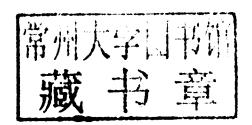# LAND, LAW AND PEOPLE IN MEDIEVAL SCOTLAND

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For Stephen
with love and thanks

Acknowledgments

Scottish earldoms and major lordships, c. 1100–c. 1400

Contents

Introduction

In January 2007 Scottish historians, archaeologists and literary scholars gathered to mark the fiftieth annual meeting of the organisation known as The Scottish Medievalists. The theme of the conference was that of 'renaissances', and several papers explored the ways in which research on the kingdom's past has changed over the previous half century. One of the developments identified as most significant in recent years is the welcome reception that the field of Scottish studies has given to new theoretical paradigms through which to interpret the comparatively limited range of primary source materials that survives from the medieval period. Among the most important of these new perspectives has been the model of thick description, an analytical approach that first animated studies in cultural anthropology and ethnography in the 1970s, then was applied (though not always to acclaim) by other social scientists and humanists.[1] In the last two decades especially the fluidity of disciplinary boundaries within the field of Scottish studies has borne rich and varied fruit. It has opened the way, among other things, to a new kind of 'Celtic' history, one that neither laments a vanished Celtic past, nor celebrates a mythical pan-Celtic British experience. Drawing heavily on the methodologies that inform the 'new' British history, moreover, recent work has sought to compare, contrast and juxtapose the experiences of Scotland with those of Ireland and Wales in the three centuries after 1066, a period that, as Professor Rees Davies argued some years ago, was critical in the construction of the British polity.[2] The efforts of the team that Donald Watt assembled in the mid-1980s to produce a new edition of Walter Bower's *Scotichronicon* have been particularly important in shedding new light on the intricacies of national and historical identity-making in the medieval period,[3] and have in turn made possible a highly sophisticated understanding of the encounter that took place between Gaels and Europeans in the two to three centuries after the death of King Mael Coluim III in 1093.

The 'new' Scottish history has not, however, proven uncontroversial. If there is, by now, some consensus among historians that the settlement of a European aristocracy in Scotland in the twelfth and thirteenth centuries effected profound change to the social, political and religious landscapes of

the kingdom, there is much less agreement about the ways in which the cultures of the native Gaels and the incoming Europeans interacted with and influenced each other. In their efforts to challenge the nineteenth-century paradigm that contrasted Celtic 'barbarism' with European 'civilisation', Scottish historians have formulated several contesting perspectives from which to analyse the interaction of indigenous Gaelic and innovative continental customs, mores and laws. One particularly effective model, that of periphery and core, was first developed in the Scottish context by Keith Stringer as a vehicle through which to understand relations between the crown and its great territorial lords.[4] Another approach has argued for a conceptualisation of the medieval kingdom as a series of interacting 'power centres' from which great lords, including the king himself, actualised political, legal and economic authority in a series of constantly mutating spheres of influence. Although they have examined the topic from different perspectives, scholars interested in this approach have done much to illuminate the complex process by which the multiple estates, thanages and mormaerships of ancient Alba coalesced into the kingdom about which chroniclers such as the authors of the *Gesta Annalia I* and *II*, John of Fordun and Walter Bower could later write so confidently.[5] The work of archaeologists on the material remains of such power centres, moreover, has added breadth and depth to the portrayal of the medieval Scottish state as the culmination of a series of stages that, between the ninth and the thirteenth centuries, profoundly altered 'ideological structures' linking 'the powerful and the subservient'.[6] A firmer grasp of the power structures of the kingdom in this period has led scholars to examine the negotiation, on a regional level, of royal and lordly authority, and detailed examinations of great lordships have highlighted the ways in which medieval aristocrats perceived, conceived and experienced the exercise of political power in territories as far apart as Galloway, the western isles and Moray.[7]

Common to most of these studies is the recognition of the aristocratic household as the nexus between the local world of the lordship and the wider political space of the kingdom. Historians have therefore devoted considerable attention also to the reconstruction of noble affinities, particularly during the period that Geoffrey Barrow long ago dubbed the 'Anglo-Norman era',[8] when the settlement of new families from England and the continent transformed the cultural landscape of Scotland and initiated within the kingdom a rich commingling of the languages and customs of people of Gaelic, Norse, Brittonic, Anglian, English, French and Flemish descent. At the level of the aristocracy the mechanics of these myriad encounters left traces in new patterns of marriage and inheritance, structures of land holding, the exploitation of peasant labour, and practices of

generating and preserving the collective memory of events. All these topics are examined in this volume.

