.

A truly accomplished scholar working in the Civilian tradition, du Plessis has also written much on the medieval *ius commune*: see *e. g.*, du Plessis, Paul J., "Jacques de Revigny (c. 1230-1296)", in Descamps, Olivier and Domingo, Rafael (eds.), *Great Christian Jurists in French History*, Cambridge, Cambridge University Press, 2019, pp. 71-84; *id.* "Creative Legal Reasoning and Rules of Law: A Study in the ius commune", in Fiori, Roberto (ed.), *Modelli teorici e metodologici nella storia del diritto privato*, Naples, Jovene, vol. 3. 2008, pp. 193-236; *id.*, "The Development of Legal Doctrine in the ius commune: A Case Study", in Dębiński, Antoni and Jońca, Maciej (eds.), *Roman Law and European Legal Culture*, Lublin, Catholic University of Lublin Press, 2008, pp. 42-66; *id.*, "Good Faith and Equity in the Law of Contract in the Civilian Tradition", in *Tydskrif vir Hedendaags Romeins-Hollandse Reg.*, vol. 65, 2002, pp. 397-412; *id.*, "Of mice —and other disasters— and men: Rent abatement due to unforeseen and uncontrollable events in the civilian tradition", *Tulane European and Civil Law Forum*, vol. 17, 2002, pp. 113-49; *id.*, "The actio aquae pluviae arcendae in South African Law", *Fundamina*, vol. 6, 2000, pp. 77-85.

[43] And still editing, as a new volume was published while this chapter was being written: Huang, Meiling and du Plessis, Paul J. (eds.), *Comparative Perspectives on the Chinese Civil Code: Property Law Across Cultures*, Abingdon, Routledge, 2024.

[44] One of the difficulties of the English-speaking students of Roman law indeed lies in the language: because they have to study not just Latin (something increasingly difficult to do today) and (ideally) ancient Greek, but also a variety of European languages, as most contributions on Roman law tend to be in German, Italian, French and Spanish —but not so many in English—. Among the books edited or co-edited by du Plessis see esp. Bell, Sinclair W. and Du Plessis, Paul J. (eds.), *Roman Law Before the Twelve Tables: An Interdisciplinary Approach*, Edinburgh, Edinburgh University Press, 2020; du Plessis, Paul J. (ed.), *Wrongful Damage to Property in Roman Law: British Perspectives*, Edinburgh, Edinburgh University Press, 2018; du Plessis, Paul J. *et al.* (eds.), *The Oxford Handbook of Roman Law and Society*, Oxford, Oxford University Press, 2016; *Cicero's Law: Rethinking Roman Law in the Late Republic*, Edinburgh, Edinburgh University Press, 2016; *id.* (ed.), *New Frontiers: Law and Society in the Roman World*, Edinburgh, Edinburgh University Press, 2014. Mention should also be made of the series of books edited by Professors Cairns and du Plessis: Cairns, John W. and du Plessis, Paul J. (eds.), *Reassessing Legal Humanism and its Claims: Petere Fontes?*, Edinburgh, Edinburgh University Press, 2015; *id.*, *The creation of the Ius Commune: From Casus to Regula*, Edinburgh, Edinburgh University Press, 2010;

Led over the last decade by the same du Plessis, the University of Edinburgh also hosts the Centre for Legal History,[45] fostering the study of legal history, and its relationship with modern legal cultures. While the main focus of the Centre has traditionally been on the Civilian tradition, the Centre for Legal History and, more broadly, the legal-historical research it encourages are hardly limited to that: to date, the Centre is also home both to a valiant historian of the English common law, Lorren Eldridge, whose work focuses primarily on the history of English land law,[46] and to Chloë Kennedy, whose research spans across criminal law, legal theory and legal history, opening new lines of research in the dialogue between those subjects.[47]

In Edinburgh, Napier University is home to another Roman lawyer, Giuseppe Di Donato, whose broad research interests stretch from the thought of St Isidore of Seville on the Roman concept of *status libertatis* to the fascinating reconstruction of the Roman military settlement of Vindolanda,[48] the Roman auxiliary fort south of Hadrian's Wall.

Moving westwards from its capital, one would soon reach Scotland's largest city, Glasgow. The University of Glasgow is home to several among the most distinguished scholars on legal history in Scotland, and it offers

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id., *Beyond Dogmatics: Law and Society in the Roman World*, Edinburgh, Edinburgh University Press, 2008.

[45] Available at: *https://www.law.ed.ac.uk/research/research-centres-and-networks/centre-for-legal-history* (last accessed: 28 July 2024).

[46] Among Dr Eldridge's publications mention should be made at least of two works: Eldridge, Lorren, *Law and the Medieval Village Community: Reinvigorating Historical Jurisprudence*, London, Routledge, 2023, and Ead., "Gone and Forgotten: Vinogradoff's Historical Jurisprudence", *Legal Studies*, vol. 41, 2021, pp. 194-213.

[47] *E. g.*, Kennedy, Chloë, "Sociology of Law and Legal History", in Přibáň, Jiří (ed.), *Research Handbook on the Sociology of Law,* Edward Elgar Publishing, Cheltenham, 2020, pp. 31-42; Kennedy, Chloë and Farmer, Lindsay, "Wrongs", in Goodrich, Peter (ed.), *A Cultural History of Law in the Early Modern Age*, London, Bloomsbury, vol. 3, 2019, pp. 137-154; Ead., "Questioning Culpability: Lessons from Soterial-Legal History", *Law and Humanities*, vol. 12, 2018, pp. 159-183; Ead., "Declaring crimes", *Oxford Journal of Legal Studies*, vol. 37, 2017, pp. 741-769; Ead., "Immanence and Transcendence: History's Roles in Normative Legal Theory", *Jurisprudence*, vol. 8, 2017, pp. 557-579; Ead., "«Ungovernable Feelings and Passions»: Common Sense Philosophy and Mental State Defences in Nineteenth Century Scotland", *Edinburgh Law Review*, 2016, vol. 20, pp. 285-311; Ead., "Criminal Law and Religion in Post-Reformation Scotland", *Edinburgh Law Review*, vol. 16, 2012, pp. 178-197.

[48] Among the contributions of Di Donato mention should be made of his monograph *Vindolanda: A Roman Military Settlement as a Legal Model of Integration,* Madrid, Dykinson, 2023, as well as of some of his contributions on St Isidore of Seville, especially "Uomo e animale nell'opera di Isidoro di Siviglia: breve contributo all'esegesi di D. I.1.1.3 (Ulp. I Inst.)", *Revista General de Derecho Romano*, vol. 29, 2017, pp. 1-19, and *id.*, "Echi gaiani in Isidoro di Siviglia", *Iuris Antiqui Historia*, vol. 10, 2018, pp. 43-88.

a variety of advanced ("honours") undergraduate courses on the subject. Some of those scholars, especially Mark Godfrey, have focused their research on the institutional developments, the procedure and, above all, the creation and the development of the central law court of Scotland (the College of Justice, established in 1532).[49] Others, such as John Finlay, have adopted a more prosopographical approach, writing extensively on the history of the legal profession in Scotland.[50] Others still, such as Stephen Bogle,

[49] The most famous work of Godfrey is doubtless his renowned monograph *Civil Justice in Renaissance Scotland: The Origins of a Central Court*, Leiden, Brill, 2009. See also Godfrey, A. Mark and van Rhee, Remco (C.H.) (eds.), *Central Courts in Early Modern Europe and the Americas*, Berlin, Duncker & Humblot, 2020; *id*. (ed.), *Law and Authority in British Legal History, 1200–1900*, Cambridge, Cambridge University Press, 2016. Professor Godfrey is also one of the three editors (together with Heikki Pihlajamäki and Markus D. Dubber) of the massive and highly influential *Oxford Handbook of European Legal History*, Oxford, Oxford University Press, 2018.

