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Dugald Dalgetty :
and Scottish Soldiers of Fortune

WHEN Sir Walter Scott began to write the *Legend of Montrose*, his intention was to weave the plot of his novel round the romantic and terrible story of the death of John, Lord Kilpont, at the hands of his friend, James Stewart of Ardvoirlich. Fate, however, was lying in wait for him in the person of Rittmaster Dugald Dalgetty of Drumthwacket, and, as is often the case, the minor character attracted to himself the real interest of the author, and became in a true sense the hero of the story. Hence the romance in its final form is dominated by the personality of a Scottish soldier of fortune of the seventeenth century—a fact for which the writer has been condemned. Quite unjustly ; for the valiant soldado is one of Scott's most happy creations, and even those who grew weary of Dugald's interminable prose must rejoice in the delightful character it reveals. He is such a strange mixture of shrewdness and idealism, of practicality and pedantry, of aggression and caution, of cosmopolitan experience and simple Scottish prejudice, that he provokes our disgust, excites our amusement, and finally earns our respect.

At first we are repelled by his brutality and by the coarse selfishness so strongly denounced by Menteith in the novel. But on consideration we tend to agree with Montrose that 'the dog has good qualities.' He has seen many wars and followed many masters, but he counts none equal to 'the Lion of the North and bulwark of the Protestant Faith,' and as he is quick to point out,

it was only after the death of Gustavus that he left the Swedish host. The ready victory which attended the king's arms, and the consequent booty were, he admits, the principal attractions of the service ; but the 'Protestant Faith' counted for something too, for Dugald quitted the slack and congenial Spanish service on a point of conscience. His conscience, it is true, was a unique machine ; 'I hold it,' he explains, 'to be the duty of the chaplain of the regiment to settle these matters for me . . . inasmuch as he does nothing else that I know of for his pay and allowances,' and he hints that if he had been 'proffered any consideration either in perquisite or pay,' in respect of his damaged conscience, he might have continued to follow the banners of Spain. None the less the root cause of his dissatisfaction was that he was expected to go with his regiment to the mass, and this, as an alumnus of the Mareschal College of Aberdeen, he considered an 'act of blinded papistry,' 'which I was altogether unwilling to homologate by my presence.' Throughout all the vicissitudes of his career, too, he preserved a strict though curious code of honour, the main article of which was steadfast obedience to the hand which paid him. Against the rock of this conviction all Argyll's bribes availed nothing ; and even after the day of Philiphaugh, the captain obstinately refused, at the imminent peril of his life, to enter the service of the Covenanters until his engagement to King Charles was completed. Happily the remaining period was only a fortnight, and when this had elapsed, the stout cavalier became a staunch supporter of the Covenant—nay more, by a marriage with the aged relict of a Mearns Presbyterian, he achieved the supreme end of all his military endeavours—the possession of the barren but ancestral moor of Drumthwacket.

In every aspect of Dugald's conduct appear these quaint contradictions. In action he is bold, resourceful, and above all practical, but in speech he is an incurable bore, whose military skill is veiled in a thick mist of pedantry. When he congratulates Montrose on his victory at Tippermuir, he adds a few words of advice ; while he appreciates the valour of the MacGregors' midnight 'camisade' against the castle of Ardenvohr, he sticks firmly to his view that the correct method of attack would have rested on a skilful use of 'the hillock called Drumsnab' ; even when he is losing consciousness, as the result of a severe wound, his last incoherent murmurings are charged with tedious and unattended counsels. For his horse, while he is living, the captain will risk

his head and even postpone his dinner; but after the faithful animal is dead he proposes to utilise the hide 'to form into a cassock and trousers after the Tartar fashion, to be worn under my armour, in respect my nether garments are at present shamefully the worse for wear.' So are sentiment and practicality blended in the person of Dugald Dalgetty, and the question presents itself: 'Is this character drawn from life, or is he the creation of a romantic fancy?'

The valiant mercenary is such a real figure that it is hard to conceive of him as pure fiction, and as a matter of fact Scott himself tells us that the portrait was sketched from two very famous models—Sir James Turner, who, besides his memoirs, has left us a learned work on the art of war, *Pallas Armata*, and Col. Robert Monro, the title of whose book is too long for repetition.[1] The contents, however, are worth noting; they comprise an account of the author's adventures in the Thirty Years' War, certain pious moralisings thereupon, and a few practical hints upon infantry drill and tactics. Even to the most casual observer it is patent that Scott borrowed extensively from the sources he mentions; not only are many of the incidents related by Dalgetty taken wholesale from the books in question, but the captain himself is a reflection—a rather distorted reflection—of the character which shines through the pages of Monro.

Long before Dugald was created, Turner had examined and rejected the 'method of embattling by the square-root,' and Monro had written his panegyric upon 'the Lyon of the North, the invincible King of Sweden of never-dying memory.' The stories which the captain tells, of the valour of the Irishes,[2] of a long period of sentry-go,[3] of a curious example of the second sight,[4]

[1] Monro, 'His expedition with the Worthy Scots Regiment (called MacKeye's Regiment) levied in August, 1626, by Sir Donald Mac-key, Lord Rhees, Colonell for his Majesties service of Denmark, and reduced after the Battaile of Nerling, to one company in September, 1634, at Wormes in the Paltz,' etc. [London, 1637.]

[2] Monro, ii. 34.

[3] Monro, i. 45, tells us that he stood fully armed in the heat till he was weary of his life, 'which afterwards made me the more strict in punishing those under my command.'

Turner, *Pallas Armata*, 219, considers the kind of punishment prejudicial to the service, and Scott had not, perhaps, read his words, for he makes Dugald boast of his ability to hear best with his eyes closed—'A fashion I learned when I stood sentinel.'

[4] Monro, i. 76.

Monro was wounded at Stralsund, and when his lieutenant-colonel visited him in a state of depression, cheered him up with the story of how Murdo Macleod of

are all culled from the pages of *The Late Expedition*. Dugald, then, is sprung of good parents, and if heredity counts for anything should be true to type, despite the romantic environment of an author's brain. He makes, therefore, an excellent starting point for the examination of a most interesting personality, the Scottish soldier of fortune.

Some allowance, of course, must be made for convention, and certain of the Captain's characteristics may be dismissed as personal idiosyncrasies invented by Scott. The average mercenary was much less comic than Dugald; he did not habitually say 'whilk,' and his appetite was not a matter of such prime importance. Turner, it is true, devotes part of a chapter [book iii. ch. viii.] to a discussion of Proviant and Proviant masters, and Monro in one place (ii. 47) launches into a disquisition upon beers, but both fell far behind Dalgetty in the theory and practice of bodily sustenance. One explanation alone suggests itself—Turner was educated at Glasgow, Monro[1] at St. Andrews, but Dugald's method of dealing with his 'provant' was acquired, as he tells himself, 'at the bursars' table at the Mareschal College of Aberdeen, where, if you did not move your jaws as fast as a pair of castanets, you were very unlikely to get anything to put between them.'[2] This is a triviality, and in any case a composite figure like Dugald cannot present accurately the character of any single one of the soldiers of fortune who abounded in the seventeenth century; none the less, a minute examination will reveal the essential accuracy of Scott's

Assynt predicted the death of Allen Tough, a Lochaber man, and several others, and the wounding of Monro himself. This narrative the wounded hero told 'to make my lieutenant-colonel laugh,' although the prediction had come true in the interim. Another amusing story which Monro told his superior officer on this occasion was that of the Emperor Augustus, who, 'being neere death, commanded that after his decease, all his friends should clap their hands and laugh unfainedly, as the custome was when a comedy was well acted.'

Many other instances could be collected; it is worth noting the very slight alterations made by Scott in the names. *Donald* Tough and Murdoch *Mackenzie* are the names used by Dalgetty.

[1] *Vide* Monro, *Exped.* ii. p. 75. The names of Robert Monro and John Hepburn occur on the matriculation roll of Leonard's College in the University of St. Andrews in 1610 and 1612 respectively. The information on p. 6 of Grant's *Memoirs and Adventures of Sir John Hepburn* is incorrect.

[2] There is a possible explanation of Scott's picture of Dalgetty in the remark made by James VI. to Sir Andrew Gray, a stout old warrior who invariably wore buff and armour in times of peace, and who added to his long sword and formidable dagger a pair of iron pistols. On one occasion 'the king told him merrilie,' he was now so fortified, that if he were but well victualled he would be impregnable. Grant, *Memoirs and Adventures of Sir John Hepburn*, p. 22.

picture, and it is worth while to try to discover the causes which produced this odd type of soldier, with his peculiar code of honour, his peculiar religion, and, above all, his peculiar pedantry.

In order to solve our problem it is necessary to trace the development of the art of war up to the period of the great Gustavus; by so doing we shall not only gain a vivid idea of the meaning of Dalgetty's profession, but we shall find the reason for that pedantry which seems to be the hall mark of the seventeenth-century soldier, and unites in a common bond men of widely varying characters.

The sharp contrast between exact theory and empiric practice, which found itself in so many medieval institutions, was nowhere more marked than in military affairs. Theoretically the empire still remained, but the imperial forces were no longer the ordered legions of triumphant Rome. The emperor could reckon only on the levies, feudal or mercenary, with which his own lands and revenues supplied him, and each national monarch maintained his army by the same methods. In some cases, notably in England, the system was early given a definite form, but the feudal host, even when supplemented by a general levy, was not an efficient fighting machine. Every citizen was a soldier in a sense, but there was a great difference between the amateur peasant and the professional man-at-arms, and the Middle Ages had no very clear conception either of a citizen-soldier or a national army. In short, what really mattered was the feudal cavalry, whose sheer weight bore down the ill-armed infantry of the day, and the great problem which confronted a force deficient in heavy-armed knights was how to stop the overwhelming charge of the opposing horsemen.

Necessity, the great creator, found a way—two ways in fact. The genius of the English discovered that the most splendid of cavalry could be stopped by a line of archers stiffened with dismounted men-at-arms, but, despite the great success of this system, it was never generally adopted, and the formation which won favour on the Continent was that first brought to a definite form by the Swiss, who arranged their infantry in deep masses, and armed them with 18-foot pikes. From such a hedge the boldest horse and the hardest rider must perforce recoil. The French were the main employers of the Swiss mercenaries, and racial antipathy, together with the inevitable jealousy between mountaineers and men of the plain, resulted in the growth of the famous 'Lanzknecht' regiments, whose connection with the imperial service is so well known. The tactics of these men were of the simplest, and their organisation almost non-existent;

the number of men in a company, or companies in a regiment, varied much; the under-officers were elected by the rank and file, and it was the men who tried their comrades' offences. Discipline and drill cannot have been very perfect, and yet the Swiss and the Lanzknechts remained the real military forces of Europe until the victories of Bicocca and Pavia marked the rise of a successful rival—the famous Spanish infantry. The essential merit of this new military system, however, lay in its skilful combination of the pike with the new missile weapon, the arquebus, which, however clumsy, produced a terrible effect upon the thick masses of the Swiss. Even when a series of inventions[1] had produced the musket, however, the fire-arm remained an unhandy weapon,[2] and this fact accounts for a peculiar development in the Spanish drill. The problem was to maintain a continuous fire, and the Marquis Pescara found the solution by teaching his men to fire by successive ranks. That is to say, each rank after it had discharged its volley, doubled round to the rear of the body and reloaded; meanwhile the next rank went through the same operation, until gradually the first rank regained the front. The disadvantages of the system are apparent, but it suffices to note that it involved the retention of deep formations, since the business of reloading was very slow. Still, with all its faults, Pescara's system held the field until the skilful brain of Maurice of Nassau invented a system more exact though still cumbrous, and the Dutch drill became the model for all the world to copy.

During the sixteenth century, then, Europe was dominated by a military system of incredible slowness. The evolutions of great bodies of infantry were necessarily ponderous, and in the meantime cavalry tactics had utterly degenerated. The hopelessness of breaking a battalion of pikes had led to the complete abandonment of shock-action, and a cavalry attack had become a feeble copy of Pescara's infantry drill, in which ineffective pistols were fired by the successive ranks of a long column. In fact the tactics of the day revolved in a vicious circle. The massive stolidity of the foot made a cavalry charge well-nigh impossible, and the slowness of the cavalry alone permitted of the solemn evolutions of the infantry. It is part of Gustavus' claim to fame that he was the

[1] Fortescue, *Hist. Brit. Army*, i. pp. 100, 101.

[2] Grant, *Memoirs and Adventures of Sir John Hepburn*, App. iii., gives an example of some early fire-orders. Thirty-three words of command were required to fire a single shot and make due preparation for the second—this as late as 1627.

author of several notable improvements on the established practice of war; these must now be considered, since their successful application was due in no small measure to the efforts of Scottish cavaliers of fortune. It was Sir Alexander Hamilton of Redhouse, whose sound ideas on the subject of artillery induced Gustavus to adopt wider views with regard to this arm. Turner[1] has a sneer for 'Deare Sandie,' and it is true that the light leather guns he invented, 'Sandie's stoups,' were not strong enough to fire more than a dozen shots, but none the less Hamilton was one of the first men to have a true conception of the use of artillery, and it was his factory at Örebro which produced field-pieces light enough to be distributed regimentally, and capable of being loaded and discharged as quickly as musket.[2] In his use of cavalry Gustavus made no great advance, and to credit him with the rediscovery of shock-action would scarcely be correct; the very fact that he always interspersed 'platoons' of musketeers among his horsemen shows that he did not rely upon the speed and weight of his charge. Still, here too he made improvements by reducing the endless columns of the Reiters to three or four lines, and by teaching his men to ride in and use the sword as well as the pistol. In his dragoon regiments, too, he developed a useful 'M.I.'[3]

It is upon his dealings with infantry that much of Gustavus' reputation rests; yet here too his reforms are to a large extent only modifications of the existing system. He reduced the length of the unwieldy pike from eighteen feet to eleven, and made his battalions much more flexible by limiting their ranks to six. In place of making the musketeers advance rank by rank, he introduced a plan by which each individual man moved forward past the man immediately in front of him,[4] thus avoiding the wholesale movements to the rear, which had been the bane of the Spanish system. He even invented a new formation, the brigade, and Mr. Fortescue (p. 182) credits him with an accurate organisation by which eight companies of 126 men made a regiment, and two regiments a brigade. Here the historian assigns to Gustavus a too great accuracy. It can be proved that a brigade did not necessarily include two regiments; sometimes it includes as many

[1] Turner's *Memoirs*, p. 23.

[2] Cf. Monro, *Exped.* ii. p. 1; Fortescue, *Hist. Brit. Army*, i. 184; Fischer, *Scots in Germany*, p. 109. [See *Pallas Armata*, p. 228, for place of field pieces in marshalling a brigade.]