Despite the vigour with which they sometimes delimit, define and defend their theoretical positions, almost all scholars are in agreement in viewing the two and a half centuries after the accession of David I in 1124 as a formative period in the history of Scotland. Most are also of the opinion that the outbreak of war with England in 1296 marked a watershed within this phase of the nation's development, signalling not merely a dislocation of the course of Scottish politics at home and in the wider European sphere, but also a shift in the configuration of the kingdom's legal institutions and in popular and elite manifestations of its cultural heritage. By the year 1400 Scotland had developed a distinct identity within the British Isles, a sense of a past that was neither wholly Gaelic nor self-consciously European.[9] Yet, if there is broad agreement among scholars about the period during which the late medieval Scottish polity took shape, there is still scope for discussion about the relationships among the several ethnic groups that populated the kingdom in the early 'Anglo-Norman era'. Recent arguments aimed at emphasising the uniformity that characterised the political aspirations, economic ambitions and spiritual beliefs of Gaels, Norse, English and Europeans in twelfth- and thirteenth-century Scotland have offered timely warnings against reducing the complexity of the cultural encounter of the period to such simple diachronic models as native 'barbarism' versus European 'civility', conquest versus submission, and active resistance versus passive accommodation.[10]

Too strong an emphasis on cultural harmony none the less runs the risk of effacing the very real and profound linguistic, religious and cultural differences that distinguished the native Gaelic population of Scotland in particular from that of the English and continental newcomers after 1124. Despite the allure of Angevin notions of legal, jurisdictional and political authority, the Scottish crown never lost touch with the Irish past of the kingdom of Alba; indeed, in the thirteenth century literate scholars came to deploy the unique history of the Scottish people as a potent weapon in defence of the independence and sovereignty of the realm.[11] The great Gaelic magnates had even less inclination to divest themselves entirely of their native antecedents and powerful reasons to champion their ethnic identities. Most obviously, their status as mormaers endowed them with incontestable claims to distinction and high honour within their own lands and in the entourage of the Mac Malcolm court. After 1124, moreover, the readiness of the crown itself to accommodate their customs, language and territorial claims promised (and delivered) them an ongoing share in the governance of the realm.[12] Alexander Grant's observation that in Clydesdale

the continuities associated with Scotland's twelfth- and thirteenth-century 'Normanisation' were as significant as the changes, may aptly be applied to the whole kingdom.[13]

In many respects, then, the Scotland of the late fourteenth-century king Robert III was a unique kingdom, with 'hybrid institutions, hybrid law, a hybrid Church, and an increasingly hybrid landowning class'.[14] The chapters in this volume explore, from a variety of perspectives, the encounter between Gaels and Europeans in the kingdom, and the ways in which this hybridisation took shape as the customs and practices of both groups found expression in Scottish legal and social contexts. These studies are based on a close reading of several hundred charters, brieves and other written deeds that survive from the period between 1100 and 1400 from across the length and breadth of the kingdom. Many of these documents have long been available in print in the volumes published by historical and antiquarian societies such as the Maitland, Bannatyne and Spalding Clubs and the Scottish History Society. Others (though far fewer) remain in manuscript form, housed in the collections of the National Archives and the National Library of Scotland. Where it has been deemed appropriate, that is, where the published documents offer reliable transcriptions of the original charter texts, references in this book are made to printed versions. In several chapters the use of Gaelic forms of personal names – or the choice to eschew them – is deliberate, signalling an intention to draw the reader's attention to the different perspectives that native Gaels and European newcomers brought to processes as varied as dispute resolution, boundary marching, estate management and social categorisation.

Twelfth-, thirteenth- and fourteenth-century Scotland was a rich blend of native Gaelic and European influences, where the customs and practices of two very distinct cultures interacted and worked together to shape a unique kind of lordly authority. Part I of this book examines aspects of the relationship between land and law in this period. One of the more interesting manifestations of the blend of 'old' and 'new' is the system of courts that developed in the course of the thirteenth century. Unlike contemporary England, where justice and dispute settlement came under the increasing control of the Norman, and especially the Angevin period crown, the Scottish medieval legal system saw the kings continue to share responsibility for punishing misdeeds and misdoers with their more important subjects, including the great Gaelic magnates who had once enjoyed exclusive responsibility for dispensing justice in the territories of the old mormaerships as heads of extensive kinship networks. The native lords none the less found much to attract them in the broad spectrum of lordly prerogatives of justice that incoming barons introduced to the kingdom from England and

northern France. The first chapter of the book examines the early evidence relating to lordly courts in the late twelfth and the thirteenth centuries, both those of the Anglo-Norman and European newcomers and, more particularly, those of the great native dignitaries. It then explores, compares and contrasts the ways in which native aristocrats adopted and adapted English and European concepts of justice within these courts down to the mid-fourteenth century. A chief focus of the chapter is on the ways in which Gaelic lords used the ceremony and ritual associated with the dispensation of justice to perpetuate – and enhance – uniquely native concepts of lordly authority.