Among the many contributions of Godfrey see at least the following: Godfrey, A. Mark, "Scottish Legal History 2001–2022: A Select Bibliography", *Zeitschrift für Neuere Rechtsgeschichte*, 2022, vol. 44, pp. 285-301; *id*., "Rethinking the Justice of the Feud in Sixteenth Century Scotland", in Boardman, Steve and Goodare, Julian (eds.), *Kings, Lords and Men in Scotland and Britain, 1300-1625: Essays in Honour of Jenny Wormald*, Edinburgh, Edinburgh University Press, 2014, pp. 136-154; *id*., "Parliament and the Law", in Brown, Keith M. and MacDonald, Alan R. (eds.), *The History of the Scottish Parliament*, vol. 3, *Parliament in Context, 1235-1707*, Edinburgh, Edinburgh University Press, 2010, pp. 157-185; *id*., "Arbitration in the Ius Commune and Scots Law", *Roman Legal Tradition*, 2004, vol. 2, pp. 122-135; *id*., "Ius Commune, Practick and Civil Procedure in the Sixteenth-Century Court of Session", *Tijdschrift voor Rechtsgeschiedenis*, vol. 72, 2004, pp. 283-295; *id*., "Arbitration and Dispute Resolution in Sixteenth-Century Scotland", *Tijdschrift voor Rechtsgeschiedenis*, vol. 70, 2002, pp. 109-135; *id*., "The Assumption of Jurisdiction: Parliament, the King's Council and the College of Justice in Sixteenth-Century Scotland", *Journal of Legal History*, vol. 22, 2001, pp. 21-36; *id*., "Jurisdiction over Rights in Land in Later Medieval Scotland", *Juridical Review*, 2000, pp. 243-263.

[50] Much of Finlay's research was published in numerous (and, typically, ponderous – yet always extremely meticulous) monographic studies: Finlay, John, *George Craig of Galashiels: The Life and Work of a Nineteenth Century Lawyer*, Edinburgh, Edinburgh University Press, 2023; *id*., *The Admission Register of Notaries Public in Scotland, 1800-1899* (2 vols.), Edinburgh, Scottish Record Society, 2018; *id*., *Legal Practice in Eighteenth-Century Scotland*, Leiden, Brill, 2015; *id*., *The Community of the College of Justice*, Edinburgh, Edinburgh University Press, 2012; *id*., *Men of Law in Pre-Reformation Scotland*, East Linton, Tuckwell Press, 2000.

Among his numerous articles and chapters, see at least Finlay, John, "Lawyers' letters as an historical source", *Juridical Review*, 2023, pp. 48-69; *id*., "«Inter arma enim silent leges?» Impressment and the Scottish Courts in the later eighteenth century", *Edinburgh Law Review*, vol. 26, 2022, pp. 1-28; *id*., "The Petition in the Court of Session in Early Modern Scotland", 2018, *Parliaments, Estates and Representation*, vol. 38, 2018, pp. 337-349; *id*., "Professorial Opinions and Scottish-Dutch Legal Relations at the Turn of the Eighteenth Century", *Tijdschrift voor Rechtsgeschiedenis*, vol. 84, 2016, pp. 245-289; *id*., "Tax the Attorneys!' Stamp Duty and the Scottish Legal Profession in the Eighteenth Century", *Journal of Scottish Historical Studies*, 2014, vol. 34, pp. 141-166; *id*., "Corruption, Regionalism and Legal Practice in Eighteenth-

have favoured the study of legal ideas in some of the most renowned early-modern Scottish jurists.[51]

Several other legal historians taught at Glasgow University until recently. Among them, mention should be made of at least three scholars with whom the student of legal history in Europe will be doubtless familiar: Olivia Robinson, William Gordon and David Fergus, authors of a very fortunate handbook of European legal history, with three editions from 1985 to 2000,[52] among many other contributions.[53]

Century Scotland: The Rise and Fall of David Armstrong, Advocate", *Transactions of the Dumfries and Galloway Natural History and Antiquarian Society*, vol. 86, 2012, pp. 143-172; *id*., "Arbitration in Eighteenth-Century Scotland", *Juridical Review*, 2011, pp. 277-291; *id*., "Scots Lawyers and House of Lords Appeals in Eighteenth-Century Britain", *Journal of Legal History*, vol. 32, 2011, pp. 249-277; *id*., "The History of Delay in Civil Procedure: Scotland 1600-1808", in Rhee, Remco (C. H.) (ed.), *The History of Delay in Civil Procedure*, Berlin, Dunker & Humblot, 2010, pp. 121-152; *id*., "Lawyers and the Early Modern State: Regulation, Exclusion, and Numerus Clauses", *Canadian Journal of History: Annales Canadiennes d'Histoire*, vol. 44, 2009, pp. 383-410; *id*., "The History of the Notary in Scotland", in Schmoeckel, Mathias and Schuber, Werner (eds.) *Handbuch zur Geschichte des Notariats der europäischen Traditionen*, Baden-Baden, Nomos, 2009, pp. 393-428; *id*., "Pettyfoggers, Regulation, and Local Courts in Early Modern Scotland", *Scottish Historical Review*, 2008, vol. 87, pp. 42-67.

[51] Bogle, Stephen, *Contract Before the Enlightenment: the Ideas of James Dalrymple, Viscount Stair, 1619-1695*, Oxford, Oxford University Press, 2023; *id*., "Morality before the Enlightenment: an Interpretation of Viscount Stair's Natural Law Theory, c. 1681", *Journal of Scottish Philosophy*, 2023, vol. 21, pp. 189-209; *id*., "Inequality, Just Price and Bad Bargains: Contracting Attitudes after the South Sea Crash, 1720", *Journal of Legal History*, vol. 40, 2019, pp. 298-325.

[52] Robinson, Olivia F., Fergus, T. David, and Gordon, William M., *European Legal History. Sources and Institutions* (3rd ed.), Oxford, Oxford University Press, 2000. *Cf. id*. (eds.), *An Introduction to European Legal History*, Abingdon, Professional Books, 1985.

[53] Most contributions of Robinson focus on Roman law. To recall only her main monographs, see Robinson, Olivia F., *Penal Practice and Penal Policy in Ancient Rome*, London, Routledge, 2007; Ead., *The Sources of Roman Law: Problems and Methods for Ancient Historians*, London, Routledge, 1997; Ead., *The Criminal Law of Ancient Rome*, London, Duckworth, 1995; Ead., *Ancient Rome: City Planning and Administration* (2nd ed.), London, Routledge, 1994; Ead. and Gordon, William M. (eds.), *The Institutes of Gaius*, London, Duckworth, 1988. On her works on Scottish legal history see *e. g.*, Ead. (ed.), *The Laws and Customs of Scotland in Matters Criminal, by Sir George Mackenzie*, Edinburgh, Stair Society, 2012.

Among the legal history works of Fergus see at least Fergus, T. David (ed.), "'Quoniam Attachiamenta': An Edition", Edinburgh, Stair Society, 1996; *id*. (ed.), *Legal history in the Making: Proceedings of the Ninth British Legal History Conference*, London, Hambledon Press, 1991.

With regard to William Gordon, Douglas Professor of Civil Law at Glasgow University from 1969 to 1999, apart from the works already mentioned, see at least the following: Gordon, William M., "Acquisition of Ownership by *Traditio* and Acquisition of Possession", *Revue Internationale Des Droits De l'Antiquité*, vol. 12, 1965, pp. 279-300; *id*., "The Actio Depositi Reconsidered", in Stein, Peter and Lewis, Andrew D. E. (eds.), *Studies in Justinian's Institutes in Memory of J. A. C. Thomas*, London, Sweet and Maxwell, 1983, pp. 45-55; *id*., "The Importance of the Iusta Causa of Traditio", in Birks, Peter (ed.), *New Perspectives in the Roman Law of*

If we proceed northwards, a first university where we will find legal historians actively involved in present-day teaching and research will be that of Stirling, where three scholars are currently active both in teaching and in researching legal-history subjects: one is Leslie Dodd, whose work has shed light on the thought of the first of the so-called "Institutional Writers" in Scotland, Thomas Craig, author of the *Jus feudale tribus libris comprehensum* (1655), as well as on the relationship between feudal-legal thought in early-modern Scotland and Continental legal humanism.[54] Another is Craig Anderson, author —among other studies— of two Roman law handbooks that we have already mentioned.[55] A third is Jonathan Brown, in whose research Roman law, Scottish legal history and contemporary private law are intriguingly blended together.[56]

Property. Essays for Barry Nicholas, Oxford, Clarendon Press, 1989, pp. 123-135; *id.*, "Going to the Fair - Jacques De Révigny on Possession", in Lewis, Andrew D. E. and Ibbetson, David J. (eds.), *The Roman Law Tradition*, Cambridge, Cambridge University Press, 1994, pp. 73-97; *id.*, "A Comparison of the Influence of Roman Law in England and Scotland", in Carey Miller, David L., and Zimmermann, Reinhard (eds.), *The Civilian Tradition and Scots Law. Aberdeen Quincentenary Essays*, Berlin, Duncker & Humblot, 1998, pp. 135-148; *id.*, *Roman Law, Scots Law and Legal History. Selected Essays*, Edinburgh, Edinburgh University Press, 2007; *id.* and Hunter, Doreen M. (eds.), *The Court Book of the Barony and Regality of Falkirk and Callendar*, Edinburgh, Stair Society, 1991; Gordon, William M. and de Waal, Marius J, "Servitudes and Real Burdens", in Zimmermann, Reinhard *et al.* (eds.), *Mixed Legal Systems in Comparative Perspective: Property and Obligations in Scotland and South Africa*, Oxford, Oxford University Press, 2004, pp. 735-757.