[3] Mounted Infantry.

[4] Monro, *Exped.* p. 185.

as four,[1] and while there is evidence to show that it consisted of twelve companies, it is astonishing to notice that these lesser units disappeared entirely when incorporated in the brigade. Each company consisted of 72 musketeers and 54 pikemen, and in forming the brigade was at once resolved into its component elements. The pikes were massed in three squadrons of 216 men each, but the musketeers fought in multiples, not of 72, but of 48, so that the integrity of the individual company was completely sacrificed.

A modern tactician would not approve of breaking up his companies in order to draw up his battalion for action, but Gustavus' method had its advantages. The essential feature of the brigade was that the central body of pikes was pushed out in front of the two wings, thus leaving two 'sally ports,' as Turner calls them; many of the musketeers were used to flank the pikes, but there was always a considerable surplus, and through the two sally ports there passed an endless stream of musketeers, whose fire produced a terrible effect on the thick masses of the opposing infantry as it advanced to the attack.

Such a system demanded a good drill, and Gustavus' discipline was excellent; clumsy as his methods appear, they were far in advance of those of his rivals, and his superiority did not confine itself to mere drill. The Lion of the North was the first to leave a sufficient space between his two lines of battle, and the first consistently to employ a reserve; he understood the value of entrenchments, and, greatest of all, he perceived the advantage of rapidity. It is astonishing to note how much of Germany was covered during the two years of Gustavus' campaigns. Such, then, were the

[1] The composition of a brigade is mysterious. Monro, *Exped.* ii. 183, tells us it consists of 12 companies, and a company was 126 men (*Pallas Armata* makes it only about 100, p. 217). Consequently a brigade could only be about 1500 men. *Pallas Armata* notes that many of the Swedish brigades were no less than 1800 strong, p. 228. According to Mr. Fortescue, a brigade could muster 16 companies of 126 men, making a total of 2016 men, and Lord Reay, about 1632, gave to the 'Swedish Intelligencer' a scheme which showed how 2016 men made a brigade of 12 companies. This would make a company consist of 168 men, and there is no evidence that this was so, though it is curious that 168 men, if pikes and muskets were in the proportion of 3 to 4, would make 96 the unit of musketeers, a figure which agrees well with the platoon of 48. At first there were four regiments in the Green Brigade (Monro, ii. 25), but later it appears to consist of two only, Monro's and Spens' (Monro, ii. 108, 125, 159, 171), and on pp. 113-4 (Monro, ii.) we find two other Scotch regiments referred to as a brigade. Seeing that, at a later date, there was no fixed number of companies in a regiment (*Pallas Armata*, 222), it seems idle to insist too strongly on any definite formula for a brigade, and indeed its strength was not fixed at all (*Pallas Armata*, 230).

conditions under which Dugald Dalgetty learned his profession. But what was Dugald doing in Germany?

> 'It was a' to seek his fortune in the High Germanie,
> To fecht the foreign loons in their ain countrie.'

A poor land, whose resources were all too slender even for her scanty population, Scotland was the natural mother of the soldier of fortune. 'Much can be done with £300, especially if one goes among the English,' says a modern authority; the younger son of an old Scots family did not necessarily inherit even £300 (Scots), but he had a fair supply of bone and muscle, a passable education, a useful if not a brilliant sword, and 'a guid conceit o' himsel'.' Armed with these assets he set forth to carve his fortune, not only among the English, but in any country where he could follow his trade of war.

By virtue of the 'Auld Alliance' France had received the main stream of these adventurers, and the history of the Garde Ecossaise is both long and honourable. Various causes, however, among which the Reformation is the outstanding, tended to direct the current to other quarters. Scotsmen fought against the Spaniards in the Low Countries, and the outbreak of the 'Thirty Years' War' provided a still larger field for the warlike activities of our race. The Protestants were the chief gainers, and when Christian IV. made his luckless gamble on German soil, a part—and perhaps the most efficient part—of his army was formed by a regiment raised by Sir Donald Mackay, afterwards Lord Reay. Meanwhile a firm connection had been established between Scotland and the Baltic, where Sweden, engaged in her desperate struggle for expansion, found it impossible to supply from her own children the necessary armies, and the two streams met when Gustavus Adolphus, urged by national ambition and Protestant faith, led his hosts forward to play their distinguished part in the 'Thirty Years' War.'

It was in the Swedish army that the true Dugald Dalgetty was made. Monro himself is an excellent type, and a study of his history will introduce us not only to the first parents of a distinguished regiment, but also to many of the colonel's brothers-in-arms, whose feats are much more celebrated than his own. Monro served his military apprenticeship in France, and having obtained a captaincy in Mackay's regiment (August, 1626) took part in some desperate fighting in the campaign of Holstein. The regiment covered itself with glory, and casualties were many,

with the result that Monro became a Major before the year was out. One episode will paint the scene for us. During Christian's retreat the regiment had held with great daring the Pass of Oldenburg, and gained as its reward the privilege of being marched off first.[1] They reached the coast in safety, but whilst they were waiting for shipping, the pier was occupied by undisciplined horsemen,[2] 'who ever begin confusion,' and so, says Monro, 'I asking my colonells leave drew our whole colours in front and our pikes charged after them, our musketiers drawne up in our reare by divisions, fortifying our reare in case the enemy should assault us in our Reare, and then . . . we cleered the peere of the horsemen.' So the regiment came off, bringing many of its sick and wounded with it, and the rest of the mercenaries made a base surrender, and for the most part took service with Tilly. The whole proceeding seems cold-blooded enough, but on the other hand it must be remembered that the Scots had borne the brunt of the action, whereas the Germans[3] had demanded pay before going on service, and that, after all, their escape was due to the discipline which they alone preserved.

It was in the service of Christian that Major Monro went with his men to the defence of Stralsund, but before that siege was ended he had found another master, and Germanic Protestantism a new defender in the person of Gustavus Adolphus. Wallenstein had sworn to take Stralsund,[4] 'though it were hanging in iron chains betwixt the earth and the heavens,' but he was balked of his purpose, and the honours of the defence are with Alexander Leslie, later Earl of Leven. Monro meanwhile had become Lieutenant-Colonel, and as Lord Reay had returned to Scotland, he seems to have virtually commanded the regiment, though it was not till August, 1632,[5] that he gained the full rank of Colonel. Along with three other Scots regiments his men were formed by Gustavus into the Green Brigade, and put under the command of Sir John Hepburn,[6] a distingushed soldier who had been Monro's

[1] Monro, *Exped.* i. p. 19. [2] *Ibid.* p. 27. [3] *Ibid.* p. 24.
[4] *Ibid.* p. 67. [5] *Ibid.* ii. p. 146.

[6] See Grant, *Memoirs of Sir John Hepburn.* The name James Ramsay occurs on the roll of Incorporations in the College of St. Leonards at St. Andrews in 1601, and again in 1602, and a James Ramsay graduated in 1605. Whether either of these entries refers to the hero of Hanau is uncertain ; many representatives of the Ramsay family were students at St. Andrews, and as Sir James appears to have been born in 1589, he would begin his university course (if he had one) about 1601 or 1602. Certainly he was a man of culture.

fellow-student at St. Andrews. This corps remained with the King from the moment of its formation (at Schwedt on the Oder) until just before the battle at Lützen, when, after having been sadly mauled at Nürnberg it was detached along with other troops to observe Bavaria. Although we read of many other Scots regiments, and although the composition of the Green Brigade varies a good deal, Monro always considers it as pre-eminently the Scots Brigade. Latterly it appears to have consisted only of Mackay's and Spens' regiments, and after the fiery Hepburn had quarrelled with Gustavus and departed to take service with France, it seems to have been commanded by Monro himself. After Gustavus' death Monro remained for a while in Germany, but his shattered regiment, even when strengthened by the remains of his dead brother's command, was so weak that he returned to Scotland to recruit. Hence he was not present at the disastrous battle of Nördlingen, where the Protestant cause was lost in South Germany, and where his regiment was reduced from about 1800 men to the strength of one company. This poor remnant was incorporated with the survivors of the other Scottish regiments, and after fighting under Bernhard of Saxe-Weimar, passed with the rest of that leader's army into the service of France, where the Scots, under the valiant Hepburn, gained fresh honours, and disputed, though without justice, the precedence of the regiment of Picardy. The seniority it failed to establish in France, it gained in Great Britain, however, for from the old 'Regiment d'Hebron' is sprung the gallant 'Lothian Regiment,' better known as the Royal Scots.[1]

[1] Fortescue, *Hist. Brit. Army*, i. p. 190; Mackay, *An Old Scots Brigade*, pp. 193, 195. In connection with the descent of the Royal Scots from the 'Regiment d'Hebron' occurs the interesting question as to whether this regiment has preserved the 'Old Scots March' which was so famous in Germany that on one occasion the Germans played it to frighten their foes (Monro, ii. 113). Fischer states that the Old Scots March 'was composed in 1527 for the Old Guard of King James V' (*Scots in Germany*, p. 80 n.), but Sheriff Ferguson has produced evidence to show that an old Scottish march was known in France long before this period, and that the air of this march is practically that of 'Hey, Tuttie, Taittie,' the traditional march of Bannockburn (*Scotsman*, July 14, 1913). It is certain that each nationality had its own peculiar air, and that the old military marches were generally slow. One gets the impression too that they were primarily drum marches. The Royal Scots at the present day march past to 'Dumbarton's Drums,' a tune which takes its name from George, Earl of Dumbarton, who was Colonel from 1653 to 1688. It is certain that the regiment played 'The Old Scots March' as late as 1679, but it is not clear whether there is any relation between the Scots March and Dumbarton's Drums. The matter is to be

It would be a long task to enumerate the Scottish officers whose fortunes were founded on their services in the Thirty Years' War. The Leslies, Alexander and David, are, perhaps, the best known; but tribute must be paid to Sir James Ramsay,[1] because his valiant deeds, especially in the defence of Hanau, and his tragic fate captivated the mind of literary Germany, so that he survives as the hero of many a romantic tale. Not all Scots, however, were as devoted as Monro and Ramsay. Sir Patrick Ruthven[2] was a very capable officer, but he appears to have been somewhat of a self-seeker, and his love of the bottle led to his nickname of Rotwein. Coarse and ungrammatical though he was, he was efficient, and so too was General King,[3] whose endless complaints and demands show him to have been both assertive and rapacious.

There is evidence to show that the Scots were sometimes cruel officers,[4] who beat the young levies almost to death, and it is certain that many of them were bent on making their fortunes at all costs, but none the less it is with pride that Scotsmen think of a period when names like Spens, M'Dougall, and Forbes,[5] were great in Germany, and when the pipe and probably the kilt[6] too had carried the fame of the nation to the heart of Europe.

When we cease to regard individual cases, and to look for the main characteristics of the Scottish mercenary, we shall find that, in nearly every case, he may be credited with courage and pride. The storming of Frankfurt[7] and the capture of Würzburg[8] are testimonies to the valour of the Scots, and it is with truth, as well as with a bitter pride, that Monro tells us that the Scots were given the place of danger 'according to custome.'[9] The worthy

discussed in the forthcoming *Royal Scots Regimental History*, and as an MS. score dating from the seventeenth century has now been found, the question should at last be capable of settlement.

[1] For a brief account of this 'Son of Mars and the Muses,' as Grotius called him, see Fischer, *The Scots in Germany*, p. 93, and *The Scots in Sweden*, p. 115, and Lord Hailes' *Life*.

[2] Fischer, *The Scots in Germany*, p. 107, and *The Scots in Sweden*, p. 102, and *Ruthven Correspondence* in Roxburghe Club's publications.

[3] For King, see Fischer, *Scots in Germany*, p. 99; and *Scots in Sweden*, p. 93 and pp. 111-116.

[4] Fischer, *Scots in Sweden*, p. 107. [5] See Fischer's *Works*, *passim*.

[6] An interesting print, showing a dress very like the kilt, is published by Mackay in *An Old Scots Brigade*. Turner mentions the pipe, but prefers the Almain whistle (*Pall. Arm.* 219).

[7] Monro, *Exped.* ii. p. 33. [8] *Ibid.* ii. p. 79. [9] *Ibid.* ii. p. 120.

colonel is far from being blate, and indeed one of his remarks is typical of his profession. The resplendent Saxons, he tells us, looked with scorn upon the tattered army which followed Gustavus, 'how-beit we thought not the worse of ourselves,'[1] and he points his moral with the account of the battle of Leipzig, where 'it was the Scots Briggad's fortune to have gotten the praise for the foot-service;[2] and not without cause.' This complacent attitude reveals itself in another characteristic to which allusion has already been made. If we may judge by Monro and Turner, the Dugald of the flesh was almost as great a pedant as the Dugald of the novel. The pages of *The Late Expedition* abound in classical allusions and citations, and the author of *Pallas Armata* thought it necessary to examine at great length the military discipline of the Grecians and the Romans as a kind of 'Einleitung' to a discourse on the 'Modern Art of War.' One is tempted to explain this phenomenon by the fact that in those days Germany was the great school of the science, but the real cause is rather different. The practical necessities of war had led to a development of deep formations precisely at the time of the Renaissance, when men's minds were definitely turned upon the models of classical antiquity. Machiavelli was swift to notice the resemblance between the Swiss battalion and the Macedonian phalanx,[3] and the practical soldier began to study the theory of his art in the old text-books. Aelian's *Book on Tactics* was dedicated to the Emperor Hadrian, and Vegetius' treatise, *De Re Militari*, to the Emperor Valentinian III.;[4] neither, therefore, could be regarded as a modern book even in the sixteenth century, and yet both were read with avidity.[5]

No military education was complete unless it included a knowledge of the evolutions of the phalanx, with its sixteen ranks and its three types of counter-march.[6] Nor could the student consider

[1] Monro, *Exped.* ii. p. 62. [2] *Ibid.* ii. pp. 66-7.

[3] Fortescue, *Hist. Brit. Army*, i. 106.

[4] See Bury's *Gibbon*, vol. iii. p. 187 note. Vegetius cannot have written later than 450 A.D.

[5] Especially Aelian. Captain John Bingham translated the *Tactica* in 1616. Vegetius has found many detractors (Dillon's *Translation of the Tactica*, p. 208). Turner, however, defends him (*Pallas Armata*, p. 39). Both books will be found in several editions in most libraries which lay any claim to antiquity. A discussion of the classicism in military affairs is found in Fortescue, *Hist. Brit. Army*, i. pp. 166-7.