The formal marching of boundaries – perambulation – remained for many years after the accession of King David I in 1124 one of the most important legal procedures at Scottish common law. While the practice eventually declined in importance in England, it retained in Scotland a variety of social and political dimensions, yet it has been the subject of relatively little close scholarly scrutiny.[15] Chapter 2 explores the significance of perambulation in medieval Scottish society. It begins with a brief review of the work that legal historians have done on the origins of the royal brieve that, as early as the reign of David I, initiated as a matter of routine the act of perambulating the marches of an estate. It examines also the steadily increasing popularity of the procedure after 1124, the ways in which it was carried out, and the identity both of the litigants who sought to settle disputes with recourse to perambulation and the witnesses upon whose expertise they depended. Finally, the chapter discusses the act of perambulation within the wider context of the social and cultural history of 'Anglo-Norman era' Scotland, and emphasises the usefulness of treating the process as a lens through which to explore the ways in which the intermingling of Gaelic and European customs shaped the early development of Scottish law.

By the early thirteenth century throughout lowland Scotland, letters, charters, indentures and notifications authenticated with waxen seals had acquired an evidentiary authority that was effecting a profound transformation of legal practice in royal and baronial courts. Increasing reliance on written deeds and personal seals as 'credible media' is symptomatic of a profound shift within medieval culture and the development of what scholars now generally refer to, *pace* Michael Clanchy, as 'trust in writing'.[16] Scottish historians have only recently begun to explore in depth the mechanics of that process as it occurred in Scotland.[17] The first section of Chapter 3 examines the ways in which lay persons became accustomed to using written documents in the important business of acquiring and conveying estates of land and their perquisites. A second section traces the proliferation of seal usage in Scotland. The chronological focus in this chapter is on the century

or so between the accession to the throne in 1124 of David I and c. 1250, by which time there is discernible in Scotland a 'community bound together by a common attitude towards the uses of documents and a shared inter-pretation of certain texts'.[18] Within the mere century and a quarter between these dates, title to property (and its revenues) had become so closely tied to possession of some kind of sealed instrument that in almost all regions of the kingdom there can have been few landholders who were not thor-oughly acquainted with the evidentiary value of written charters. The stages by which medieval Scottish people came to 'develop trust' in documents and in the images impressed on waxen seals offer a unique vehicle through which to trace changing notions of personal and family identity among the landholding ranks.

In Part II of this book the focus shifts to the twin themes of land and people. Chapter 4 offers a study of medieval Scottish landownership at the level of the aristocracy in the context of a single lordship, examined over the *longue durée* of the years 1240 to 1322. Around 1243 the Scottish magnate Malise II earl of Strathearn married Marjory, daughter of Robert de Muschamp, baron of Wooler in Northumberland. The match typifies the social currency that marriage represented to high-ranking families through-out Britain in the mid-thirteenth century, in that it allowed Muschamp to associate himself on equal terms with one of the most ancient and respected Gaelic families in the kingdom, and made it possible for Malise to join the exclusive ranks of the Anglo-Scottish border aristocracy. This chapter reviews the links, familial, social and political, that Earl Malise II (d. 1271) and his son, Malise III (d. c. 1317) forged with the barony of Wooler in Northumberland from the middle years of the thirteenth century down to the severance of that link in the opening decades of the fourteenth. Of especial interest here are the strategies that the father devised for preserv-ing the benefits of English-held property for his kindred as a consequence, and in spite, of the challenges posed by the outbreak of war in 1296. The chapter is grounded in the new (and thoroughly appropriate) emphasis on the wide lens of the aristocratic gaze that scholars such as Robin Frame, Keith Stringer and others have shown is essential to an understanding of the nobility of the period.[19] Medieval magnates were above all driven by a profound preoccupation with the advancement of the family; as one scholar has trenchantly put it: '[k]in solidarities were central in shaping patterns of property, power and violence'.[20] So, too, were they the guiding spirit behind the formulation of noble strategies designed to protect and preserve landed wealth at virtually all costs. The late thirteenth-century wars of independ-ence generated political crises at every level of Scottish society; arguably, nowhere was the uncertainty of these years more acute than among men and

women who had the most to lose. Malise II proved surprisingly successful in planning and implementing strategies for managing his Northumberland estates on behalf of his extended family; his sound work is evident in the relative success of his heirs in navigating the troubled waters of the post-1296 crisis. The achievements of the Strathearn kindred in holding on to their English property stands in vivid contrast to the disasters that befell Earl Malise III and his son in Scotland at the height of the conflict.[21]