[54] Dodd, Leslie, "Feudal Law and the Unionist Writings of Thomas Craig", *Scottish Historical Review*, vol. 102, 2023, pp. 34-66; Ead., "The Vita Cragii of James Baillie", in Godfrey A (ed.) *Miscellany VIII*. Publications of the Stair Society, vol. 67, Edinburgh, Stair Society, 2020, pp. 265-283; Ead., "Thomas Craig on the origin and development of feudal law", *Tijdschrift voor Rechtsgeschiedenis*, vol. 87, 2019, pp. 86-127; Ead., "Kinship, conflict and unity among Roman elites in post-Roman Gaul: The contrasting experiences of Caesarius and Avitus", in Varga, Rada and Rusu-Bolindeţ, Viorica (eds.), *Official Power and Local Elites in the Roman Provinces*, London, Routledge, 2016, pp. 188-208; Ead., "Thomas Craig's Aetiology of Law and Society: Literary Dependence and Independence in the Jus Feudale", *Journal of Legal History*, 2016, vol. 37, pp. 121-179.

Another scholarly merit of Dodd was that of editing —as well as translating from Latin— the first book of Thomas Craig's *Jus feudale*, arguably the first comprehensive legal treatise be written in Scotland, between the end of the sixteenth and the first years of the seventeenth centuries, and then published only in 1655: Dodd, Leslie (ed.), *Jus feudale tribus libris comprehensum, Book 1* [*Jus feudale*], Edinburgh, Stair Society, 2017. It is hoped that the other volumes will follow soon.

[55] Anderson, Craig, *Roman Law Essentials* (2nd ed.), Edinburgh, Edinburgh University Press, 2018; *id.*, *Roman Law for Scots Law Students*, Edinburgh, Edinburgh University Press, 2021.

[56] Brown, Jonathan, "Plagium: an archaic and anomalous crime", *Juridical Review*, 2016, vol. 2, pp. 129-146; *id.*, "Servitude, Slavery and Scots Law: Historical Perspectives on the Human Trafficking and Exploitation (Scotland) Act 2015", *Legal Studies*, vol. 40, 2020, pp.

Moving on further north in this ideal journey, we would arrive at the small yet exquisitely beautiful city of St Andrews, whose School of History has the privilege of hosting two among the most renowned legal historians in Britain and beyond: Caroline Humfress and John Hudson. Humfress' reputation as a leading scholar of the later Roman Empire is indissolubly connected with her outstanding study on the relationship between legal practice and ecclesiastical doctrine.[57] Hudson's research focuses on the early

353-375; *id.*, "Res Religiosae and the Roman Roots of the Crime of Violation of Sepulchres", *Edinburgh Law Review*, vol. 22, 2018, pp. 347-367; *id.*, "'Revenge Porn' and the Actio iniuriarum: Using «Old Law» to Solve «New Problems»", *Legal Studies*, vol. 38, 2018, pp. 396-410. Some of Dr Brown's articles are freely accessible online: see *e. g.*, *id.*, "Law Reform, Legal Transplants and Developing the Law of Defamation", available here: *https://strathprints.strath.ac.uk/73416/1/Brown_SLG_2020_Law_reform_legal_transplants_and_developing.pdf* (last accessed: 11 July 2024).

[57] Humfress, Caroline, *Orthodoxy and the Courts in Late Antiquity*, Oxford, Oxford University Press, 2007. See also Ead. and Garnsey, Peter, *The Evolution of the Late Antique World*, Cambridge, Orchard Academic, 2001. Among Professor Humfress' many essays see esp. Ead., "Legal Pluralism's Other: Mythologizing Modern Law", *Law and History Review*, vol. 42, 2024, pp. 155-168; Ead., "Out of Time? Eternity, Christology and Justinianic Law" in Robertson, John (ed.), *Political Thought, Time, And History*, Cambridge, Cambridge University Press, 2023, pp. 36-53; Ead., "The Early Church" in Winroth, Anders and Wei, John (eds.), *The Cambridge Companion to Medieval Canon Law*, Cambridge and New York, Cambridge University Press, 2022, pp. 11-31; Ead., "Beyond the (Byzantine) State: Towards a User Theory of Jurisdiction" in Krisch, Nico (ed.), *Entangled Legalities Beyond the State*, Cambridge, Cambridge University Press, 2021, pp. 353-375; Ead., "Law, Bureaucracy, and the Practice of Government and Rule", in Bang, Peter *et al.* (eds.), *The Oxford World History of Empire*, Oxford, Oxford University Press, 2021, pp. 266-287; Ead., "Natural Law and Casuistic Reasoning in Roman Jurisprudence", in Adamson, Peter and Rapp, Christoff (eds.), *State and Nature: Essays on Ancient Political Philosophy*, Berlin, De Gruyter, 2021, pp. 247-266; Ead. "«*Cherchez La Femme*!» Heresy and Law in Late Antiquity", in McKitterick, Rosamond *et al.* (eds.), *The Church and the Law*, Cambridge, Cambridge University Press, 2020, pp. 36-49; Ead., "A New Legal Cosmos: Late Roman Lawyers and the Early Medieval Church", in Linehan, Peter *et al.* (eds.), *The Medieval World* (2nd ed.), London, Routledge, 2018, pp. 653-673; Ead., "Ordering divine knowledge in late Roman legal discourse - University of St Andrews", *COLLeGIUM*, vol. 20, 2016, pp. 160-176; Ead., "Telling Stories about (Roman) Law: Rules and Concepts in Legal Discourse", in Dresch, Paul and Scheele, Judith (eds.), *Legalism: Rules and Categories*, Oxford, Oxford University Press, 2015, pp. 79-104; Ead., "Patristic Sources", in Johnston, David (ed.), *The Cambridge companion to Roman law*, Cambridge, Cambridge University Press, 2015, pp. 97-118.

Among the works that Humfress has edited see Ead. *et al.* (eds.), *Cambridge Comparative History of Ancient Law*, Cambridge, Cambridge University Press, 2024; Ead. *et al.* (eds.), *Being Christian in late antiquity: a festschrift for Gillian Clark,* Oxford, Oxford University Press, 2014; Ead. *et al.* (eds.), *Law and Empire, Ideas, Practices, Actors*, vol. 3, Leiden, Brill, 2013. Professor Humfress is also one of the editors of the important three-volume reference work on political theory: Bevir, Mark *et al.* (eds.), *Encyclopedia of Political Theory*, Thousand Oaks (CA), Sage, 2010.

history of the English common law, a subject of which he is one of the leading international experts. Any student of the history of the common law, and especially of its formative period, would be very familiar with his name.[58]

The reader who continued this ideal tour until reaching the northern part of Scotland would be amply rewarded once arrived at Aberdeen University, home to several of the most significant present-day legal historians in Scotland. One of them is John Ford, Chair of Civil law and a leading authority on early-modern Scots law, as well as on early-modern maritime law in Scotland.[59] Another very significant voice in the legal history com-

[58] Hudson, John G.H., *The formation of the English common law: law and society in England from King Alfred to Magna Carta* (2nd ed.), Abingdon, Routledge Taylor & Francis, 2017; *id.*, *The Oxford History of the Laws of England*, vol. 2, *871-1216*, Oxford, Oxford University Press, 2012; *id.*, *The Formation of English Common Law*, London, Longman, 1996; *id.*, *Land, Law and Lordship in Anglo-Norman England*, Oxford, Oxford University Press, 1994.

Among the works he edited see *id. et al.* (eds.), *Common law, civil law, and colonial law: essays in comparative legal history from the twelfth to the twentieth centuries*, Cambridge, Cambridge University Press, 2021; *id. et al.* (eds.), "'The making of Europe': essays in honour of Robert Bartlett", Leiden, Brill, 2016; *id. et al.* (eds.), *Magna Carta* (3rd ed.), Cambridge, Cambridge University Press, 2015; *id.* and Rodriguez, Ana (eds.), *Diverging paths? the shapes of power and institutions in medieval Christendom and Islam*, Leiden, Brill, 2014; *id.* and Baxter, Stephen (eds.), *Patrick Wormald, Papers preparatory to the making of English Law: King Alfred to the twelfth century: from God's Law to Common Law*, London, University of London Early English Laws, 2014; *id.* and Garnett, George S. (eds.), *Law and Government in Medieval England and Normandy: Essays in Honour of Sir James Holt*, Cambridge, Cambridge University Press, 1994.