[6] *Pallas Armata*, pp. 10, 11. Monro, *Exped.* ii. pp. 188-9.

himself well equipped until he had mastered Vegetius' precepts on the 'castrametation of a consular army'[1] and similar topics. In an age when the gentleman's son usually went up to the university in his early teens, a classical education was not inconsistent with the profession of arms; and Monro and Turner, practical soldiers both, are evidence that even the hard experience of war was powerless to break the authority of tradition. The former, for example, while he condemns the counter-march, describes it fully, and suggests in its stead the adoption of a wheel, a difficult evolution already described by Aelian under the title 'perispasmus.[2] Turner, too, gives full details of a drill he denounces as useless, and does not even reject the principle of 'embattling by the square root' without a long enquiry and a few extra arithmetical refinements of his own invention.[3] All this seems vain enough, but it is to be remembered that, when in 1814 Viscount Dillon translated the *Tactica*, he did so expressly for the benefit of the young officer, and indeed as long as fighting was conducted in close order and at short ranges a complicated drill was almost sure to result.[4]

Scott then was quite correct when he made Dugald a university man and a bit of a pedant, for the mercenary of the seventeenth century was a highly theoretical soldier who took a real pride in his profession. In the case of Monro this pride revealed itself not only in a didactic manner, but in a very pleasant generosity towards his brothers in arms. He is not only delighted at the professional successes gained by his fellow Protestants, but he expects his opponents to make a creditable exhibition. He is ashamed[6] of his enemy on one occasion, and he is loud in the praise, not only of Scots[6] who fought upon the other side, but of Pappenheim[7] himself. Even to the ruthless Tilly he pays a magnificent compliment,[8] 'and my wish were,' he says, 'that I might prove as valiant in advancing Christ's kingdom, though I should die in the quarrel, as he was forward in hindering of it; my death then

[1] *Pallas Armata*, p. 121. [2] Dillon's *Translation of the Tactica*, p. 122.

[3] *Pallas Armata*, p. 266.

[4] When fighting is at close range, tactics to a certain extent take the place of strategy; that is to say, a general may rely upon deceiving his enemy by the nature of his formations more than by use of rapid marches, land features, and so on. Some of the similarities between the classical and medieval systems may have been the result of common experience rather than of imitation.

[5] Monro, *Exped.* ii. pp. 14, 19, 20, and 40.

[6] *Ibid.* i. pp. 11, 14, and ii. p. 145. [7] *Ibid.* ii. p. 137. [8] *Ibid.* ii. p. 118.

should not be bitter to my friends, I leaving an immortal name behinde me.' This religion of Monro's is no mere verbiage ; it entered into all his soldiering. He had no doubt that he was fighting in the cause of God, and that those who laid down their lives for the sake of Protestantism would 'ride triumphing' with the saints in glory. It is true that he was a mercenary, and that he passed unconcernedly from the service of Denmark to that of Gustavus, but he remained true to the faith that was bred in him, and his beliefs were not a matter for the chaplain of the regiment. In his pedantry and his Scottish prejudice he resembles Dalgetty, otherwise he is cast in a far finer mould.[1] Was the novelist then in error, when he made the ties of religion lie so lightly on the soldier of fortune ? Assuredly not, for, apart from the fact that many of Monro's contemporaries fell far short of him in virtue, the Thirty Years' War became steadily less moral. Dugald, whilst he lost his Scottish prejudices, lost also his fervent religion, and Sir James Turner puts the matter plainly when he tells us that he 'had swallowed without chewing, in Germanie, a very dangerous maxime, which militarie men there too much follow ; which was, that so we serve our master honnestlie, it is no matter what master we serve.'[2] None the less the earlier type seems to have survived in a few instances, and a conspicuous example is found in Major-General Mackay,[3] who is best known as the commander routed at Killiecrankie. He has, however, other claims to remembrance, for his character reveals many of the traits of the old-fashioned soldier of fortune. In him are united both the pedantry which applied to a Highland war the strategy of the Low Countries, and the practicality which discarded the clumsy plug-bayonet.[4] He has lost his national prejudice, it is true, for he tells us that he preferred 'the English commonality . . . in matter of courage to the Scots,'[5] and that he looked on his compatriots 'as void of zeal for their religion and natural affection' ;[6] but he himself keeps a

[1] Monro's conduct in Ireland seems to cast doubts on his merit as a soldier, but Turner's account is perhaps scarcely just to him ; and the troops he had were bad as a rule. On the whole, his own writing seems to reveal a character such as is described above.

[2] Sir James Turner's *Memoirs*, p. 14.

[3] Mackay's *Memoirs* (Bannatyne Club, 1883) are the best source of information.

[4] Fortescue, *Hist. Brit. Army*, vol. i. p. 343. [5] Mackay's *Memoirs*, p. 59.

[6] *Ibid.* p. 77. Still there is evidence that then Monro was to some extent denationalised. He at one time wanted to command strangers rather than Scots (Monro, *Exped.* ii. p. 146), and Turner did not approve of the bag-pipe (*Pallas Armata*, p. 219).

firm hold upon his faith—'the piousest man I ever knew,' says Bishop Burnet. At the close of his book upon the rules of war is found a section urging the propriety of prayer before the commencement of an action, and the form of supplication he suggests[1] lacks neither strength nor beauty. His deep religion revealed itself not only in prayer but in a high conception of duty, and the man's death is very typical. He had told Count Solmes that the assault on Steinkirk could, under the circumstances, result only in a waste of life, but the sulky general replied with the order to advance. 'God's will be done,' said Mackay,[2] and he was among the first to fall upon that red day when Dutch strategy was vanquished and British valour gained an immortal crown. He, however, was something of a rarity; with him old Dugald Dalgetty was fallen, and the highly professional, and rather non-moral Sergeant Scales arose in his stead. The wars were no longer wars of religion; they had become wars for territory and trade.

Much has been said of the Scottish officer abroad; what of the rank and file? It is hard to say exactly how many Scots served in the army of Gustavus, because in regiments professedly Scottish were found representatives of many other nationalities. Fischer supposes[3] that the greatest number fighting at the same time under the Swedish banner would be between six and eight thousand. These figures, of course, represent but a small proportion of the total number of men who actually left Scotland—a number hard to guess,[4] for each successive levy was speedily visited by death in every form. Battle, fever, massacre, shipwreck and exposure soon thinned the ranks, and there was always room for the new blood provided by the great recruiting sergeant Ambition, and by his humbler assistants Press-gang and Gaol-delivery.[5]

The road of empire, it is said, is white with dead men's bones, and to the countless adventurers who died unknown in Germany is due the tribute of an honourable memory. For empire, rightly

[1] Mackay's *Memoirs*, Intro. p. xvii.

[2] Fortescue, *Hist. Brit. Army*, i. p. 366.

[3] Fischer, *Scots in Sweden*, p. 91. Mackay, in *An Old Scots Brigade*, p. 125, mentions 13,000 British soldiers, of whom most were Scots. The authority he quotes mentions only 10,000 in all, p. 193. He speaks of 13 regiments of Scots; but there is no proof given that all served at the same time.

[4] Lord Reay himself sent upwards of 10,000 men. Mackay, *An Old Scots Brigade*, p. 200.

[5] Mackay, *An Old Scots Brigade*, p. 5; Fischer, *The Scots in Sweden*, p. 77.

understood, is a thing of the spirit, and the tradition of Great Britain owes no small debt to these old mercenaries. They were greedy and pedantic, but they were also brave and efficient, and in their own way honourable too. And this is, after all, the view which was taken by Sir Walter Scott when he drew his immortal picture of Captain Dugald Dalgetty.

J. D. Mackie.

The Royal Commission on the Ancient and Historical Monuments and Constructions of Scotland

IT was a matter of congratulation that his late Majesty, King Edward, appointed Sir Herbert Eustace Maxwell, Baronet, President of the Society of Antiquaries of Scotland, together with 'several other persons therein mentioned[1] to be Commissioners to make an Inventory of the Ancient and Historical Monuments and Constructions connected with or illustrative of the contemporary culture, civilization and conditions of life of the people in Scotland from the earliest times to the year 1707.'

The Commission was appointed on the 7th February, 1908, and all its members were selected for their special knowledge of one or more of the departments into which Scottish antiquarian remains fall to be classified. We cannot, however, forbear to notice Sir Herbert Maxwell's pre-eminent fitness to be chairman of the Commissioners; indeed, few among Scottish antiquaries can lay claim to be so conversant as he with the multifarious objects and problems which come up for discussion at their meetings. His works on the topography and place-names of Galloway, the early Chronicles relating to Scotland, the history of Dumfriesshire and Galloway, together with numerous contributions on antiquarian topics to societies, are widely known and show that the range of his researches embraces even the most obscure phases of Scottish archaeology. It may not, however, be as widely known that, for many years, in his capacity as Secretary to the Ayrshire and Galloway Archaeological

[1] The other members of the Commission are: The Honourable Lord Guthrie, Professor Baldwin Brown, Professor T. H. Bryce, M.D., F.R.S.E., Francis Christian Buchanan, Esq., W. T. Oldrieve, Esq., Thomas Ross, Esq., and A. O. Curle, Esq., W.S., Secretary. In August, 1913, Mr. Curle resigned the office of secretary, on his appointment as Director of the National Museum of Antiquities, and was appointed an additional Commissioner. Mr. William Mackay Mackenzie was then appointed secretary to the Commissioners.

DUNDRENNAN ABBEY: SOUTH TRANSEPT

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Association, he devoted much of his time and energy to practical archaeology, which he rigorously prosecuted with pen, pencil and spade. With the Dowalton crannogs on his own property, and being an eye-witness of the operations which brought them to light, he has ever since taken an active interest in that class of remains. Moreover, he was in those days a keen collector of relics, and amassed a large and valuable collection which, a few years ago, he presented to the National Museum of Antiquities in Edinburgh. (See *Proceedings of the Society of Antiquaries of Scotland*, vol. xxiii. p. 142 and p. 200.)

Mr. Curle, who, as secretary, became chiefly responsible for the necessary field work, entered on a congenial task, being an ardent antiquary from his youth. The result of his labours, as shown in the compilation of the five Reports and Inventories issued during the time he was secretary to the Commission, amply justifies the opinion, then entertained by his friends with regard to his appointment, that he was the right man in the right place.

At the outset, perhaps, the most intricate problem the Commissioners had to solve was the precise *modus operandi* by which the special inquiry entrusted to them could be most efficiently carried out. The archaeological materials, which from time to time had to come under their purview, were scattered over that considerable portion of Britain now known as Scotland, but which formerly was divided into a few provinces, mostly inhabited by different races; and their chronological range extended so far back into the dim vista of prehistoric times that the civilizations, which obtained at the distal and proximal ends of that long period, differed as much from each other as a primitive dug-out differs from a modern man-of-war. The Stone-Age man worked with a kit of tools improvised out of stone, bone or horn; so that his handicraft products have but a faint resemblance to those manufactured in later ages, when these primitive tools and weapons had been superseded by cutting implements made of metals. Thus, the relics and structural monuments of the Neolithic Age are so different, in material, technique and execution, from those, say of medieval times, that it is rare to find among archaeologists one who has made a special study of the contemporary antiquities of these two stages in Scottish civilization. Moreover, inhabited sites, with remains characteristic of these stages, may often require different authorities to decipher the full meaning of their contents. For example, the contents of an ordinary sepulchral mound, containing a human skeleton,

pottery, implements and ornaments, have to be submitted to special experts in order to ascertain their precise archaeological value in illustrating contemporary social life and industries.

Then, again, the field of operations may be said to be literally strewn with the more or less fragmentary relics of the arts, industries and customs of the different races who formerly inhabited the country, often without any stratigraphical indications of their age. Some date back to a time when the fashion which called for their construction may have become obsolete; or their special function may have been forgotten, owing to subsequent improvements and innovations arising out of the demands of a progressive civilization. Others, especially architectural remains, come down to the various stages of the historic period—in which case their age may be more precisely determined by references made to them in the early chronicles and historical annals. But, notwithstanding all the information hitherto derived from these contemporary sidelights, the *raison d'être* of many of them still remains doubtful. An earthwork may have been constructed for a defensive, sepulchral or domestic purpose; and, without a thorough excavation, there may be no means of ascertaining what was the primary object for which it was reared. A single standing stone may be commemorative of some great social, but forgotten, event in the drama of life; or it may simply mark the line of a former land boundary or a burial site; or it may be the solitary survival of some megalithic monument, which has disappeared by the hands of man in comparatively modern times, such as a stone circle, chambered cairn, dolmen or alignment. Archaic rock sculptures in the form of cups, cup-and-ring, spirals, and even those very remarkable mystic symbols on the early Christian stone monuments, still remain enigmas to Scottish archaeologists. In such circumstances all that can be done is to put on record, by a correct description, and if possible by a drawing or photograph, what now remains of the original monument.

To make a bare inventory of the antiquarian structural monuments still extant within the Scottish area, together with a brief notice of their present condition, would be a simple matter; but, on the other hand, an exhaustive discussion on their meaning and precise function in the shifting organizations of the periods to which they belong, would be a *tour de force* beyond the power of any single person however great his archaeological qualifications may be. Indeed, no department of knowledge requires more assistance from the collateral sciences than archaeology, if

its discoveries are made to give up all the latent information they contain. So much is this the case that experts in Geology, Botany, Palaeontology, Chemistry, History, Art and Domestic Economy, may be regarded as a standing Board of Advisers to whom an appeal may be made as occasion demands their services.

In these circumstances it is evident that in compiling an inventory of existing antiquities within the Scottish area, which would be readily available as a work of reference as well as a guide to future investigators, a medium course between brevity and discursiveness was the best to pursue ; and, as a rule, this is the method adopted by the Commissioners in the compilation of the Inventories, with the result that we have a *catalogue raisonné* on an enlarged scale. Each entry is consecutively numbered and contains a brief description of the monument or object to be recorded,—the following points, when applicable, being a *sine quâ non*, viz. its characteristic features, topographical site, the numbered sheet of O.S.M. on which it is noted, and the date on which it was visited.

The present geographical divisions of Scotland into counties and parishes form the leading headings under which the various materials are described, although there may be little or no correspondence between present-day land divisions and the original areas of distribution of their respective antiquities. In collecting facts, locating inhabited sites, visiting stone monuments in out-of-the-way districts, a peripatetic archaeologist will, no doubt, find his labours much simplified by consulting the clergy of the parish as well as local antiquaries, who may be highly interested and well informed in the archaeology and folklore of their own neighbourhood. In grouping the materials under the headings of the respective parishes the Commissioners have adopted, on the whole, the most practicable plan, besides having two excellent precedents in the Old and New Statistical Accounts of Scotland.

In arranging the heterogeneous materials found within the limits of the different parishes on archaeological principles, the following appropriate nomenclature has been adopted and uniformly adhered to throughout the various reports :

1. Ecclesiastical Structures.
2. Castellated and Domestic Structures.
3. Defensive Constructions.
4. Sepulchral Constructions.
5. Rock Sculptures.
6. Sites.
7. Miscellaneous.