Chapter 5 examines the other end of the social spectrum. Current scholarship sheds comparatively little light on the ways in which people who occupied the lowest ranks of Scottish society experienced unfreedom and servility in the period between roughly 1100 and the middle years of the fourteenth century. The precarious nature of surviving source materials has long obscured the meaning of slavery and serfdom in this period and has made it difficult for historians to paint a clear picture of the lot of the poor folk of Scotland. This chapter revisits some of the evidence that scholars have already explored, and several of its arguments echo the conclusions of earlier historians, but it seeks primarily to understand the ways in which the changing economic, political and social landscapes that marked the 'Anglo-Norman era' in Scotland affected people of low social rank, especially native Gaels. Although Archibald Duncan has issued a stern warning against close comparison of any kind between Scotland and Ireland,[22] the argument is made here that the conditions which transformed the social and legal status of a broad spectrum of the indigenous population in Ireland after 1171 were in many respects similar to those which affected peasants in the course of the 'Normanisation' of Scotland. The methodologies and findings of Irish historians are applied to Scottish charter texts in an effort to detect the otherwise muted voices of the tillers of the soil.

Chapter 6 explores the ways in which the methodological and theoretical perspectives of recent scholarship in the humanities and social sciences may be applied to the large body of charter and charter-related source materials that survives from the medieval period. Scottish historians, particularly those interested in the years between 1100 and 1400, have long acknowledged the centrality of written title deeds to the study of the medieval landed elite, and have learned to mine the technical language of these documents to uncover information 'which they were not in the first place designed to provide'.[23] The study offered here examines the concept of friendship (*amicitia*) among the landholding ranks of Scottish society, and shows that despite their limitations charter texts are rich sources for the study of personal relationships in the medieval kingdom. It begins with a brief review of historiographical trends, notably the concept of 'social space', that have deeply influenced recent studies of the European world or Europe and discusses how scholars

have used this paradigm to uncover the complex nature of friendship in the medieval period. The chapter then turns to a study of *amicitia* as it is expressed in extant charter texts from the period 1100–1400. It argues that the *literati* who drafted charters, indentures, notifications and other kinds of written instruments on behalf of noble patrons were very much up to date with, and receptive to, concepts of friendship then current in Europe. Scottish clerks used the terms associated with *amicitia* in a wide range of contexts; chiefly, but by no means exclusively, in the curial setting; moreover, they deployed the language of friendship in thoughtful, articulate and meaningful fashion. In seeking to understand the circumstances in which medieval Scottish clerks, the landholders who employed them, and the people who interacted with them thought about and identified 'friends', the chapter offers still another model by which to analyse the cultural encounter that took place between Gaels and Europeans and a different conceptual framework for evaluating the role that both peoples played in the genesis of a uniquely Scottish, hybrid, society.

The Conclusion, finally, reviews the several themes that run through this book. The particular perspective here is once again that of the British Isles as a whole, the aim being an effort to situate Scottish evidence about land, law and people within a broader geographical context.

NOTES

1. C. Geertz, *The Interpretation of Cultures* (New York, 1973), pp. 3–30.
2. R. R. Davies, 'In praise of British history', in R. R. Davies (ed.), *The British Isles, 1100–1500: Comparisons, Contrasts and Connections* (Edinburgh, 1988), pp. 10–17 and, more recently, R. R. Davies, *The First English Empire: Power and Identities in the British Isles, 1093–1343* (Oxford, 2000), pp. 2–3.
3. B. E. Crawford, 'Introduction', in *Church, Chronicle and Learning in Medieval Scotland: Essays presented to Donald Watt on the Occasion of the Completion of the Publication of Bower's* Scotichronicon (Edinburgh, 1999), pp. 7–8.
4. K. J. Stringer, 'Periphery and core in thirteenth-century Scotland: Alan, son of Roland, lord of Galloway and constable of Scotland', in A. Grant and K. J. Stringer (eds), *Medieval Scotland: Crown, Lordship and Community – Essays presented to G. W. S. Barrow* (Edinburgh, 1993), pp. 82–113; studies applying this model include R. Oram, *The Lordship of Galloway* (Edinburgh, 2000), and R. A. McDonald, 'Matrimonial politics and core-periphery interactions in twelfth- and early thirteenth-century Scotland', *Journal of Medieval History*, 21 (1995), pp. 227–47.
5. Alexander Grant and Dauvit Broun in particular have written at considerable length about the subject; see especially A. Grant, 'The construction of the early Scottish state', in J. R. Maddicott and D. M. Palliser (eds), *The Medieval State:*