[59] Among his books see: Ford, John D., *Law and Opinion in Scotland during the Seventeenth Century*, Oxford, Hart, 2007; *id.*, *The Emergence of Privateering*, Leiden, Brill Nijhoff, 2023; *id.* (ed.), *Alexander King's Treatise on Maritime Law*, Edinburgh, Stair Society, 2018; *id.* (ed.), *Local Customs and Common Laws: Essays on the Law Governing Maritime Commerce in Sixteenth-Century Scotland*, Leiden, Brill, 2024.

Among Ford's many essays, see at least *id.*, "The Law and Economy of Shipwreck in Scotland during the Sixteenth Century", in Simpson, Andrew R.C. and Sunde, Jørn Ø. (eds.), *Comparative Perspectives in Scottish and Norwegian Legal History, Trade and Seafaring, 1200-1800*, Edinburgh, Edinburgh University Press, 2024, pp. 297-321; *id.*, "A Common Lawyer Reflects on Adjudication in a Civil Law Court", in Amend-Traut, Anja *et al.* (eds.), *Urteiler, Richter, Spruchkörper: Entscheidungsfindung und Entscheidungsmechanismen in der Europäischen Rechtskultur*, Cologne, Böhlau, 2021, pp. 141-161; *id.*, "General Average in Scotland during the Sixteenth Century", in P. Hellwege and G. Rossi (eds.), *Maritime Risk Management: Essays on the History of Marine Insurance, General Average and Sea Loans*, Berlin, Duncker & Humblot, 2021, pp. 112-139; *id.*, "Paradigms of Authority in the College of Justice in Scotland", in Rossi, Guido (ed.), *Authorities in Early Modern Law Courts*, Edinburgh, Edinburgh University Press, 2021, pp. 29-49; *id.*, "Adjudication in the Scottish Parliament, 1532-1707", in Godfrey, A. Mark and van Rhee, Remco (C.H.) (eds.), *Central Courts in Early Modern Europe and the Americas*, Berlin, Duncker & Humblot, 2020, pp. 189-224; *id.*, "Control of the Procedure of the College of Justice in Scotland", in Czeguhn, Ignacio *et al.* (eds.), *Control of Supreme Courts in Early Modern*

munity in Scotland who is also teaching at Aberdeen University is Andrew Simpson,[60] whom we have already encountered when looking at the handbooks on Scottish legal history.[61] A further legal historian working in the same University is Thomas Green, whose research filled a significant gap in our understanding of the law in the aftermath of the Reformation, and the interplay between church and state law in sixteenth- and early seventeenth-century Scotland.[62] Yet another scholar that ought to be mentioned in con-

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Europe, Berlin, Duncker & Humblot, 2018, pp. 231-246; *id*., "Some Dubious Beliefs about Medieval Prize Law", in Musson, Anthony and Ramsay, Nigel (eds.), *Courts of Chivalry and Admiralty in Late Medieval Europe*, Woodbridge, Boydell & Brewer, 2018, pp. 215-36; *id*., "Conciliar Authority and Equitable Jurisdiction in Early-Modern Scotland", in Godfrey, Mark (ed.), *Law and Authority in British Legal History, 1200-1900*, Cambridge, Cambridge University Press, 2016, pp. 140-169; *id*., "William Welwod's Treatises on Maritime Law", *Journal of Legal History*, 2013, vol. 34, pp. 172-210; *id*., "Four Models of Union'", *Juridical Review*, 2011, pp. 45-76; *id*., "A Guide to the Procedure of the Admiralty Court", *Scottish Archives*, vol. 18, 2012, pp. 95-107; *id*., "Protestations to Parliament for Remeid of Law", *Scottish Historical Review*, 2009, vol. 88, pp. 57-107; *id*., "The Legal Provisions in the Acts of Union", *Cambridge Law Journal*, vol. 66, 2007, pp. 106-141; *id*., "The Law of the Sea and the Two Unions", *Proceedings of the British Academy*, vol. 127, 2005, pp. 127-141; *id*., "The Lawful Bonds of Scottish Society: The Five Articles of Perth, The Negative Confession and the National Covenant", *The Historical Journal*, vol. 37, 1994, pp. 45-64; *id*., "Stair's title «Of Liberty and Servitude»", in Lewis, Andrew D. E. and Ibbetson, David J. (eds.), *The Roman Law Tradition*, Cambridge, Cambridge University Press, 1994, pp. 135-158.

[60] Simpson, Andrew R.C. and Sunde, Jørn Ø. (eds.), *Comparative Perspectives in Scottish and Norwegian Legal History, Trade and Seafaring, 1200-1800*, Edinburgh, Edinburgh University Press, 2024; Simpson, Andrew R. C., "An Introduction to Scottish Legal Culture", in Koch, Sören and Kjølstad, Marius Mikkel (eds.), *Handbook on Legal Cultures: A Selection of the World's Legal Cultures*, Berlin, Springer, 2023, pp. 919-960; *id*., "The Scottish Common Law: Origins and Development, ca.1124-ca.1500", in Pihlajamäki, Heikki *et al*. (eds.), *Oxford Handbook of European Legal History*, Oxford, Oxford University Press, 2018, pp. 451-474; *id*., "Law and Authority in British Legal History, 1200-1900", in Godfrey, Mark (ed.), *Law and Authority in British Legal History, 1200-1900*, Cambridge, Cambridge University Press, 2016, pp. 85-119; *id. et al.* (eds.), *Continuity, Change and Pragmatism in the Law: Essays in Memory of Professor Angelo Forte*, Aberdeen, Aberdeen University Press, 2016; *id*., "Counsel and the Crown: History, Law and Politics in the Thought of David Chalmers of Ormond", *Journal of Legal History*, 2015, vol. 36, pp. 3-42. See also his several chapters in the recent book that Simpson published with Winfred Coutts and Julian Goodare, *The Compendium of the Laws of Scotland by David Chalmers of Ormond*, Edinburgh, Stair Society, 2023.

[61] Simpson, Andrew and Wilson, Adelyn, *op. cit*.

[62] See *e. g*., Green, Thomas, "Evolution and Varieties of Church Courts and Laws in Reformation Scotland", in Hazlett, Ian (ed.), *A Companion to the Reformation in Scotland, c.1525–1638: Frameworks of Change and Development*, Leiden, Brill, 2021, pp. 397-419; *id*., *The Spiritual Jurisdiction in Reformation Scotland: A Legal History*, Edinburgh University Press, Edinburgh, 2019; *id*., "Early Modern Jurisprudence and Theology", in Fergusson, David, Elliott, Mark W. (eds.), *The History of Scottish Theology*, vol. 1, *Celtic Origins to Reformed Orthodoxy*, Oxford, Oxford University Press, 2019, pp. 328-341; *id. et al.*, *Religion in Scots Law: Report of*

nection with Aberdeen is Alice Krzanich, whose research focuses on the history of contract law with particular emphasis on relating domestic service[63] and the way hurt feelings have been recognised in Scots law.

If not all Roman lawyers in Scotland write only on Roman law, very few in the world could boast the same variety of research interests as Geoffrey MacCormack, surely among the most polyhedric legal historians in Britain and beyond. Among the finest Roman lawyers in Europe, and author of several and truly remarkable contributions, especially on obligations,[64]

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an Audit at the University of Glasgow, Edinburgh, Humanist Society Scotland, 2016; *id*., "The sources of early Scots consistorial law: Reflections on law, authority and jurisdiction during the Scottish Reformation", in Godfrey, Mark (ed.), *Law and Authority in British Legal History, 1200-1900*, Cambridge, Cambridge University Press, 2016, pp. 120-139; *id*., "Romano-Canonical Procedure in Reformation Scotland: The Example of the Court of the Commissaries of Edinburgh", *Journal of Legal History*, vol. 36, 2015, pp. 217-235; *id*., *The Consistorial Decisions of the Commissaries of Edinburgh, 1564 to 1576/7*, Edinburgh, Stair Society, 2014; *id*., "Scottish Benefices and the Commissary Court of Edinburgh: The Example of McGibbon v Struthers", in MacQueen, Hector (ed.), *Miscellany Six*, Edinburgh, Stair Society, 2009, pp. 45-61.

[63] Krzanich's Doctoral thesis was on "Female Domestic Servants and the Law: An Analysis of Gender, Class and the Contract of Service in Early Nineteenth-Century Scotland".

[64] To the point that MacCormack's work may be considered one of the best examples in which German, French and Italian Roman lawyers of the 1960s, 1970s and 1980s positively *had* to read English, instead of the —in those years, far more usual— other way round.