The monuments which come under these very comprehensive headings have, in most instances, to be subdivided under subsidiary titles, such as Motes, Cairns, Stone Circles, Standing Stones, Forts, Crannogs, etc., and even many of these have to be further differentiated into various types. But, beyond facilitating the description of the monument under consideration, there is no special significance attached to these classifications because of the inherent difficulty of determining the precise character of some of the structural remains, owing to their fragmentary condition. Under the title Miscellaneous many of these undetermined structures fall to be described side by side with some unique object, isolated hoard, or some stray flint implements. The system, however, works well, and this is the main point.

The Inventory being the *pièce de résistance* of each report and a repertory for future investigators, it was essential to have each entry numbered consecutively so as to be easily referred to. This can be most readily effected by quoting the county and the inventory number. If, however, the various inventories are not placed under the heading of their respective counties, some confusion will inevitably arise as the work progresses. For example, the fourth and fifth reports are issued under the heading 'Inventory of Monuments and Constructions in Galloway, Vol. I. Wigtown, Vol. II. Stewartry of Kirkcudbright.' Why the Commissioners have departed from the method adopted in the other three reports is not apparent. Had the usual course been followed, the intercalation of Vols. I. and II. would have been unnecessary. Is this innovation to become a precedent for the rest of the work? If so, Inventories may be put under such headings as Strathclyde, Lothian, Caledonia, or any other ill-defined antiquated province, with the result that when the entire work comes to be arranged in consecutive volumes matters will be somewhat complicated. At present it would appear that each of the larger counties will require a volume to itself, but for uniformity of size two or more of the smaller counties, when adjacent to each other, as Forfar and Kincardine, or Nairn, Elgin and Banff, might be included in one volume. Although these are trivial details, and scarcely worth mentioning, they ought if possible to be avoided; and now that the Commission has got into thorough working order we hope that in future the Inventories will appear under the names of the counties in which their contents have been found.

The Inventory of each county is preceded by a general

KIRKCONNEL TOWER : COURT-YARD FROM NORTH

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introduction, occupying some 30 or 40 pages, in which the antiquarian materials are briefly summarized from the stand-points of history, ethnology, topography and archaeology, being thus, to a considerable extent, supplementary to the former. Any inferential or speculative deductions, arising out of the distribution of the antiquities, or from other causes, are judiciously confined to this section of the work, as they are more suggestive than dogmatic. For it is only after the completion of the entire survey for Scotland that such archaeological areas can be defined with any degree of accuracy, as one fresh discovery might give the *coup de grace* to the most specious theory on the subject. There are several lines on which the existence of archaeological areas may be determined, and, as a *post factum* study, it would be extremely interesting to know how far the results, culled from the Inventories, correspond geographically with the traditional and protohistoric land divisions of Scotland. A careful analysis of place-names would, approximately, disclose the districts occupied by pre-Ayrians, Gaels, Brythons, Romans, Norse, Anglo-Saxons and Normans, all of whom inhabited more or less of the Scottish area. The distribution of the different types of sepulchral monuments—chambered-cairns, short-cists, burials after inhumation and cremation—would indicate certain districts in which one or other of these burial customs predominated; and possibly reveal the route by which the early immigrants entered Britain. But besides archaeological areas determined by constructive and industrial remains, historical notices of the people and notable events, there are other problems of a more or less speculative character which occasionally find a place in the introductions, as, for example, the influence of the topographical features of a district in accounting for the resemblances and differences of certain monuments found in particular localities, as exemplified in the geographical distribution of vitrified forts, hill-forts, brochs, stone circles, etc. Although the smaller antiquities—implements, weapons and ornaments—found sporadically over the country, do not come under the jurisdiction of the Commissioners, it appears, as a matter of fact, that these finds are noticed and put on record. Some of these objects are already known to be restricted to limited localities. Two well-known typical examples of which are the ornamented stone balls and the so-called polished stone knives of Shetland.

While the writer was just finishing this paper a revised issue of the Inventory of the Monuments and Constructions in the

County of Berwick came to hand. The previous edition, being the first of the series of Inventories issued by the Commissioners, is but a pamphlet of 58 pages, without any illustrations of the monuments it records. Though arranged on precisely similar lines to those of the subsequently issued reports, this brochure was manifestly too brief and altogether incommensurate with the masterly Inventories of the other four counties which appeared a few years later. Under these circumstances the Commissioners considered it desirable to reissue the Berwick Inventory, so as to bring it into harmony with the later Inventories. The new edition, besides being uniform with these in its *format*, bears unmistakable evidence of having been prepared with the same archaeological skill and literary ability—so that the foregoing general remarks are equally applicable to it.

In addition to the Inventory and introduction already noticed, there is in each volume a detailed list of the ancient and historical monuments and constructions which the Commissioners deem most worthy of preservation, together with tabulated statements analyzing the distribution and characteristic features of forts, cairns, brochs, ecclesiastical sites, etc., so far as such monuments are to be found within the respective counties. It also contains a copious bibliography, a list of parishes, and a large map of the county indicating the position of the various antiquarian monuments by numbers corresponding to those in the Inventory. The volumes are well illustrated with plans and woodcuts in the text, many of the latter being from the *Proceedings* of the Society of Antiquaries. There are besides a number of excellent photographs of objects which could be readily brought under the camera, such as primitive stone monuments, ecclesiastical buildings, ornamental tombstones, medieval castles, etc. These are interspersed throughout the letterpress as double-page illustrations. The general public are thus in possession of five handsome volumes in octavo, being the Inventories of Monuments and Constructions in the Counties of Berwick (1909-15), Sutherland (1911), Caithness (1911), Wigtown (1912), and Kirkcudbright (1914). They are issued in paper covers, and each contains a capital index and from 228 to 347 pages of text in a moderately sized type.

The information gathered from these various sources is of inestimable value to the general reader, as it enables him to get, as it were, a bird's-eye view of what the Inventory contains, what are the predominating antiquities in each county, and how they are locally distributed. The principles of comparative archaeology are

kept well to the fore in these preliminary sketches, and, being clearly and attractively written, they tend to encourage the reader to prosecute any subject for which he has a particular penchant.

These general observations justify the conclusion that, if the survey of the rest of the counties of Scotland is brought to a finish under the highly competent management disclosed by the contents of the five Inventories now issued, the result will be a work of lasting importance and a landmark in the history of Scottish archaeology. It will serve as a fresh starting-point and a model for future researches to clear up some of the obscurities which still hang over our national antiquities. Among the large membership of societies founded for the study of archaeology there are few persons who derive financial benefit from any private investigations they may execute, for archaeology is proverbially an expensive hobby. But there is a craving in the human mind to know something more than the trained professional knowledge requisite for the support of mere animal life which often successfully shapes the footsteps of one, with higher aspirations of this kind, to the goal of his ambition. For it is a remarkable fact that many who, at the outset of their career, had the hardest struggle on this point, have ultimately done good work in one or other of the physical sciences, which lend themselves to the prosecution of out-door researches, such as botany, zoology, geology, and archaeology. But of all the fascinating pursuits open to persons who have attained some leisure, after the struggle for existence has become less exacting, archaeology is the most attractive, because its subject-matter is so saturated with human interest that it appeals to the sentiments of all cultured people to whatever station in life they may belong. Proficiency in archaeology is, however, like all trades, crafts, and professions, only to be attained by systematic training and a long tutelage in field operations; but, unfortunately, its interests, not being essential for the commercial prosperity of the nation, there is hardly any provision made by the State for communicating even an elementary knowledge of its principles. We therefore look upon the work of the Commissioners as a valuable object-lesson in showing how the practical department of the science should be conducted. If one trained expert can do so much in locating, excavating, tabulating, and describing such a mass of heterogeneous materials as the present Director of the National Museum has done during the five years he was secretary to the Commission, why should he not with a competent staff of assistants superintend

and control all practical researches in Scotland? For the future, it is on spade-work we have chiefly to rely for any considerable increase to the antiquities already preserved in our museums. But the spade can be used for destructive purposes as well as for unearthing antiquarian treasure. Excavations conducted by unskilled persons, however well-meaning their intentions may be, will generally do more harm than good by destroying or overlooking important relics, simply because they are ignorant of the kind of objects to be looked for. This kind of research is little better than what a farmer does when he removes the stones of a cairn, fort, or circle, to build his dykes with, but allows the associated relics to be dispersed.

All such indiscriminate excavations ought to be forbidden by law.

For these and other reasons we hail the splendid achievements of the Royal Commission on the Ancient and Historical Monuments and Constructions in Scotland as partly supplying the deficiency in our educational system as regards the teaching of archaeology. Copies of these Inventories should be in all our local libraries and museums so as to be available for consultation at any time, as well as in the hands of antiquaries, county gentlemen, and others, who may have an opportunity of controlling local discoveries.

While heartily congratulating the Commissioners on the quality and general excellence of the work already accomplished, under their auspices, in this truly national and patriotic undertaking, there is just one other remark we venture to make, more by way of inquiry than suggestion, viz. to accelerate, if possible, their operations, so as to have the Inventories of all the counties of Scotland completed within a much shorter period than at the rate of one county Inventory a year.

ROBERT MUNRO.

COCKBURNSPATH CHURCH: TOWER

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Parliamentary Representation in Scotland

IV. COUNCILS AND CONVENTIONS.[1]

FOR the very earliest meetings of the Great Council of the Kings of Scots of which we have any knowledge there is no contemporary descriptive expression. In the first volume of the *Acts of the Parliaments of Scotland* they are cautiously described as 'Assemblies,' a non-committal term adopted by a careful editor. The earliest use of the word 'Concilium' belongs to the year 1144, and is quoted from the Register of the Augustinian Priory of St. Andrews ('in Concilio Regis Prelatorum optimatum et fidelium suorum,' *A.P.* vol. xii. supp. p. 2). A meeting in Perth in 1167 is called 'Curia Regis' in the original document in the chapter house at Durham (*A.P.* i. p. 386), and 'plena curia' is used in the Register of the Augustinian Priory of St. Andrews to describe a meeting of the reign of Alexander II. (*A.P.* xii. p. 2). The word 'Concilium' appears in 1257 on the authority of a document quoted from Rymer (*A.P.* i. p. 637) and in 1266 on the authority of the title of a document in the Register of Kelso Abbey (*A.P.* xii. p. 3). Fordun stands sponsor for 'General Councils' in 1209 and in 1211, and for a 'Parliament'[2] in 1215. But otherwise the editor maintained his cautious 'Assembly' until the year 1283, when, apparently on English authority, he employed the word 'Parliament' for the meeting to acknowledge the Maid of Norway as heir-presumptive to the throne. In 1290[3] it is similarly used in connexion with the Treaty of Brigham, but, again, not in the document itself. It appears for the first time in the text of the original records in February, 1293, when it is

[1] See *Scottish Historical Review*, xii. 115.

[2] Dr. Neilson has kindly called my attention to the fact that a twelfth century Anglo-Norman writer applies the word 'parlement' to a council held by William the Lion: 'Dunc tint li reis Willame sun plenier parlement' (Jordan Fantosme's *Chronicle*, l. 258). The word cannot have any technical significance, but it is curious to find what became a technical term 'plenier parlement.'

[3] Dates are always quoted in this paper in New Style.

applied to a council held by John Balliol, and it also occurs in documents of August, 1293, and March, 1309. In 1312 we find 'concilium'; in 1314 and in 1325 'Parliamentum'; in 1318, 1321, and 1323 'plenum Parliamentum'; and in 1324 'plenum concilium' (*A.P.* i. pp. 461, 464, 483, 465, 479, 481, 482). At the great Parliament of Cambuskenneth, in 1326, although no clergy are actually recorded to have been present, the meeting is described as 'plenum Parliamentum' (*Ibid.* p. 475).

The earlier usage was, therefore, 'Concilium' or 'Curia'; the few instances of the latter term which we possess suggest its restriction, even at this date, to meetings for judicial purposes. The term 'Parliament' became familiar in England in the thirteenth century, and was introduced into Scotland during the period of English influence in the end of that century. By the date of the Parliament of Cambuskenneth it had firmly established itself, and it is the regular usage until about 1344.[1]

From 1347 to the end of the reign of David II. the word 'Concilium' is more frequently employed than 'Parliamentum.' The authority for the terminology is to be found in the documents themselves, *i.e.* in charters or in the 'Blak Buik' transcript of the records of Parliamentary proceedings. The two terms do not tend to be used indifferently; if a meeting is described as a Parliament in the Black Book it is also called a Parliament in a charter (cf. *A.P.* i. pp. 498, 506, 507, 527, 532, 536). There are also instances in which independent charters are consistent in their use of the word Parliament or of the word Council (cf. *A.P.* i. pp. 514, 525 for 'Parliamentum,' and p. 522 for 'Concilium'). It is, therefore, possible that the two terms are employed distinctively and deliberately in these documents, but it is difficult to trace any points of differentiation.

No guidance is to be obtained from the actual proceedings at these meetings; this may be because our information is so fragmentary. It is, at all events, certain that important legislation could be passed in a Council as well as in a Parliament (*A.P.* i. pp. 491, 498). If legislation yields no grounds of distinction, can we base any guess upon the composition of the assembly? There is some temptation to do so in the fact that in every case except one in which we have definite evidence of the presence of burgesses the meeting is called a Parliament (July 1366, Sept. 1367, Feby. 1370), and that in the one exceptional instance (Jan. 1365) the

[1] There is at least one exception, a 'plenum concilium' at Aberdeen in February, 1343 (Anderson's *Aberdeen Charters*, p. 17).

term employed is not the bare 'concilium' but 'tanquam in concilio generali' (*A.P.* i. p. 495). The unusual meeting or series of meetings in September, 1357, to negotiate about the ransom of David II., when burgesses were present, is also a 'plenum concilium.' But the available instances are so few that they form a slender foundation for a theory that if an assembly included burgesses it was not a mere 'concilium' but a 'Parliamentum' or 'plenum concilium,' and their effect is to some extent discounted by a statement that the 'tres communitates' were present at a 'Concilium' in November, 1357 (*A.P.* i. p. 491).

We must not expect absolute verbal precision, for we are dealing, in the reign of David II., with a period of institutional growth and development. What was, so far as we know, a new kind of 'Concilium' was coming into existence—the Secret or Privy Council, the obscure early history of which can best be discussed in another connexion. When institutions are growing there must be 'terminological inexactitude' (in the natural sense of the words), and the succeeding reign of Robert II. supplies us with examples. In that reign we have seven instances of the use of the word 'Parliamentum,' five of 'Concilium Generale,' and four of 'Concilium.' Burgesses were present at Parliaments in March, 1372, and in April, 1373, but they were also present at a Council in October, 1372. An assembly which met in June, 1382, is termed in one document a 'Concilium Generale' (*A.P.* i. 563) and in another a 'Concilium' (*A.P.* xii. pp. 18-19). But both things and names were gradually becoming more clearly distinguished, and after the reign of Robert II. we have no instance of the application of the term 'Concilium' to an assembly with any pretensions to being a Parliament. Councils continued to meet, and they have an interesting history, but they can be clearly distinguished from meetings of the Estates. Such meetings were described indifferently as Parliaments or General Councils until the reign of James II., when the latter term fell into disuse. 'Parliamentum' is invariable in the reigns of James III., James IV., and James V., with the single exception of the year 1513, when a 'Concilium Generale' was held at Perth soon after Flodden.

Three years after the death of James V. we find a new term in the Parliamentary records. In the year 1545 there appears a record of a Convention of the Nobility. No special significance attaches to this date, because minutes or other records of Conventions were kept in the *Register of the Privy Council*, and the extant portion of

the *Register* begins with the year 1545. The Privy Council minute refers to the Convention as 'a general convention now held in Stirling like as has been this long time' (*P.C.R.* i. p. 6), and it happens that we have, in an English source, a record of a Convention in the preceding year (*State Papers*, 1836, vol. v. p. 391). The institution was no novelty in 1544, for the *Register of the Great Seal* preserves a reference to a similar meeting as far back as October, 1464, in the minority of James III., when the young king made a revocation of grants of Crown lands in the presence of a 'congregation of the lords spiritual and temporal' (*Mag. Sig.* ii. No. 811, *A.P.* ii. p. 84). A similar revocation made in the minority of James II. had the authority of the three Estates at a General Council at which commissioners of burghs are recorded to have been present (*A.P.* ii. p. 31).

Before we can make any guess as to the significance of this difference of procedure we must look for any references to Conventions outside the Parliamentary records. I have been unable to find any evidence before the beginning of the reign of James II. In a rubric in the eleventh chapter of the sixth book of his *History* John Major speaks of a Convention of the Nobility which passed a decree for the payment of the ransom of James I. after his release, but in the text he calls it a Parliament, as also does Bower, who was a contemporary authority for the period, and the Parliamentary record itself speaks of the three Estates (*A.P.* ii. p. 3). It is significant that Bower, who was especially familiar with the administration under James I., never suggests the existence of a Convention as distinguished from a Parliament. The first suggestion of a Convention occurs in connexion with the coronation of James II. Pitscottie, relying upon the continuation of Boece by the sixteenth century Italian Ferrerius (edn. 1574, Bk. xviii. p. 357), writes about a Convention after the death of James I. Ferrerius is no authority upon the events of 1437, but the records of Parliament to some extent corroborate his statement, for, though the three Estates are said to have met, the third Estate (the burgess members) do not seem to have attended the coronation (*A.P.* ii. p. 31). Ferrerius also asserts that, before his fatal expedition to Roxburgh, James II. ordered 'omnes regni nobiles conveniri' (xviii. 379). Again, he may be right, though his account of the diplomacy of the time is not trustworthy.

Much better authenticated is a statement that, on the death of James II., the Queen-Mother, the bishops, and other nobles met at Kelso and crowned James II. in 1460. There is no

Parliamentary record, but the statement is made in the *Auchinleck Chronicle*, which is a contemporary authority. The writer does not call the meeting a Convention, but it was similar in composition to the 'Congregation' which we know to have met in 1464. There is thus some reason to connect the origin of Conventions of the Nobility with the middle of the fifteenth century, and unofficial Conventions were a feature of the disturbances of the later part of the reign of James III. They were held with some formality, and in this respect they form a contrast to the secret leagues or bands in the reign of James II. Pitscottie's references to such meetings or Conventions are of some importance, because he had family sources of information about the events of this time, and he is sometimes corroborated by Buchanan. The success of the combination which deposed James III. and placed James IV. on the throne must have increased the power and prestige of these Conventions, and, though we do not find them under the strong rule of the fourth James, the growing importance of the Privy Council in his reign prepared the way for the attribution of great authority to meetings of the nobility.

In the minority of James V. we have many statements about such meetings, and the circumstances of the time afforded many opportunities for their employment. Readers of Buchanan's *History* will recollect the frequent occurrence of the phrase 'conventus procerum' in his narrative from the beginning of the reign of James V., and it is worth noticing that, whereas in the history of the earlier Jameses, he frequently uses 'Conventus' for 'Parliament,' he generally employs, after the death of James IV., the fuller expression 'Conventus Ordinum' for a meeting of the three Estates. Buchanan tells of 'conventus procerum' at Stirling immediately after Flodden, at the time of the execution of the Homes in 1516, and on other occasions, *e.g.* in 1521 and in 1530. Pitscottie mentions a Convention of the Lords after the marriage of Queen Margaret to Angus in 1514, a convention of the Angus faction after Albany's arrival, and Conventions for the execution of the Homes, before the Armstrong expedition,[1] and before Solway Moss. His story of a Convention to elect Arran as Governor in 1543 is confirmed by the Parliamentary record, which shows that, at a preliminary meeting of the Lords Spiritual and Temporal, oaths to the new Governor had been taken (*A.P.* ii. 411).

[1] If this statement is correct, it is, except for the assertion of Ferrerius already quoted, the first instance of a Convention held by a king in person. All the other examples (when they are not meetings of rebels) occurred during minorities.

The Convention of 1544, recorded in the English *State Papers*, included, besides the Queen-Mother, four bishops, three abbots, eighteen earls and lords, and one baron (Sir John Campbell of Cawdor). Barons or freeholders who were not lords of Parliament were also present in the Convention of 1545 (*A.P.* ii. pp. 594-5); they include the seven barons or freeholders present in Parliament in August, 1546 (cf. *S.H.R.* xii. p. 118). Such Conventions were, in fact, merely meetings of partisans, and it is their recognition by the Privy Council that gives them constitutional importance. This recognition does not depend merely upon the entries of the records of their proceedings in the *Register*, for in 1545 the Council asserted that 'diverse greit and wechty materis that concernis the common wele and estait of the realme' could not be considered 'without avise of the principal Lordis Barronis baith spiritual and temporall,' and it therefore 'ordanit ane conventioun and counsale' to be held (*Reg. P.C.* i. p. 14). In 1545, in 1546, and in March, 1547, the Council agreed that Conventions should appoint Committees of their own members to be present, in rotation, at meetings of the Council (*A.P.* ii. 594-8).

A Convention which met in 1547, just before the battle of Pinkie, has a special importance, because it affords the earliest example of anything in the nature of legislation by a Convention. Acts were passed allowing certain privileges to the heirs of those who should fall in the battle, if it should happen 'as God forbid, any earl, lord, baron, freeholder, vassal, sub-vassal, feuar, mailer, tacksman, rentaller, and possessioners or commons to be slain or take sickness, wherethrough they happen to decease at this present army.' A further act gave to his nearest kin the presentation, for one turn, to any benefice the incumbent of which should be slain. The acts were passed by 'my Lord Governor and all the noblemen, barons, and freeholders and gentlemen being convened and assembled' for the war (*A.P.* ii. p. 599). From 1549 to 1561 we have no detailed information about Conventions, but the records of the Privy Council are very fragmentary.

In December, 1561, occurred the first Convention summoned during the active rule of a sovereign about which we have certain knowledge. Fifteen lords and two knights sat with the Privy Council. The *sederunt* of the Council is given as fourteen, including the officers of state, so that the 'extra-ordinarii ratione Conventus' were in a majority. The Convention passed some important temporary acts. In May, 1565, we have the record of a *sederunt*

of a Convention without any minutes, and in July and August the Privy Council was enlarged by the admission of 'divers noblemen presently convened' for the discussion of the conduct of the Earl of Murray in the 'Run-about-Raid' (*P.C.R.* i. 335, 341, 342, 346). In 1566 an important step was taken, for commissioners from eight burghs attended a Convention to grant a tax for the baptism of Prince James. The names of the lords present who were not members of the Privy Council are not given, but the record states that 'a good number of the Prelates, Nobility, and Commissioners of Burghs' were convened (*A.P.* ii. 485). This is the first instance of the grant of a tax, which in the seventeenth century became the main purpose for which Conventions were summoned. It is also the first instance of the presence of burgesses at Conventions.[1] The two facts are obviously connected, for the Royal Burghs bore a definite share in the taxation of the realm. The precedent of 1566 was followed with regard to burgesses, in July, 1567, in connexion with the deposition of Queen Mary. The famous proclamation about delivering the Queen from Bothwell was issued in June by the 'Lords of Secret Council and Nobility,' but, in July, commissioners of burghs were present with 'the Lords of Secret Council and others of the Nobility, Prelates, and Barons' at a Convention which received and approved Mary's enforced deed of abdication and her equally enforced creation of a Regency, and which crowned the infant prince (*P.C.R.* i. 531-542).

The summons of burgesses was legalized in December of the same year, by an Act of Parliament which gave a new and legal status to Conventions of the Estates. An effect of this new status is probably to be traced in the fact that the records of meetings of Conventions began to be kept in separate form and not only as entries in the *Register of the Privy Council*, though very few of these separate records are now extant. The Act of 1567 was passed by the first Parliament of James VI., and it ordered that 'when there shall happen a general convention to be for the weighty affairs of the realm, the provosts of burghs or their commissioners be required thereto, and their consents had to the same, and in special for general taxes or extents.' From

[1] Freeholders below the rank of lords of Parliament were frequently present in Conventions, although in the Convention of 1572 their right to attend was regarded as dubious (cf. *S.H.R.* xii. p. 119). After the Act of 1587 empowering the smaller barons to elect commissioners to Parliament, there can have been no question about it.

this date onwards until the departure of James VI. for England, Conventions were held almost every year, and frequently oftener than once a year. Burgess representation was frequent but not invariable, and the numbers of burgess representatives were generally very small. The records of the Convention of Royal Burghs suggest that the paucity of burgess members was the fault of the burghs themselves, and it is probably to be explained by the great frequency of meetings of Conventions. After 1603, Conventions were occasionally held in the reign of James VI.; there are three instances in the reign of Charles I. and three in the reign of Charles II. The last of these was dissolved in July, 1678, and after that date the word Convention disappears from the records of Parliament and Privy Council, except for the Convention-Parliament of 1689.

It is to the period from 1567 to 1678 that we must look for any definition of the constitutional position of Conventions as compared with Parliaments. If we can trace any constitutional theory in the references to, or records of, early Conventions, it is that their proper business was the recognition of a new ruler. The Auchinleck Chronicler, Ferrerius, and Pitscottie all (correctly or incorrectly) connect a Convention with an accession, and one of Buchanan's Conventions met immediately after Flodden. We know that Conventions were held at the election of Arran as Governor in 1543, and that the Convention of 1544 asserted its right to choose a regent, and attempted to replace Arran by the Queen-Mother (*State Papers*, 1836, v. p. 391). Calderwood (i. p. 282) tells us that, when Mary of Guise did supersede Arran in 1554, the transference of the regency was made at a Convention. Conventions were summoned in July, 1567, to receive Mary's abdication and to approve of the arrangements for the regency, in 1570 to elect the Regent Lennox, in 1571 to elect the Regent Mar, in 1572 to elect the Regent Morton, and in 1578 to recognize the assumption of regal authority by James VI. The Convention Parliament of 1689 could thus claim a considerable number of precedents for its election of William and Mary.

The continuous association of Conventions with the inauguration of new rulers suggests, at all events in the sixteenth century, the possibility of the existence of a theory that, while Parliamentary recognition was necessary for a sovereign or regent, it was desirable to secure an immediate recognition by means of a Convention which could be more easily summoned. This is what happened

in 1543, when Arran's election was made by a Convention of the nobility and immediately confirmed in Parliament (*A.P.* ii. p. 411). The records of the Parliament of 1554 are only fragmentary, but the fragments which have been preserved are ratifications of arrangements made in connexion with Arran's demission of the regency. It is therefore probable that, as Calderwood asserts, the appointment of Mary of Guise was also confirmed (*A.P.* ii. p. 600). The Parliament of December, 1567, confirmed the acceptance of Mary's abdication and the choice of Murray as regent, made at the Convention of the preceding July (*A.P.* iii. p. 11). Murray was assassinated on the 23rd January, 1570, and, on the 14th February, a Convention of the 'Nobility, Estates and Barons' met at Edinburgh to deal with the immediate situation. It included commissioners from the burghs, in accordance with the Act of 1567 (*Reg. Privy Council*, xiv. pp. 32 *et seq.*). Owing to the controversies of the time, there was a long delay in the choice of a regent, but Lennox was elected by a Convention in July, 1570. We have no official record of any Parliament in that year, but Calderwood (iii. 18) mentions a meeting of Parliament in October, at which the authority of Lennox was confirmed (cf. also the *Diurnal of Occurrents sub anno* 1570). After the death of Lennox, in 1571, Parliament and Convention seem to have been sitting at the same time, but the election of the Regent Mar was made by the Convention and subsequently confirmed by Parliament (*A.P.* iii. pp. 58, 65). In 1572, a Convention elected Morton in November, and its action was confirmed in the following January (*Ibid.* pp. 71, 78). In 1578, the 'publication of the kingis acceptatioun of the governament' was made to a Convention in March and was ratified by a Parliament in July (*Ibid.* iii. pp. 94, 115). We should not expect any recognition of the accession of Charles I., for that monarch would have regarded such a declaration as, at the best, officious; but it happened that, soon after his accession, he summoned a Convention to grant a tax for his proposed visit to Scotland, and it may not have been by accident that the Convention, in its act of taxation, took the opportunity of referring to the king's coming 'to take upon him the imperial crown of the said kingdom, whereof his Majesty by an undoubted and lineal descent and succession from so many royal and worthy progenitors is the true and lawful heir' (*A.P.* v. p. 167). The accession of Charles II. in 1649 was acknowledged by a Parliament which was in session at the time (*A.P.* vi. 2. p. 157), but that of James VII. was marked, as we

should expect, only by taking the oath of allegiance (*A.P.* viii. p. 457). The Convention-Parliament of 1689, in this respect, followed an old Scottish precedent when it ratified, as a Parliament, in July, what it had done in April as a Convention (*A.P.* ix. p. 99). On the accession of Queen Anne, Parliament passed an act to acknowledge her authority (*A.P.* xi. p. 15).

The election or recognition of new rulers, though it may be connected with the origin of Conventions, formed only a small part of their activities in the reigns of Mary and James VI. We have already seen that a great development in the history of Conventions can be traced to the six years of Mary's active rule. Burgess members were admitted; temporary acts were passed; accusations of rebellion were dealt with; a tax was granted; proclamations were issued. All this had happened before the first Parliament of James VI. (Dec. 1567) gave a defined legal status to Conventions.