The following is but a short selection among MacCormack's many contributions to Roman law: MacCormack, Geoffrey, "Sources" and "Obligations", both in Metzger, Ernest (ed.), *A Companion to Justinian's Institutes*, Ithaca (NY), Cornell University Press, 1998, pp. 1-17 and 127-207 respectively; *id*., "The actio communi dividundo in Roman and Scots law", in Lewis, Andrew D. E. and Ibbetson, David J. (eds.), *The Roman Law Tradition*, Cambridge, Cambridge University Press, 1994, pp. 159-181; *id*., "Dolus in the Law of the early classical period (Labeo-Celsus)", *Studia et documenta historiae et iuris*, vol. 52, 1986, pp. 236-285; *id*., "Juristic Use of the Term Dolus: Contract", *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte* (Romanistische Abteilung), vol. 100, 1983, pp. 520-532; *id*., "The early history of the 'Actio de in rem verso' (Alfenus to Labeo)", in Pastori, Franco (ed.), *Studi Arnaldo Biscardi*, Milano, Istituto editoriale Cisalpino, vol. 2, 1982, pp. 319-340, also published in *Studia et documenta historiae et iuris*, vol. 48, 1982, pp. 318-367; *id*., "«Iusta' and 'iniusta possessio»", *Tijdschrift voor rechtsgeschiedenis*, vol. 42, 1974, pp. 71-80; *id*., " 'Factum debitoris' and 'culpa debitoris' ", *Tijdschrift voor rechtsgeschiedenis*, vol. 41, 1973, pp. 59-74; *id*. "Custodia and Culpa", *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte* (Romanistische Abteilung), vol. 89, 1972, pp. 149-219; *id*., "The Cautio Damni Infecti: Buyer and Seller", *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte* (Romanistische Abteilung), vol. 88, 1971, pp. 300-321; *id*., "On the Third Chapter of the *Lex Aquilia*", *Irish Jurist*, vol. 5, 1970, pp. 164-178; *id*., "The role of Animus in the Classical Law of Possession", in *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte* (Romanistische Abteilung), vol. 86, 1969, pp. 105-145; *id*., "Formalism, symbolism and magic in early Roman law", *Tijdschrift voor rechtsgeschiedenis*, vol. 37, 1969, pp. 439-468; *id*., "Nexi, Iudicati and Addicti in Livy", *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte* (Romanistische Abteilung), vol. 84, 1967,

MacCormack taught Roman law and jurisprudence for many years in Aberdeen, where he held the Chair of Jurisprudence from 1971 until retirement in 1996, while at the same time writing on the history of (traditional) Chinese law, and becoming an established authority also on this subject.[65]

Not all legal historians in Scotland teach at some institutions of higher education. Among the private researchers who do research truly *artis gratia* I would like to remember at least two: Karen Baston, an expert on early-modern Scottish law libraries,[66] and Charles Fletcher, for his work on heritable jurisdictions in Scotland in the late seventeenth and early eighteenth centuries.[67] A third name of a legal historian not affiliated with any specific academic institution is just impossible to pass, that of Alan Rodger. A student of Daube in Oxford, Rodger became Lord President of the Court of Session in 1996, and five years later he was one of the two Scottish judges sitting in the House of Lords (properly speaking, the Lords of Appeal in Ordinary) and then, from 2009, a judge of the newly-established Supreme Court of the United Kingdom until his untimely death in 2011. While (almost) never holding any formal appointment to any university,[68] the late

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pp. 350-354; *id.*, "Naturalis possessio", *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte* (Romanistische Abteilung), vol. 84, 1967, pp. 47-69.

[65] MacCormack, Geoffrey, "The interplay of fa (law) and ren (benevolence) in the construction and application of the institution of liu yang (remaining at home to support parents)", *Bulletin of the School of Oriental and African Studies, University of London*, vol. 79, 2016, pp. 559-579; *id.*, "Judicial Reasoning in the Southern Song", *Journal of Song-Yuan Studies*, 2011, vol. 41, pp. 107-189; *id.*, "Issues of causation in homicide decisions of the Qing Board of Punishments from the eighteenth and nineteenth centuries", *Bulletin of the School of Oriental and African Studies, University of London,* 73, 2010, pp. 285-310; *id.*, "Liability for Suicide in Qing Law on Account of Filthy Words", *Nan nü*, vol. 12, 2010, pp. 103-141; *id.*, "The rule of law in pre-T'ang China", in *Iuris vincula: Studi in onore di Mario Talamanca*, vol. 5, Naples, Jovene, 2001, pp. 93-117; *id.*, *The Spirit of traditional Chinese law*, Athens (GA), University of Georgia Press, 1996; *id.*, "«Ts'ui Tso so Yu»: A Principle of Causality in Traditional Chinese Jurisprudence", *Irish Jurist*, (1990/1992), vol. 25/27, pp. 194-211; *id.*, *Traditional Chinese penal law*, Edinburgh, Edinburgh University Press, 1990, *id.*, "The Lü hsing: Problems of Legal Interpretation", *Monumenta Serica*, 1986-1987, vol. 37, pp. 35-47; *id.*, "Law and Punishment in the earliest Chinese Thought", *Irish Jurist*, vol. 20, 1985, pp. 334-351; MacCormack, Geoffrey and Feng-Xin, Wang, "The T'ang Code: Early Chinese Law", *Irish Jurist*, vol. 18, 1983, pp. 132-150.

[66] See esp. Baston, Karen, *Charles Areskine's library. Lawyers and their books at the dawn of the Scottish enlightenment*, Leiden, Brill, 2016; Ead. and Cairns, John, *op. cit.*, pp. 179-201.

[67] See Fletcher, Charles, *Justice and Society in the Highlands of Scotland*, Leiden, Brill, 2021.

[68] With the exception of a few (and small) classes on the *lex Aquilia* in Oxford in 2004, after the sudden death of Peter Birks (a lifelong friend of Lord Rodger). Most likely, Alan Rodger agreed to "cover" the rest of the course because of his friendship with Peter Birks and admiration for his work.

Lord Rodger gave distinguished lectures and, especially, wrote extensively on a variety of subjects, from Roman law to the history of Scots law.[69]