Between 1567 and 1603, when Conventions were very frequently in session, they served three main purposes.

1. They were an enlarged and strengthened Privy Council for executive and judicial purposes. These purposes covered a very wide range of political action. Conventions prepared public business for the consideration of Parliament. They sanctioned measures for the enforcement of law in the Highlands and Islands and in the Borders. They dealt with grave charges brought against prominent persons. Three cases, very different from each other, may be taken as illustrations—the Master of Gray, accused of having betrayed Queen Mary to death; the Earl of Huntly, one of the Catholic lords whose intrigues added to the complications of James's strange diplomacy; and Walter, first Lord Scott of Buccleuch, who got into short-lived trouble for his rescue of Kinmont Willie. Private suits also came before Conventions. They constantly issued proclamations which attempted to enforce the observance of the law. Such proclamations were based upon 'lovable acts' of the Estates, which were duly quoted. Changes in the coinage were very frequently sanctioned by Conventions, which thus became responsible for the constant depreciation of Scottish money in order to obtain profit from the mint. They were also employed to deal with questions of ecclesiastical policy, and on important occasions in 1569 and in 1585 they played a part in foreign policy. It was a Convention that in July, 1585, gave a national approval to the league between King James and Queen Elizabeth, the king holding that the matter was too urgent to be

deferred 'to a mair solemn Convention of the haill Estaittis in Parliament.'[1]

All these things could have been done, and similar things were often done, by the Secrèt Council itself, but the authority of the regent or the king was felt to be strengthened in important matters by reference to a Convention of Estates. This was a reasonable attitude, and in theory unassailable, but in practice it was in danger of degenerating into a device of adding a few lords or burgesses to the Council, and thus employing the name of the Estates on what were really false pretences. There are indications of this tendency before the time of James VI., for we find combined meetings of a Convention and the Council in 1545-7, in 1561, and again in 1566, and there were periods in the reign of James VI. when Convention and Council became almost indistinguishable.

The first of these was at the time of Morton's enforced resignation of the regency and his temporary recovery of power. In March, 1578, King James, at a convention of the nobility, took the government into his own hands because of 'the mislikyng that mony hes in the persoun of his richt traist cousing James erll of mortoun' (*A.P.* iii. p. 115). This decision was to be ratified in Parliament in July, but by the end of May, Morton had again obtained possession of the person of the young king, who was residing in Stirling Castle. Under Morton's influence the Secret Council, on the 2nd June, summoned a meeting of 'his Majesty's haill Counsale' to prepare business for the consideration of Parliament. The Council minute refers to the 'whole Council' as 'the said Convention,' and thus identifies a Convention not with an informal meeting of the Estates but with a large meeting of the Council (*P.C.R.* ii. 703). This Convention, which included twenty earls and lords of Parliament, two 'masters' or eldest sons of lords, eight bishops, eight commendators of the old religious houses and nine burgesses, replaced Morton in the Privy Council and gave him the first place in it (*A.P.* iii. p. 120). Further, it ordered that the Parliament should meet only for one day in Edinburgh, whither it had been summoned, and should then be adjourned to Stirling (*P.C.R.* ii. p. 705). When the Parliament met, Morton held a Convention (which did not include any

[1] *Privy Council Register*, iii. p. 760. Illustrations of the activities of Conventions must be sought not only in the *Acts of Parliament* but in the *Register of the Privy Council*, and especially in vols. i.-viii., xi., xii., and xiv., and 2nd Series, vol. i.

burgesses) after Parliamentary hours (*Ibid.* iii. p. 7 n.). By unscrupulous use of the unscrupulous methods of the time Morton obtained control over Parliament, and, though he brought the country to the verge of civil war, he was successful in establishing his ascendancy by an Act of Parliament which constituted the Privy Council to his mind (*A.P.* iii. pp. 94-114). A compromise, by which bloodshed was averted, slightly altered the composition of the Council, but not sufficiently to interfere with Morton's position as chief minister. Morton had repeated recourse to his device of enlarging the Council and calling it a Convention; he obtained a tax in November, 1578, from a meeting which consisted of six members of the Council and seven non-members—four lords and three bishops (*P.C.R.* iii. pp. 45-46); in March, 1579, he secured the passing of some legislation by a meeting which included on different days from twenty-one to twenty-six lords and commendators and three officials, but which described itself as 'the three Estates presently convened' (*P.C.R.* iii. pp. 108-120); and a similar meeting was held in August, 1579 (*A.P.* iii. pp. 187-8, *P.C.R.* iii. pp. 198-201). On one occasion Morton even claimed the authority of a Convention for an ordinary meeting of the Council (*P.C.R.* iii. p. 57).

After Morton's fall, in December, 1580, this device was not so regularly employed. The presence or absence of burgess members supplies a rough (though not an unfailing) test, and at the first Convention after Morton's fall, burgesses were present (Calderwood, iii. p. 488). In April, 1583, a small Convention, which included one burgess member, showed, as we shall see, some independence. Thirteen burgesses attended a Convention in July, 1585, which approved the league with England (*A.P.* iii. p. 423), and we find burgesses in Conventions in September, 1586, April, 1588, and June, 1590, all of which transacted important business (*A.P.* iii. pp. 424, 523, 524). But, in addition to a number of Conventions about which we have no information, there are instances, *e.g.* in 1588, 1590, and 1591 (*P.C.R.* iv. 284, 290, 513, 666), of the king's employing the Council, sometimes not even enlarged, as a Convention, and the events of the year 1593 obliterated, for a time, the distinction between the two bodies. The circumstances of the year 1593 will be found, fully discussed, in the late Professor Masson's Introduction to Vol. V. of the *Privy Council Register*, and I should like to take the opportunity of expressing here my very great obligations to Dr. Masson's Introductions and notes, on which this section of my discussion is

largely based. It will be sufficient to say that the extraordinary, and almost incredible, story of the Earl of Bothwell had, as one of its features, a collapse of the ordinary system of the Privy Council. Ordinary meetings of the Council fell into partial abeyance, and King James had recourse to Conventions of Estates, which met on the 11th and 12th September, the 31st October, the 23rd and 26th November, and the 27th December, 1593, and on the 17th-21st January, and the 29th April, 1594. At all of these meetings, except that of the 27th December, burgess members were present, but the business transacted at all of them, except one, was such as would ordinarily have been dealt with by the Privy Council. The single exception was a large Convention, including twenty-two commissioners of burghs, which met in January, 1594, to grant a tax and to pass an act regulating the composition of the Privy Council until the next Parliament met in April (*P.C.R.* v. p. 117).

From this re-constitution of the Council in 1594 the history of Conventions becomes clearer and more definite. We can trace the meeting of some seventeen Conventions between November, 1594, and February, 1601. At eleven of these we have evidence, in one form or another, of the presence of burgesses; for four Conventions we have no information. Only twice have we evidence of the employment of an enlarged Council as a Convention—in December, 1596, and January, 1597, in the crisis of the king's struggle with the clergy and with the town of Edinburgh, when he had strong reasons for excluding commissioners of the burghs (*A.P.* iv. pp. 103-104). During these seven years, and after the king's accession to the English throne, Conventions were employed to strengthen the authority of the Privy Council for affairs of importance.

2. Conventions were also employed to pass temporary legislation, but I have found no instance in which the final power of legislation was claimed by a Convention.[1] In 1574, for example, a Convention introduced a new poor-law, but with the provision that it was to be operative only until the next Convention or Parliament, 'that then it may be considered what is further requisite to be provided for, in this behalf, or if anything herein ordained shall

[1] Sir Thomas Craig (*Jus. Feud.* i. 8, c. 10) refers to Conventions, but merely remarks that, though their statutes have not the full weight of Acts of Parliament, yet they have legal authority and were wont to be observed as laws, especially when Conventions used to be held instead of Parliaments. The *Jus. Feudale* was published in 1603.

then appear unprofitable, superfluous, or worthy to be changed.' If the next Parliament or Convention did not deal with the subject, the temporary act was to continue till further express direction be made (*A.P.* iii. p. 89). References to ratification by a future Parliament occur in all acts which can be described as legislative rather than executive, and there are numerous instances of such ratifications. Conventions might thus have afforded an opportunity for tentative legislation (as royal ordinances did in England for some years in the reign of Edward III.), but, in point of fact, Parliament frequently confirmed the acts without alteration, and not much credit can be claimed for the arrangement as an aid to sound legislation.

It must be observed that this power of temporary legislation almost necessarily involved the power of interpreting and even of modifying Acts of Parliament. The right of interpretation was, indeed, virtually shared by the Privy Council, which, both in its judicial and its executive capacity, enforced its own reading of 'the proper effect' of statutes. Conventions, however, had the further power of giving their interpretation statutory force until Parliament should otherwise direct. Thus, in December, 1596, a Convention (which, as we have seen, was only an enlarged Privy Council) passed a treason act and an act for the acknowledgment of the royal authority; both were avowedly based upon Acts of Parliament of 1584 (*A.P.* iii. pp. 292, 296), but the Convention declared that these acts extended so far as to make it the duty of sheriffs, magistrates, noblemen, and landed gentry to stop 'slanderous and seditious preaching in contempt and disdain of the King or his predecessors and in interference with affairs of State' (*A.P.* iv. p. 101). Again, in May, 1597, a full Convention passed an act declaring the meaning of an Act of Parliament relating to usury. The declaration amounted to a wide extension, which was confirmed by Parliament in November.

It is more difficult to find actual illustrations of the modification of Acts of Parliament by a Convention, because, though new temporary acts must have invalidated clauses of existing acts, the draftsmen were very careful not to claim for a Convention the power of repealing anything beyond acts of Conventions or of the Privy Council. But in March, 1597, a Convention passed an act whereby burgesses of a town could be compelled to serve on an assize if the crime was committed within four miles of their burgh (*A.P.* iv. p. 115), thus restricting a wider exemption granted by an Act of Parliament in 1567 (*A.P.* iii. p. 44). A

more direct illustration is the Act of the Convention of January, 1594, reconstituting the Privy Council (*A.P.* iv. p. 53), which superseded an Act of Parliament of the preceding April (*Ibid.* iv. p. 34). But, even in this instance, the Convention deliberately refrained from professing to repeal the Parliamentary statute, and, though its act really substituted one Council for another, it contained a clause to the effect that members who claimed to sit under the Act of Parliament 'ar nawise secludit, bot admittit to have access place and vote.' The scrupulous care with which Conventions avoided claiming Parliamentary powers is a remarkable feature of their troubled history, and illustrates the respect for a theory of the constitution, which may, indeed, have been the tribute paid by vice to virtue, but which is none the less a factor in Scottish history deserving of more attention than it has received. It is this tradition that explains the unusual stand made by the Convention of 1625 when they declined to adopt a suggestion of Charles I. and to pass an act against 'merchants becoming usurers when they have acquired some wealth,' and remitted consideration of the subject to a Parliament. Similarly, they regarded it as beyond their powers to consider a petition of the burghs about a modification of their annual rents (*A.P.* v. pp. 176, 184, 185).

It is, of course, necessary to remember that the powers of the Executive were very wide, and that a Convention, called to strengthen the Executive, might easily regard as matters of administration what would appear to us to be legislation. I have noticed at least one act which might have been passed as temporary legislation, but which was actually given the status of a permanent order of the Executive, and which, therefore, did not obtain, and was not intended to obtain, Parliamentary ratification. In July, 1599, a Convention passed an act forbidding unlicensed printing. This act, which involved a death penalty, was not based upon 'lovable acts' of former Parliaments, but upon 'the lovable custom received in all other civil nations,' and it became a permanent law without any Parliamentary intervention (*A.P.* iv. p. 187). This is the more remarkable, because there was an Act of Parliament of 1551, of a more restricted type, which might have been quoted as a precedent, though it was directed specifically against 'ony bukis ballatis sangis blasphematiounis rymes or Tragedeis outher in latine or Inglis toung' (*A.P.* ii. p. 489). This was an exceptional stress of the powers of a Convention; but if we regard it as an act of the Executive, it finds an analogy

in the history of the censorship in England up to the time of the Commonwealth.

3. Conventions were freely used for purposes of taxation, and the legal power of a full Convention to grant taxes was never questioned. But when, in November, 1578, under Morton's rule, a slightly enlarged Council, consisting only of lords spiritual and temporal, granted a tax of £12,000 for maintaining a force on the Borders (*P.C.R.* iii. 46), so much indignation was aroused that the Council took an early opportunity of explaining that they had levied the tax as an alternative to a levy of the lieges who would have found it irksome and painful to travel at that season of the year, that there had been no intention of prejudicing the liberties or privileges of any Estate, and that the incident would not constitute a precedent (*P.C.R.* iii. p. 56). Again, in April, 1583, a small Convention, including one burgess member, refused to grant more than a sum of money for immediate needs, and insisted that the king's larger demand should be referred to a Parliament or to a 'new Convention of Estates in greater number than is presently assembled' (*A.P.* iii. pp. 328-9). In December, 1586, when the life of the king's mother was in jeopardy, James asked what seems to have been an informal Convention for money for the necessary expenses of pleading her cause, and received the reply that the Estates had consulted together, but that they found 'their greatest difficulty at this time in the fewness of their number.' The noblemen and prelates, however, offered a voluntary gift, and the burgesses promised to consider the question (*P.C.R.* iv. p. 129). In June, 1587, some months after Mary's death, an order was issued for payment of the sums promised by the lords, but the burgesses appear not to have subscribed.

There is at least one instance of the refusal of a tax by a Convention, but it is known to us only from English sources. King James, who was very impatient with Queen Elizabeth's longevity, was also much alarmed lest his succession to her crown should not be recognized in England, and he summoned Conventions in December, 1599, March, 1600, and June, 1600, with the view of obtaining sufficient money to equip an army with which to enforce his claim. The three successive Conventions declined to approve of this policy or to grant money for its adoption, and at the Convention in June, the Lord President of the College of Justice (afterwards the Earl of Dunfermline) insisted that the idea of a conquest of England was ludicrous, a

view which was supported by the smaller barons and burgesses, and which was hastily adopted by a subsequent speaker on behalf of the king. It is significant that there is no official record of these proceedings; some acts of the Convention of 1599 are preserved, but there is no hint of that of March, 1600, and only an incidental reference to the summons of the June meeting (*P.C.R.* vi. p. 98). These omissions can scarcely have been other than deliberate. Of the contemporary historians and diarists, Calderwood, Spottiswoode, and James Melville throw no light upon the subject; Moysie mentions the Convention of December, 1599, and says that the proposal for a tax for the supply of his Majesty's necessities was 'murmured against' and postponed to a larger Convention to meet in March. But the attention of the Scottish annalists of the year 1600 was entirely devoted to ecclesiastical disputes and to the Gowrie conspiracy. Our information comes from the watchful agent of Queen Elizabeth, George Nicolson, and will be found summarized very briefly in Thorpe's *Calendar*, vol. ii. pp. 779-784, and more fully in Tytler, vol. ix. pp. 303-327. One of the letters is printed *in extenso* in Colville's *Letters*, pp. 297-8. It is unfortunate that our information about the refusal of a tax should be so meagre, for there are not many such incidents in Scottish Parliamentary history.

After the Union of the Crowns, James summoned four full Conventions. In 1605 he summoned a Parliament for the 7th June, but changed his mind and called a Convention instead. His commissioners held a formal meeting of Parliament and adjourned. The *Register of the Privy Council* (vii. p. 55) shows that the Convention, which included nine burgesses, held one sitting and passed some executive acts. Another Convention met in 1608 in similar circumstances. A Parliament had been summoned for the 10th May, and again the Lords Commissioners held a formal meeting for adjournment, and its place was taken by a Convention which had a single sitting on the 20th May. The business was the summons of a levy to reduce the Islesmen to obedience, and James anticipated 'distemperit humours' in the Estates (*P.C.R.* viii. p. 502); but the Convention, which was attended by representatives from twelve burghs, sanctioned the proposed means of introducing 'civility, quietness, and obedience' into the Isles (*A.P.* iv. p. 404). In January, 1609, a Convention, including representatives from nine burghs (*Ibid.* iv. p. 405), carried out without opposition a pre-arranged programme of legislation in accordance with royal instructions (*P.C.R.* viii.

pp. 547-554). All their important measures were ratified by a Parliament in the following June. James, since his removal to England, had not used a Convention for purposes of taxation, but in March, 1617, a Convention consisting of eleven bishops, seventeen earls and lords, four officers of state, twenty-one commissioners from shires, and nineteen commissioners from burghs, granted £200,000 for the expenses of the approaching royal visit to Scotland (*A.P.* iv. p. 581). It transacted no other business. James never again summoned a full Convention, but in October, 1620—January, 1621, he attempted to obtain from the nobility a grant in aid of his son-in-law, the Elector Frederick, and received the reply that the nobility had no power to impose taxation even upon themselves, and that if they were to try to do so, the result would not prove 'worthie to be callit the benevolence of the Nobilitie of Scotland.' They therefore urged the king to summon a Parliament, which he reluctantly did (*P.C.R.* xii. pp. 366, 378, 404; *A.P.* iv. pp. 589-90).

King Charles I., in 1625, summoned a Convention of Estates which met in unusually large numbers, and showed an unusual amount of independence. They granted unanimously the taxation desired by the king for his visit to Scotland and his coronation; but they refused to commute this sum for an engagement to supply and maintain an army of 2000 men for three years. We have already seen that they declined to deal with one of the royal suggestions (about usurers), on the ground that it was a proper subject for Parliamentary action. They also refused to establish a tax of 48 shillings Scots on every ton of coal exported in a foreign vessel. They could not argue that this would be beyond the competence of a Convention, and they gave as their reason the consequent detriment to the coal trade. Further, on their own initiative, they asked that the rules affecting the dignity and precedence of Nova Scotia baronets might not come into effect until Nova Scotia had actually been colonized, and they censured Sir John Scot of Scotstarvet, a royal official and a member of the Privy Council (*A.P.* v. pp. 166-188; *P.C.R.* 2nd ser. i. pp. 150-180).

No special interest attaches to the much more amenable Convention which sat in July and August, 1630. It granted a tax, and it passed various minor measures desired by the king. The commissioners of the shires indulged in a little grumbling, but there is no indication of any opposition. Like some of the Conventions of James VI. after the Union of the Crowns, it took the

place of a Parliament, which was elected in 1628 but was repeatedly prorogued, and transacted no business until 1633. The historian Row (*sub anno* 1630) says that a list of ecclesiastical grievances was presented by 'noblemen, barons and burgesses' and that they were 'deferred to another time.' The Parliamentary records contain no reference to these grievances. The Convention appointed a Committee or Commission to discuss fishery questions, which met on various occasions in 1631 and 1632.

The Convention of 1643-44 was not summoned by the king. Before the dissolution of the last Parliament in November, 1641, it had been arranged, 'in accordance with the Triennial Act of 1640, that the next Parliament should meet in June, 1644, unless the king should summon one at an earlier date (*A.P.* v. p. 588). In May, 1643, the Privy Council, the Commissioners for the Conservation of the Peace and the Commissioners for Public Burdens agreed to instruct the Lord Chancellor to summon a Convention of Estates on the 22nd June. They informed the king of their intention, and he protested against the infringement of his prerogative (Burnet's *Dukes of Hamilton*, p. 218). Baillie tells us that the question of the power of the Council to summon a Convention was raised. 'This Argyle and Warristoune made clear by law and sundrie palpable pratiques, even since King James's going to England, where the Estates have been called before the king was acquainted' (*Letters and Journals*, ii. p. 68). The king's knowledge of law and history was better than Argyle and Warriston's, but, on the advice of Hamilton, he decided to temporize, and on the 10th June he wrote a letter to the Convention, waiving the rights of the royal prerogative, and permitting the meeting, with certain limitations. The minutes of the meeting of Convention contain no reference to this letter; on the 26th June it passed an act declaring that, as it had been summoned in the king's name, it was a lawful, free, and full Convention, with the ordinary powers of treating, consulting, and determining (*A.P.* vi. Pt. i. p. 6). The Convention met from the 22nd June to the 26th August, and then prorogued themselves to a second session, which lasted, with intermissions, from the 3rd January to the 3rd June, 1644. It cannot be said that in their deliberations they went beyond the precedents of former Conventions. Even the adoption of the Solemn League and Covenant could be defended as following the precedent of the Convention of 1585, which took a covenant for the maintenance of the true religion and made a league with England. The precise regard for

legality with which they acted is shown by the fact that the Convention came to an end on Monday the 3rd June. A new Parliament, specially elected, met on Tuesday the 4th June, being 'the day appoynted be the laste act of the last Parliament.' It went through the form of inquiring if any Commissioners had been sent by the king, but the macers received no answer, and then, but not till then, the Parliament was 'fenced' or constituted. On the 15th July acts were passed to ratify the summons of the Convention and all its acts, including the Solemn League and Covenant (*A.P.* vi. Pt. i. pp. 95-6, 148-155).

The three Conventions of the reign of Charles II. (1665, 1667, and 1678) were fully attended meetings of the Estates, summoned for purposes of taxation only, and the taxes were granted with every profession of enthusiastic loyalty to and confidence in the Crown. The revolutionary Convention which met on the 14th March, 1689, followed precedent as far as possible. There was, of course, no royal letter of summons, but on the third day of their session it was announced that 'one Mr. Craine was at the door and hade a letter from King James to present to the meeting.' He was allowed to enter and to present the letter, and a motion was made that it be read. The Duke of Hamilton, who had been elected President of the Convention, then reminded the members that they had been summoned by some noblemen and gentlemen who had asked the Prince of Orange to undertake the government, and he added that there was also a letter from the Prince of Orange, which, he thought, should be read first. Though William was described as Prince of Orange he was already King of England and his letter was signed William R. After it had been read an act was passed declaring the Convention to be a free and lawful meeting of the Estates, which could not be dissolved 'untill they setle and secure the Protestant Religione, the government lawes and liberties of the Kingdome.' This precaution was taken in case the letter from King James should dissolve the meeting, and thereupon that letter (which did nothing of the kind) was read. It was not entered in the minutes, and no reply was made to it, but on the 19th March an act was passed approving the address to the Prince of Orange which had been made by Scottish noblemen and gentlemen before the Convention was summoned, and on the 23rd a polite answer was sent to the King of England. On the 4th April, King James VII. was declared to have forfeited the right to the Crown, and 'the throne is become Vacant'; a week later a Claim of Right was approved, the throne was offered

to the King and Queen of England, France, and Ireland, and a proclamation of their accession was made the same day. On the 24th Commissioners were nominated 'to attend their Majesties with the offer of the Crown,' and William was asked to convert the Convention into a Parliament. A letter from William accepting the Crown and turning 'you (who are the full Representatives of the Nation) into a Parliament' was received on the 24th of May, and on the 5th June the Parliament was opened by the Duke of Hamilton as Royal Commissioner. On the first day of its meeting an act was passed constituting the Convention a Parliament; it was immediately 'toutched by his Majesties commissioner with the scepter' in token of the royal assent, and when that had been done the Parliament was 'fenced' in the usual manner. On the 17th June the last touch of legality was given to the proceedings by an act recognizing 'their Majestie's Royall Authoritie.' The Convention, as indeed was natural in the circumstances, had avoided anything beyond executive action, and it had shown, except in one important particular, a careful regard to precedent. That exception was the elevation of a mere Convention into a Parliament without any fresh election. No sovereign of Scotland had ever attempted so gross an illegality, and we have seen that, in 1644, the rebellious Convention of Estates deliberately refrained from taking such a step. The preference of the English precedents of 1660 and 1689 to an invariable Scottish custom was, of course, due to the fear of a General Election which might possibly have upset the Revolution Settlement.

On a review of the whole evidence, it seems probable that Conventions originated rather as an enlarged Privy Council than as an informal meeting of the Estates. This view is in keeping with any indications which may lead us to connect the origin of the institution either with changes in the personality of the sovereign or regent or with the action of leagues and bands of nobles in the reign of James III.; but there is much more cogent evidence than any such theories can provide. The word 'convention' was not a technical term; it was constantly employed in the ordinary sense of 'meeting,' and was specially used to describe any meeting to which there was a summons of some sort. The early conventions are always called conventions of the nobility or of the nobility and gentlemen, and as late as 1561 the Convention of that year was variously described in the Privy Council minutes as 'a Convention of the Nobility and Clergy' and as a meeting of 'the Secret Council and others of the

Nobility' (*P.C.R.* i. pp. 194, 201). After the admission of burgesses, the different classes of members were specified, and the first reference to the Estates in connexion with Conventions is in July, 1569, when 'my Lord Regent's Grace, divers of the nobility, and others of the Estates' were convened at Perth (*P.C.R.* ii. p. 1). The first suggestion of the technical term 'Convention of Estates' which I have noticed is a reference in the minutes of the Privy Council in February, 1570, to a 'Convention of Nobility Estates and Barons' (*P.C.R.* xiv. p. 32), and the first actual use of the technical term that I have found is in the protest of the small Convention of April, 1583, that a question of taxation should be referred to a Parliament 'or to a new Convention of Estates' (*A.P.* iii. pp. 328-9). The association of a Convention with the Estates was, therefore, developed in the minority of James VI. Further, the composition of a Convention, before the summons of burgesses in 1566, differed both positively and negatively from that of a meeting of the Estates, for a Convention included lairds but no burgesses, while a Parliament (at that date) included burgesses but no lairds. The tendency of a Convention to become an enlarged meeting of the Secret Council was the natural effect of the early history of the institution. We have, therefore, a distinct and remarkable development, beginning at the end of the reign of Mary, for a Convention ultimately became, in composition and membership, an exact reproduction of a Parliament, from which it differed only in the absence of certain formalities and in the existence of certain limitations on its powers. In the seventeenth century it was with Parliament and not with the Privy Council that contemporary observers connected a Convention. Bishop Burnet defined it accurately enough as 'a Court made up of all the Members of Parliament, but as they are called and sit without the state or formalities used in Parliaments, so their power is to raise money or forces, but they cannot make or repeal Laws' (*Dukes of Hamilton*, p. 233). The change in the character of Conventions from about 1566 may possibly have been suggested by the conventions and assemblies of the Church, which included commissioners from burghs and shires; or it may have been simply the result of a desire on the part of the Government to obtain a tax without summoning a Parliament.

If the history of the country had been less troubled, the system of Conventions might have been a useful aid both to government and to legislation, as a kind of committee of the whole Parliament.

But, like all other Scottish institutions, they tended to be a mere tool of the party in power, and they were summoned simply because it suited the authorities to hold a Convention in preference to a Parliament. James VI., in 1605, in 1608, and in 1609 seems to have valued them in proportion as the attendance was meagre; in 1617 the Convention was numerous enough to vote a tax, but not sufficiently large to give any trouble. It is significant that he summoned a Parliament for June, 1605, which did not meet for business until July, 1606, and that he summoned a Parliament for May, 1608, which did not meet for business till June, 1609. In the first interval, there was one Convention, meeting on the day appointed for the meeting of Parliament, and in the second interval there were two Conventions. It is clear from the answer given him by the informal Convention of 1621 (*cf. supra*, p. 264) that a Convention was regarded in the country as a device for avoiding a Parliament, and Charles I. adopted the same device in 1628-1633. It may have been that their experience in England made James and Charles unduly nervous about summoning Parliaments in Scotland, for it is difficult to believe that they would have met with serious opposition, and James succeeded in bending even General Assemblies to his will. Charles II. also preferred to get money rather from Conventions than from Parliaments; doubtless he had his reasons, though one cannot think that it would have made much difference.

Perhaps the most remarkable feature of the history of Conventions is the strong sense of legality and of precedent which can be traced in their proceedings. We have already illustrated this, but it is worth while calling attention to the fact that Buchanan in his *History* (Bk. xx. c. 8) records a constitutional discussion in 1570 about the right to elect a Regent after Murray's death, some holding that it depended on the documents signed by Queen Mary in 1567, and others insisting that it belongs to a full Convention. As usual, the divergent opinions were determined not by constitutional niceties but by political intrigues, but it is interesting to find that in the turmoil and civil strife of the time, constitutional theories were used even as a pretext.

[I am indebted to Mr. R. Renwick for pointing out that there is an earlier instance of the representation of Glasgow than that given in my article in the January number of the *Scottish Historical Review*. The date is 1546 (*A.P.* ii. p. 471). He also points out

that, by a charter of 1611, Glasgow was declared to a be royal burgh, and that the charter of 1636 is less important in this connexion than I had supposed. The status of Glasgow, like that of St. Andrews and Brechin, in the seventeenth century was certainly irregular, and it does not satisfy all the usual tests of a royal burgh until after the Revolution, when it obtained the power of electing its own magistrates without episcopal ratification of the election. My general argument is not affected by either of these two corrections in dates.]

ROBERT S. RAIT.