[69] The bibliography of Alan Rodger is vast, and the works thereafter mentioned constitute only a part of it. Both their sheer quantity and the high level of refinement and complexity of each of them would be truly remarkable for a full-time academic; for a senior judge, they are simply astonishing. See *e. g.*, Rodger, Alan Ferguson, "James Kemp (Leslie) Ltd v Robertson 1967 SLT 213", *Juridical Review*, 1967, pp. 268-269; *id.*, "The Praetor's Edict and Carriage by Land in Scots Law", *Irish Jurist*, *New Series*, vol. 3, 1968, pp. 175-186; *id.*, "Molina, Stair and the Jus Quaesitum Tertio", *Juridical Review*, 1969, pp. 35–44 and 128-151; *id.*, "Roman Rain-Water", *Tijdschrift voor Rechtsgeschiedenis*, vol. 38, 1970, pp. 417-431; *id.*, "Spuilzie in the Modern World", *Scots Law Times (News)*, 1970, pp. 33-36; *id.*, "Actio Confessoria and Actio Negatoria", *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte* (Romanistische Abteilung), vol. 88, 1971, pp. 184-214; *id.*, "Pledge of Bills of Lading in Scots Law", *Juridical Review*, 1971, pp. 193–213; *id.*, *Owners and Neighbours in Roman Law*, Oxford, Oxford University Press, 1972; *id.*, "D. 35.2.2", *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte* (Romanistische Abteilung), vol. 89, 1972, pp. 344-348; *id.*, "A Note on A. Cascellius", *Classical Quarterly*, vol. 22, 1972, pp. 135-138; *id.*, "Labeo, Proculus and the Ones That Got Away", *Law Quarterly Review*, vol. 88, 1972, pp. 402–413; *id.*, "The Aftermath of Hedley Byrne v. Hellers", *Scots Law Times (News)*, 1973, pp. 109-116; *id.*, "Damages for the Loss of an Inheritance", in Watson, Alan (ed.), *Daube Noster,* Edinburgh, Scottish Academic Press, 1974, pp. 289–299; *id.*, "At Risk: Advocates' Immunity Circumscribed", *Journal of the Law Society of Scotland*, vol. 23, 1978, pp. 463-466; *id.*, "The Palingenesia of Digest 36.2.13", *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte* (Romanistische Abteilung), vol. 98, 1981, pp. 366-368; *id.*, "Good Companion?", *Oxford Journal of Legal Studies*, vol. 1, 1981, pp. 257-264; *id.*, "Emptio Perfecta Revisited: A Study of Digest 18, 6, 8, 1", *Tijdschrift voor Rechtsgeschiedenis*, vol. 50, 1982, pp. 337-350; *id.*, "Behind the Scenes of Roman Law", *Oxford Journal of Legal Studies*, vol. 3, 1983, pp. 382-404; *id.*, "Concealing a Servitude", in Stein, Peter and Lewis, Andrew D.E. (eds.), *Studies in Justinian's Institutes in Memory of J.A.C. Thomas*, London, Sweet and Maxwell, 1983, pp. 134-150; *id.*, "Roman Gifts and Rain-Water", *Law Quarterly Review,* vol. 100, 1984, pp. 77–85; Id. *et al.,* "Further Aspects of the Tabula Contrebiensis", *Journal of Roman Studies,* vol. 74, 1984, pp. 45-73; *id.*, "L. Fufius – Another Undeserving Winner?" in MacCormick, Neil and Birks, Peter (eds.), *The Legal Mind: Essays for Tony Honoré,* Oxford, Oxford University Press, 1986, pp. 185-201; Id., "The Rise and Fall of Roman Lakes", *Tijdschrift voor Rechtsgeschiedenis,* vol. 55, 1987, pp. 19-29; *id.*, "Mrs. Donoghue and Alfenus Varus", *Current Legal Problems*, vol. 41, 1988, pp. 1-22; *id.*, "The Position of Aquae Ductus in the Praetor's Edict", in Birks, Peter (ed.), *New Perspectives in the Roman Law of Property: Essays for Barry Nicholas,* Oxford, Oxford University Press, 1988, pp. 177-184; *id.*, "The Palingenesia of Paul's Commentary on the Actio Aquae Pluviae Arcendae", *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte* (Romanistische Abteilung), vol. 105, 1988, pp. 726-728; *id.*, "The Jurisdiction of Local Magistrates: Chapter 84 of the Lex Irnitana", *Zeitschrift für Papyrologie und Epigraphik*, vol. 84, 1990, pp. 147-161; *id.*, "The Strange Demise of Hyslops v. Gordon", in Gamble, A. J. (ed.), *Obligations in Context: Essays in Honour of Professor D. M. Walker,* Edinburgh, Green, 1990, pp. 1-12; *id.*, "Introducing Iniuria", *Tijdschrift voor Rechtsgeschiedenis*, vol. 59, 1991, pp. 1-11; *id.*, "Marching to an Alien Tune?", *Juridical Review*, 1991, pp. 1-8; *id.*, "The Lex Irnitana and Procedure in the Civil Courts", *Journal of Roman Studies,* vol. 81, 1991, pp. 74-90; *id.*, "The Codification of Commercial Law in Victorian Britain", *Law Quarterly Review*, vol. 108, 1992, pp. 570-590; *id.*, "Lord Macmillan's Speech in Donoghue v. Stevenson", *Law Quarterly Review*, 1992, vol. 108,

The patient reader will forgive another, but last violation of the present-day-scholars rule set at the beginning of this contribution: its breach is necessary to mention another scholar that contributed to the development of

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pp. 236-259; *id*., "The Bell of Law Reform", *Scots Law Times (News)*, 1993, pp. 339-346; *id*., "Roman Law in Practice in Britain", *Rechtshistorisches Journal*, 1993, vol. 12, pp. 261-271; *id*., "Stealing Fish", in Hunter, Robert F. (ed.), *Justice and Crime: Essays in Honour of The Right Honourable The Lord Emslie*, Edinburgh, T&T Clark, 1993, pp. 1-14; *id*., "Labeo and the Fraudulent Slave", in Lewis, Andrew D. E. and Ibbetson, David J. (eds.), *The Roman Law Tradition*, Cambridge, Cambridge University Press, 1994, pp. 15-31; *id*., "Concealing a Servitude. II", *Index. Quaderni Camerti Di Studi Romanistici*, vol. 22, 1994, pp. 237-248; *id*., "The Curious Case of the Missing Mass: The Structure of Digest Title 18.4", *Tijdschrift voor Rechtsgeschiedenis*, vol. 62, 1994, pp. 297-307; *id*., "Scottish Advocates in the Nineteenth Century: The German Connection", *Law Quarterly Review*, vol. 110, 1994, pp. 563-591; *id*., "A Civil Justice System in Motion", in MacQueen, Hector (ed.), *The Cost of Justice*, Edinburgh, David Hume Institute, vol. 43, 1994, pp. 9-17; *id*., "Roman Law Comes to Partick", Evans-Jones, Robin (ed.), *The Civil Law Tradition in Scotland*, Edinburgh, The Stair Society, 1995, pp. 198-212; *id*., "Savigny in the Strand", *Irish Jurist*, vol. 30, 1995, pp. 1-20; *id*., "Jurisdictional Limits in the Lex Irnitana and the Lex De Gallia Cisalpina", *Zeitschrift für Papyrologie und Epigraphik*, vol. 110, 1996, pp. 189-206; *id*., "Postponed Business at Irni", *Journal of Roman Studies*, vol. 86, 1996, pp. 61-73; *id*., "The Use of the Civil Law in Scottish Courts", in Carey Miller, David and Zimmermann, Reinhard (eds.), *The Civilian Tradition and Scots Law: Aberdeen Quincentenary Essays,* Berlin, Duncker & Humblot, 1997, pp. 225-237; *id*., "Vadimonium to Rome (and Elsewhere)", *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte* (Romanistische Abteilung), vol. 114, 1997, pp. 160-196; *id*., "The Form and Language of Legislation", *Rechtshistorisches Journal*, vol. 18, 1999, pp. 601-635; *id*., "Attractio Inversa in the Edict of Augustus from El Bierzo", *Zeitschrift für Papyrologie und Epigraphik*, vol. 133, 2000, pp. 266-270; *id*., "Procurator Restitutus: The Palingenesia of D. 3, 3, 2 and 4", in Manthe, Ulrich and Krampe, Christoph (eds.), *Quaestiones Iuris. Festschrift für Joseph Georg Wolf Zum 70. Geburtstag*, Berlin, Duncker & Humblot, 2000, pp. 207-220; *id*., "The Praetor Hoist with His Own Petard: The Palingenesia of Digest 2.1.10", in Cairns, John and Robinson, Olivia (eds.), *Critical Studies in Ancient Law, Comparative Law and Legal History*, Oxford, Hart Publishing, 2001, pp. 127-141; *id*., "«Say Not the Struggle Naught Availeth»: The Costs and Benefits of Mixed Legal Systems", *Tulane Law Review*, vol. 78, 2003, pp. 419-434; *id*., "What Waldemar Saw: A Young German's View of the Scottish Legal System", in Hoskins, Mark and Robinson, William (eds.), *A True European: Essays for Judge David Edward*, Oxford, Hart, 2003, pp. 11-20; *id*., "Law for All Times: The Work and Contribution of David Daube", *Roman Legal Tradition*, vol. 2, 2004, pp. 3-24; *id*., "Objections and Exceptions: The Palingenesia of D.43.24.17", *Cambridge Law Journal,* vol. 64, 2005, pp. 79-93; *id*., "A Time for Everything Under the Law: Some Reflections on Retrospectivity", *Law Quarterly Review*, vol. 121, 2005, pp. 57-79; *id*., "What Did Damnum Iniuria Actually Mean?", in Burrows, Andrew and Rodger, Alan (eds.), *Mapping the Law: Essays in Memory of Peter Birks,* Oxford, Oxford University Press, 2006, pp. 421-438; *id*., "A Very Good Reason for Buying a Slave Woman?", *Law Quarterly Review*, vol. 123, 2007, pp. 446-454; *id*., "The Palingenesia of the Commentaries Relating to the Lex Aquilia", *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte* (Romanistische Abteilung), vol. 124, 2007, pp. 145-197; *id*., "Civil Justice: Where Next?", *The Journal of the Law Society of Scotland*, 2008, vol. 53, pp. 14-18; *id*., *The Courts, the Church and the Constitution: Aspects of the Disruption of 1843. The Jean Clark Memorial Lectures*, Edinburgh, Edinburgh University Press, 2008; *id*., "Judges and Academics in the United Kingdom", *University of Queensland Law Journal*, 2010, vol. 29, pp. 29-41.

the history of Scots law —David Sellar, a fine legal historian, as well as a great expert in medieval Highland history and genealogy.[70] Sellar was also Lord Lyon King of Arms, the Officer of State responsible for heraldic issues in Scotland. It is worth noting that the Court of the Lord Lyon (a single-judge court) is the oldest heraldic court still functioning today.

Legal history, to paraphrase an aphorism, is too serious a subject to be left to legal historians. In Scotland, this is certainly true more than elsewhere, as the work of many scholars who might not necessarily consider themselves as "pure" legal historians has in fact a profound historical dimension. It suffices to think of comparative lawyers of international renown such as Alexandra Braun,[71] as well as of English common lawyers of the intellectual calibre of David Fox.[72] The same is true for many scholars engaged in Scottish private-law and commercial-law subjects. This is clearly visible, to name but a few, in the scholarship of eminent commercial lawyers such as Laura MacGregor[73]

[70] Some of his most legally-minded articles have been recently re-published together: MacQueen, Hector (ed.), *Continuity, Influences and Integration in Scottish Legal History: Select Essays of David Sellar*, Edinburgh, Edinburgh University Press, 2022.

[71] The significance of legal history in the work of Braun, Lord President Reid Chair of Law at Edinburgh University, may be seen throughout her career, from her most recent and path-breaking monograph (Braun, Alexandra, *Claiming a Promised Inheritance: A Comparative Study*, Oxford, Oxford University Press, 2022) back to her first monograph (Ead., *Giudici e Accademia nell'esperienza inglese: Storia di un dialogo*, Bologna, Il Mulino, 2006).

[72] Chair of Common Law at the University of Edinburgh, Fox is the co-editor of the ponderous and most authoritative work on money history, Fox, David and Ernst, Wolfgang (eds.), *Money in the Western Legal Tradition: Middle Ages to Bretton Woods*, Oxford, Oxford University Press, 2016. Among his monographic studies mention should be made at least of Fox, David, *Property Rights in Money*, Oxford, Oxford University Press, 2008. See also his numerous chapters in McGhee, John (ed.), *Snell's Equity* (33rd ed.), London, Sweet & Maxwell, 2015. On his most legal-historically focused contributions, see esp. Fox, David, "The Anglo-Scots monetary union of 1707", *Edinburgh Law Review*, vol. 23, 2019, pp. 360-387; *id*., "The structures of monetary nominalism in the Pre-Modern common law", *Journal of Legal History*, vol. 34, 2013, pp. 139-171.

[73] MacGregor is Chair of Scots Law at the University of Edinburgh. Among her many contributions see most recently Macgregor, Laura, "Introduction", in Reid, Kenneth (ed.), *Commentaries on the Laws of Scotland and on the Principles of Mercantile Jurisprudence*, Edinburgh, Edinburgh Legal Education Trust, 2024, pp. v-xxxii. To mention only some of the contributions in which the historical dimension of commercial law appears more clearly in Professor MacGregor's work, see *e.g.* MacGregor, Laura, "Agency Law: Continuity and change", in Hutchison, Andrew and Myburgh, Franzyska (eds.), *Research Handbook on International Commercial Contracts*, Cheltenham, Edward Elgar Publishing, 2020, pp. 281-300; Ead., "Partnerships and legal personality: Cautionary tales from Scotland", *Journal of Corporate Law Studies*, vol. 20, 2020, pp. 237-262; Ead., "Empire, trade, and the use of agents in the 19th century: The 'reception' of the undisclosed principal rule in Louisiana law and Scots law", *Louisiana Law Review*, vol. 79, 2019, pp. 985-1043; Ead., "Agency law in the Scottish courts: Time for

and Andreas Rahmatian,[74] as well as of leading private lawyers such as Andrew Steven[75] and Elspeth Reid,[76] and also of many others, including Jonathan Ainslie,[77] Daniel Carr,[78] Graeme Cunningham,[79] Joyman Lee,[80] John Macleod,[81] Dot Reid,[82] and Flora Vern.[83] Yet the significance of legal history in contemporary scholarship in Scottish universities goes even beyond that, as attested, for instance, in the work of some among the most pre-

a broader approach?", *Edinburgh Law Review*, vol. 23, 2019, pp. 94-100; Ead. and Busch, Danny (eds.), *The Unauthorised Agent: Perspectives from European and Comparative Law*, Cambridge, Cambridge University Press, 2009 (within this contribution, see esp. MacGregor's own chapter *Unauthorised Agency in Scots Law*, *ibidem*, pp. 261-299, as well as that written together with Danny Busch, *Comparative Law Evaluation, ibidem,* pp. 385-438); Ead., "Agency and Mandate", *The Laws of Scotland: Stair Memorial Encyclopaedia*, Butterworths and the Law Society of Scotland, 2002, pp. 1-110; Ead., "Pacta Illicita", in Zimmermann, Reinhard and Reid, Kenneth (eds.), *A History of Private Law in Scotland*, *cit.*, vol. 2, pp. 129-55.

[74] Among Rahmatian's works most related to legal history see esp. his monograph on Lord Kames (1696-1782): Rahmatian, Andreas, *Lord Kames: Legal and Social Theorist*, Edinburgh, Edinburgh University Press, 2015. See also *id.*, *Credit and Creed: A Critical Legal Theory of Money*, London, Routledge, 2019; *id.*, *Copyright and Creativity: The Making of Property Rights in Creative Works*, Cheltenham, Edward Elgar, 2011; *id.*, *Der Bereicherungsausgleich in Zessionslagen*, Frankfurt-am-Main, P. Lang, 1996.

[75] Andrew Steven, Chair of Property Law at the University of Edinburgh, is a highly prolific scholar. Among his many works this chapter could not fail to mention his first monograph, in which legal historical analysis emerges most clearly: Steven, Andrew J. M., *Pledge and Lien*, Edinburgh, Edinburgh Legal Education Trust, 2008.

[76] Among many other works, Elspeth Reid is the author of the monumental and recent monograph *The Law of Delict in Scotland*, Edinburgh, Edinburgh University Press, 2022.

[77] See esp. Ainslie, Jonathan, "Intrusion of Privacy and the Actio Iniuriarum", *Juridical Review*, 2023, pp. 139-159; *id.*, "Good Faith and Relational Contracts: A Scots-Roman Perspective", *Edinburgh Law Review*, vol. 26, 2022, pp. 29-50.

[78] Carr, Daniel, *Ideas of equity*, Edinburgh, Edinburgh Legal Education Trust, 2017.

[79] Cunningham, Graeme, "The place of rhetoric in late Republican law: some thoughts on *pietas* and the *querela inofficiosi testamenti*", in Spagnolo, Benjamin and Sampson, Joe (eds.), *Principle and Pragmatism in Roman Law*, Oxford, Hart, 2020, pp. 79-88.

[80] *E. g.*, Lee, Joyman, "Where imperialism could not reach: Chinese industrial policy and Japan, 1900-1940", *Enterprise and Society*, vol. 15, 2014, pp. 655-671.

[81] Macleod, John, *Fraud and Voidable Transfer*, Edinburgh, Edinburgh Legal Education Trust, 2020.

[82] Reid, Dot, "The Doctrine of Presumptive Fraud in Scots Law", *Journal of Legal History*, vol. 34, 2013, pp. 307-326; Ead., "Thomas Aquinas and Viscount Stair: the influence of scholastic moral theology on Stair's account of restitution and recompense", *Journal of Legal History*, vol. 29, 2008, pp. 189-214; Ead., "From the cradle to the grave: politics, families and inheritance law", *Edinburgh Law Review*, vol. 12, 2008, pp. 391-417.

[83] Vern, Flora, *Les objets juridiques: recherches en droit des biens*, Paris, Dalloz, 2020. *Cfr.* most recently Ead., *La propriété et les droits fonciers coutumiers: Étude sur la vivacité de quelques coutumes françaises*, *Lex Electronica*, vol. 29, 2024, pp. 25-50.

eminent constitutional theorists in Great Britain, such as Neil Walker,[84] Stephen Tierney[85] and Adam Tomkins,[86] as well as leading international lawyers such as Nehal Bhuta.[87]

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[84] Walker holds the Regius Chair of Public Law and the Law of Nature and Nations at the University of Edinburgh (the first chair in Law at Edinburgh, established in 1707). He is the author of several monographs, among which see *e. g.*, Walker, Neil, *Intimations of Global Law*, Cambridge, Cambridge University Press, 2014; *id*. and Loader, Ian, *Civilizing Security*, Cambridge, Cambridge University Press, 2007; *id*, *Policing in a Changing Constitutional Order*, London, Sweet & Maxwell, 2000; *id.*, *The Scottish Community Charge*, Edinburgh, Green, 1989. Among his recent contributions see *e. g.*, *id*., "Sovereignty, property and climate change", *Edinburgh Law Review*, vol. 27, 2023, pp. 129-156; *id.*, *The sovereignty surplus*, *International Journal of Constitutional Law*, vol. 18, 2020, pp. 370-428; *id.*, "Populism and constitutional tension", *International Journal of Constitutional Law*, vol. 17, 2019, pp. 515-535; *id.*, "Sovereignty and beyond: The double edge of external constitutionalism", *Virginia Journal of International Law*, vol. 57, 2018, pp. 801-820; *id*., "Federalism in 3D: The reimagination of political community in the European Union", *Catolica Law Review*, 2017, vol. 1, pp. 67-90; *id*., "Postnational cons-titutionalism and the challenge of contested multilateralism", *Global Constitutionalism*, vol. 5, 2016, pp. 308-319; *id*., "Constitutional pluralism revisited", *European Law Journal*, vol. 23, 2016, pp. 333-355; *id*., "Human Rights and Global Public Goods: The Sound of One Hand Clapping?", *Indiana Journal of Global Legal Studies*, vol. 23, 2016, pp. 249-265.

[85] Among the many works of Stephen Tierney, Professor of Constitutional Theory at the University of Edinburgh, mention should be made of some of his monographs where the historical dimension of his analysis emerges more fully: Tierney, Stephen, *The Federal Contract: A Constitutional Theory of Federalism*, Oxford, Oxford University Press, 2022; *id.*, *Constitutional Referendums: The Theory and Practice of Republican Deliberation*, Oxford, Oxford University Press, 2012; *id*., *Constitutional Law and National Pluralism*, Oxford, Oxford University Press, 2005. Among the books he edited see esp. *id*. and Schütze, Robert (eds.), *The United Kingdom and The Federal Idea,* Oxford, Hart, 2018.

[86] Among the more historically-informed of the numerous publications by Tomkins, John Millar Chair of Public Law at the University of Glasgow, see at least Tomkins, Adam and Turpin, Colin, *British Government and the Constitution* (7th ed.), Cambridge, Cambridge University Press, 2011; Tomkins, Adam, "The Role of the Courts in the Political Constitution", *University of Toronto Law Journal*, vol. 60, 2010, pp. 1-22; *id.*, *Our Republican Constitution*, Oxford, Hart, 2005; *id*., "Defence of the Political Constitution", *Oxford Journal of Legal Studies*, vol. 22, 2002, pp. 157-175; *id*., *The Constitution After Scott: Government Unwrapped*, Oxford, Oxford University Press, 1998; *id*., "Inventing human rights law and scholarship", *Oxford Journal of Legal Studies*, vol. 16, 1996, pp. 153-160.

[87] Nehal Bhuta is Professor of International Public Law at the University of Edinburgh, and Co-Editor-in-Chief of the Oxford University Press Series "History and Theory of International Law". A short selection of Professor Bhuta's publications building more on legal history and the history of legal ideas should include at least the following works: Bhuta, Nehal, "A Thousand Flowers Blooming or the Desert of the Real? International Law and its Many Problems of History", in Ando, Clifford *et al.* (eds.), *The Cambridge History of Rights*, vol. 1, *The Ancient World*, Cambridge, Cambridge University Press, 2023, pp. 1-69; *id*., "Recovering Social Rights", *Institute for International Law and Justice Working Paper 2023/1* (History and Theory of International Law Series), available at: *https://www.iilj.org/publications/recovering-*

In July 2023 the University of Strathclyde in Glasgow appointed its first legal historian as a Dean: Adelyn Wilson, a valiant scholar of the history of Scots law, and especially of its early-modern period.[88] In an academic world where legal history faces increasing challenges,[89] this is surely evidence of the good health of the subject in Scotland.

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social-rights/ (last accessed: 28 July 2024), pp. 1-66; *id*., "The State Theory of Grotius", *Current Legal Problems*, vol. 73, 2020, pp. 127-176; *id*., "State Theory, State Order, State System: Jus Gentium and the Constitution of Public Power", in Kadelbach, Stefan *et al.* (eds.), *System, Order, and International Law: The Early History of International Legal Thought from Machiavelli to Hegel*, Oxford, Oxford University Press, 2017, pp. 398-417; *id*., "The Mystery of the State: State Concept, State Theory and State Making in Schmitt and Oakeshott", in Dyzenhaus, David and Poole, Thomas (eds.), *Law, Liberty and State: Oakeshott, Hayek and Schmitt on the Rule of Law*, Cambridge, Cambridge University Press, 2015, pp. 10-37; *id*., "Rethinking the Universality of Human Rights: A Comparative Historical Proposal for the Idea of 'Common Ground' with Other Moral Traditions", in Emon, Anver M. *et al.* (eds.), *Islamic Law and International Human Rights Law*, Oxford, Oxford University Press, 2012, pp. 123-143.

[88] See esp. Wilson, Adelyn, L. M., "Compiling the Scottish 'Practick': the method of Morison's Dictionary", *The Journal of Legal History*, vol. 44, 2023, pp. 159-189; Ead., "Justice and Society in the Highlands of Scotland: Strathspey and the Regality of Grant (c.1690-1758)", *Comparative Legal History*, vol. 10, 2022, pp. 217-221; Ead., "Notaries and advocates in early modern Aberdeen", in Armstrong, Jackson W. and Frankot, Edda (eds.), *Culture of Law in Urban Northern Europe: Scotland and its Neighbours, c.1350-c.1650*, Abingdon, Routledge, 2020, pp. 267-283; Ead., "Men of law and legal networks in Aberdeen, principally in 1600-1650", in *Networks and Connections: Papers of the British Legal History Conference*. Lobban, Michael and Williams, Ian (eds.), Cambridge, Cambridge University Press, 2020, pp. 33-59; Ead., "The transmission and use of the collected legal decisions of Sir Richard Maitland of Lethington in sixteenth- and seventeenth-century Scotland", *The Library*, 2018, vol. 19, pp. 325-359; Ead., "Legal Practice and Legal Institutions in Seventeenth-Century Aberdeen, as Witnessed in the Lives of Thomas Nicolson of Cockburnspath and his Associates", *Journal of Irish and Scottish Studies*, vol. 9, 2018, pp. 93-128; Ead., "The Elchies manuscript and the method of Sir Richard Maitland of Lethington", *Manuscripta: A Journal for Manuscript Research*, vol. 62, 2018, pp. 95-145; Simpson, Andrew R.C. and Wilson, Adelyn L.M., *Scottish Legal History*, *cit*.; Wilson, Adelyn L. M., "The 'authentick practique bookes' of Alexander Spalding", in Simpson, Andrew R. C. *et al*. (eds.), *Continuity, Change and Pragmatism in the Law: Essays in Memory of Professor Angelo Forte*, Aberdeen, Aberdeen University Press, 2016 (a volume of which she is one of the editors), pp. 175-236; Ead., "The textual tradition of Stair's Institutions, with reference to the title «Of Liberty and Servitude»", in MacQueen, Hector (ed.), *Miscellany Seven*, Edinburgh, Stair Society, 2015, pp. 1-124; Ead., "Practicks in Scotland's interregnum", *Juridical Review*, 2012, pp. 319-352; Ead., "Stair and the Inleydinge of Grotius", *Edinburgh Law Review*, vol. 14, 2010, pp. 259-268; Ead., "Stair, Mackenzie and risk in sale in seventeenth century Scotland", *Fundamina: A Journal of Legal History*, vol. 15, 2009, pp. 168-180.

[89] See for all Pihlajamäki, Heikki, "Merging Comparative Law and Legal History: Towards an Integrated Discipline", *American Journal of Comparative Law*, vol. 66, 2018, pp. 733-750.

VII. Conclusions

Legal History is probably one of the subjects in which the tension between "old" and "new" is more visible in the dynamics of many law schools today. The growth of new disciplines, as well as budget considerations, has sometimes pushed for its downsizing in terms of both syllabus taught and staff recruitment. This is especially the case in those countries where higher education receives limited financial assistance from the State, and it has to rely mainly on students' fees. In a market-oriented university system, it is often said, the past has little future. The replacement of Roman law courses with general introductions to the law in some universities seems to attest to this trend.

The traditional argument that knowledge of the past is essential to understand the present might seem a petition of principle, and a weak attempt to defend the *status quo*. Sadly, *historia* has never been *magistra vitae*. Moreover, that argument can easily lead to viewing legal history as ancillary to modern law: the danger of this approach is that legal rules are detached from their (historical) context and analysed as abstract principles. Not only this may easily create a false perception of continuity between Roman law and modern law, but it might even accelerate the demise of legal history as an independent subject in undergraduate teaching. At the same time, however, the interest in legal history remains strong among scholars and, especially, research students —a clear sign of the vitality of the subject. The challenge of legal historians today is probably this: to show that legal history is still a valuable legal (and not merely historical) subject in its own right, which can help in the formation of future lawyers. It is a challenge to be met in both our teaching and research.

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