Sir Thomas Craig, Feudalist

IT was the fortune of Thomas Craig to lead a life devoted to the study and practice of the Law. His long career was professional in a peculiar sense and bore an imprint which was seldom found in the Scotland of his day or, as a matter of fact, of succeeding generations. The pre-Reformation lawyers were ecclesiastics, whose interest lay in the extension of systems of jurisprudence and legal practice which were cosmopolitan in their origin and aim. During the fifty years which followed the constitutional establishment of the Reformed religion in Scotland a bold effort was made by the leaders of the Reform party to direct legislation and legal administration and to occupy the position which had been held by the ecclesiastical lawyers of the old regime.[1] The ultimate failure of this attempt was due to influences which find expression in the life and character of Thomas Craig. These forces first became articulate in the establishment of the Court of Session in 1533, and the fact that this tribunal was modelled on the *Parlement de Paris* indicates their French origin. But an administrative measure is barren in the absence of men imbued with the tradition and spirit which it is intended to express, and the Court of Session, and with it scientific jurisprudence, only withstood the disintegrating forces of religious reform through the tenacious devotion to French traditions of the practising

[1] The most eloquent expression of this point of view is to be found in François Hotman's *Anti-Tribonian* (*Opuscules Francoises des Hotmans*, Paris 1616), in which the author pours scorn on the claims of Civil Law to represent justice and equity, and urges youths 'quitter le mestier pour s'addonner entierement à l'estude de la religion: qui est un fort belle exemple et miroir pour les jeunes hommes qui aiment et craignent Dieu' (cap. 15). 'Et s'il est besoin de parler du droit civil des Romains,' he writes, 'je diray d'avantage, qu'il ne fut jamais fait ny composé pour servir d'equité et raison naturelle convenable indifferemment à toutes nations, mais seulement par une particuliere prerogative inventée expres pour maintenir les bourgeois Romains, et en plus haut degré et dignité que les autres habitans du pais d'Italie' (cap. 10). Hotman's ideal was the application of local customary law by representatives of the estates of the kingdom, who kept before their eyes religion and natural equity (cap. 17). Cf. *Scottish Historical Review*, ix. 10.

lawyers who had drunk at the wells of Paris, Poitiers and Bourges. The most eminent of these was Thomas Craig.

When Craig crossed to France in 1555, after some years of study at St. Andrews University, he found himself in the high noon of the French legal renaissance. Cujas had recently succeeded Baudouin at Bourges, whence the latter, in the course of one of his periodical religious changes, had fled to join François Hotman at Strassbourg. Cujas, however, was not permitted to reign alone at Bourges, and was engaged in legal controversy with Doneau, a fellow humanist, and Douaren, a brilliant disciple of Alciatus. The last named, along with Budé of Paris and Zasius of Constance,[1] was 'le premier entrepreneur du nouveau menage,' founded on the conviction expressed in the words of Baudouin, 'sine historia caeca est jurisprudentia.'[2] These masters found jurisprudence in the hands of the degenerate Bartolists, who served the ends of the *practicians* and produced commentaries,[3] in which a thin stream of jejune observations wound its way along a dry river-bed bristling with references. They inaugurated a method of legal study which marked a change as revolutionary as that which Descartes effected at a later date in the field of philosophical speculation. They realised that jurisprudence was an historical study, and revived it with the aid of auxiliary sciences. Their historical perspective was not always based on a critical examination of sources in the modern sense, but it was sufficiently

[1] Zasius was the first German jurist of eminence. He spent a long life as professor at Freiburg, and died there in 1535. His learning and elegant Latin style were combined with personal characteristics which distinguished him from his French contemporaries, and were distinctively Teutonic. 'Caeterum ad vitam, quod attinet,' wrote a pupil, 'erat ille honestissimis et amabilissimis moribus praeditus : liberalis, humanus, affabilis, laeti et perquam festivi ingenii, ut qui libentissimi semper jocaretur. Dapsilis erat, et crebro convivabatur, adhibitis plerumque doctis viris, amicis suis, quorum suavissimis confabulationibus animum suum subinde recreabat. Nihil enim minus, quam solitudinem ferre poterat. Cibi atque vini nonnihil erat avidior (unde et crassitiem corporis contraxerat) ut mirari non pauci solerent, quomodo vir istis rebus intemperantior tantos tamen labores lubracionesque (quibus plurimum utebatur) sustinere citra morbum posset.' Cf. Joan. Ficardus, *Vitae recentorium jureconsultorum.* Craig refers to Zasius as 'inter juris Feudalis interpretes doctissimus' (*Jus Feudale*, iii. 5, § 28).

[2] Pasquier, *Recherches de la France*, ix. 39.

[3] Cf. Rabelais' phrases, 'une belle robbe d'or triumphante et precieuse à merveilles, qui feust bordée de merde,' and 'la brodure d'iceulx, c'est assavoir la Glose de Accurse, et tant salle, tant infame et punaise, que ce n'est que ordure et villenie' (bk. i. cap. 5).

clear to free the more active members of the school from subservience to great traditions. Such a subservience is often the first fruits of historical studies. Thus, François Hotman, a doctrinaire republican of the extreme type which is apt to present itself in periods of rapid political change, advocated, in place of the abstractions which might have been expected of him, a *mélange* of civil law, feudal customs and *politique tirée de l'écriture sainte*.[1]

Craig's early studies at St. Andrews had possibly awakened him to the forces which were bringing together the newly recovered past and the insistent future, but it is impossible to overestimate the effect even on his 'douce' Scotch temperament of his entry into the vivid life of sixteenth century France. His limitations saved him from exaggeration, and it is improbable that he came in contact with legal politicians, or, if he did, that he was sufficiently mature to appreciate them. His eighteenth century biographer states that he studied in Paris under Baudouin and Rebuffus, and, while this is chronologically impossible, it indicates that he obtained his legal training under jurists who were unlikely to divert his attention from strictly legal studies. The former obtained a reputation as a religious trimmer, one day a Huguenot, the next a Romanist, interested but essentially moderate; while the latter was principally a Canonist, and is shown by his writings to have belonged to the old school, which had not freed itself from the pseudo-Bartolist tradition. It is impossible to trace Craig's movements during his seven years' residence in France, and it is improbable that he remained throughout the period in Paris, but his after-career demonstrates that the influences which he experienced there were permanent and formative.[2] He received an

[1] Cf. Hotman's phrase, 'un philosophe politique discourant de raison et equité tel que doit estre un jurisconsulte.'

[2] No direct information is available regarding Craig's residence in France. In his *De Unione*, cap. 10 (S.H.S. p. 151), he refers to the relations between Englishmen and Scotsmen, 'ut ipse vidi cum adolescens Lutetiae essem,' and it is probable that he spent some time in Paris, but Tytler's statement (*Life and Writings of Sir Thomas Craig*, Edinburgh 1823, p. 17) that he studied under Rebuffus and Baudouin is based on conjecture. Like most of his countrymen, he probably studied at several universities, particularly in view of the fact that the exposition of Civil Law was prohibited at Paris during his residence in France. In default of direct evidence, recourse must be had to his writings. Among the sixteenth century jurists cited by him, François Hotman receives special attention. In the *Jus Feudale* he is referred to as 'vir doctissimus,' 'juris consultissimus,' 'inter primos nostrae aetatis juris consultos,' and 'vir sane magni judicii,' and Craig subjects his views to detailed criticism. The chronology of Hotman's wandering

imprint which defined him as a man no less than as a jurist. In particular he owed much to the spirit of the French legal practitioners of his age.

The *avocats du parlement* had an important share in the political development of France. Their influence extended over a period of centuries. During their legal studies in Italy the majority of them became imbued with an intellectual enthusiasm for the idea of centralised kingship, which found expression in the legislation of Imperial Rome. The turbulent political life of the Italian city-states seemed to justify their preferences, and further support was given to them when they came into contact with the practical working of the feudal system in France. These lawyers accordingly devoted themselves through generations to the development of a strong centralised power in the sphere of jurisprudence and legal administration. They gained their end at the expense of feudalism, which they undermined by their elaborate development of the laws of succession at the expense of the feudal superior, and by the struggle to separate territorial

life is uncertain, but it is probable that during Craig's residence in France he was in Germany and did not return to France until 1563 (*Thuani Historia sui temporis*, lib. xcix. ed. London 1733, tom. iv. pars 2, p. 895). If Craig studied under this remarkable man, he did so before his extreme democratic views had taken shape. Andrew Melville came in contact with Hotman at Geneva in 1576 (*James Melville's Autobiography* (Wodrow Society), p. 42), and the latter had an unrecognised influence on the leaders of the second phase of the Scottish Reform movement.

Petrus Rebuffus, who died in 1557, is referred to by Craig as 'vir doctissimus et in usu forensi exercitissimus' (*Jus Feudale*, lib. i. 10) and as 'a most acute lawyer' (*Scotland's Soveraignty Asserted*, p. 17). Cf. 'nostre Rebuffe, personnage de grande et singuliere doctrine au fait du Droit.' Pasquier, *Recherches de la France*, ix. 39.

The only other laudatory reference to a contemporary jurist in Craig's writings is to 'vir doctissimus Gulielmus Terrenus, qui commentarios in Constitutiones Normannicos exquisitissimos conscripsit' (*ibid.* ii. 20). This writer may be identified as Guillaume Terrien, the author of *Commentaires du droit civil, tant public que privé, observé au pays et duché de Normandie* (Paris 1574, 1578, and Rouen 1654). Cf. Dupin, *Profession d'avocat* (Paris 1832), ii. 264. Terrien was 'lieutenant-general au bailliage de Dieppe,' and Craig may have met him there.

Craig makes no reference to Baudouin, while he frequently quotes Cujas, Budaeus and Bodin, and Tytler's statement that he studied under him seems to be doubtful, as Badouin left Bourges for Germany in 1555, the year of Craig's arrival in France (Brissaud, *Droit Français*, Paris 1904, i. 351). After Craig's return home Andrew Melville studied at Paris under Baudouin (*James Melville's Diary*, p. 39).

It is apparent that Craig's writings furnish no conclusive evidence as to his teachers in France, and the question remains open.

power from legal jurisdiction, summed up in the maxim, 'Fief et justice n'ont rien de commun.' They aimed at the separation of political sovereignty from the possession of property, and, in the words of an eminent legal historian, succeeded in transforming 'la féodalité dominante' into 'la féodalité contractante.'[1] In its earlier stages this movement was beneficial, and gave national unity to France at the expense of 'une immense perturbation dans les dégres des possessions féodales.'[2] With the growth of the royal power the prestige and influence of the legists increased. They became a special caste, with traditions which gave them almost a sacerdotal character, but they had no defences against their own creation, and as time passed some of them began to realise that in their policy of eliminating the subject superior, in so far as political power was concerned, they had done a disservice to the middle classes in leaving them unprotected in face of a centralised government. Thus we find the democratic jurists of the sixteenth century, in the person of François Hotman, making use of the feudal conceptions, which their class had combated, to resist the growing forces of what they conceived to be royal despotism. But to the contemporaries of the youthful Craig these far-reaching considerations lay hidden in the background, and to his eyes the *Parlements* and the legists who gave them their prestige, presented an alluring spectacle of influential dignity. Their position was not based on exclusively technical qualifications. At no period was the lawyer less of 'a very lawyer' than in the generation of the later French renaissance, which synchronised with Craig's residence in France. The leading practitioners of his time were Christian Stoics and Epicureans, who spent discreet and contented lives in the shelter of legal dignity, finding sufficient reputation in professional excellence, coloured with humanism, and disdaining the political extravagances of their day.[3] They live in the pages of Loisel's master-piece, *Pasquier ou Dialogue des Avocats du Parlement de Paris.*[4]

The speaker is Etienne Pasquier, whose eminence as a lawyer has been overshadowed by his literary genius, though in his time it would have been considered unusual to separate the two fields.

[1] Brissaud, *Droit Français* (Paris 1904), i. 657, 659, 660 and 666.

[2] Barboux, *Les Legistes* (Paris, 1877), 141.

[3] Cf. Delaruelle, *Guillaume Budé*; (Paris 1907) and Zanta, *Renaissance de Stoicisme*; (Paris, 1914).

[4] Dupin, *Profession d'Avocat* (Paris 1832), i. 149.

After a deft sketch of the cultivation of forensic eloquence and the development of legal institutions in France, Pasquier casts his eyes back over the fifty-three years which had elapsed since he joined his Order in 1549, and passes in review the eminent figures which had made their mark in the Palais during the period. With wistful grace he recalls M. Matthieu Chartier, 'l'oracle de la ville, à cause tant de son savoir, experience et long usage, que de sa preud'hommie et integrité de sa vie'; M. Noël Brulart, whose fine career as *procureur général* proved the truth of the maxim, 'le magistrat fait cognoistre l'homme'; Pierre Seguier and Christophle de Thou, whose contrasted styles of pleading were expressed in the words *Multa paucis* and *Pauca multis*; Charles Dumoulin, 'le plus docte de son temps en droict civil et coustumier, et toutesfois malhabile en la fonction d'advocat, principalement au barreau'; Gilles Bourdin, a humanist, 'très-docte en toutes bonnes lettres et sciences'; M. de Pibrac, principal counsellor of Henry II. during his troubled reign in Poland, and friend of de l'Hospital; Leonard Goulas, who could not suffer 'les inepties et importunetez des parties,' and 'les reprehensions que font quelquesfois messieurs les presidens,' and whose practice suffered in consequence; Jacques Mangot, 'le plus accomply personnage en tout ce que l'on pouvoit desirer, qui fust en son aage,' whose style of pleading surpassed that of his rival Canaye in respect that 'il sembloit avoir plus de force, marchant quasi comme à pas de bœuf, et consequemment imprimant plus avant ce qu'il disoit au cœur des escoutans.' There were others who forgot that 'l'estat d'advocat desire son homme tout entier,' and lost their chance of forensic distinction, such as Pierre de Rochefort, who 's'arrestoit plus à son office de bailly de Saint Germain-des-Prés, qu'à son estat d'advocat,' or de Larche, 'lequel s'employait plus au bureau des enfans de la Trinité,' or Thomas Sibilet 'qui s'amusoit plus à la poésie française qu'à la plaidoirie,' or M. N. le Feron, 'qui s'adonna plus à escrire des genealogies et armoiries qu'à son estat d'advocat,' or M. Louis Aleaume, who had the makings of a great advocate, but 'estoit homme de livres et de liberté se contentant de son bien, et de la place de substitut au parquet de messieurs les gens du roy,' or M. Roul Parent, who left the bar, 's'estant mis si avant dans la devotion, qu'il estudioit plus en theologie, qu'il ne s'employoit aux affaires du palais,' or Chauveau, 'qui n'eut pas esté mauvais advocat, encores que tout petit qu'il estoit, il eust une voix de prescheur, comme il le devint bien tost apres.' Others, again, became court officials,

and remained such, having failed to realise that an official position can only be a stepping-stone or a cul-de-sac, and that 'le Parquet trompoit son maistre.' Such are some of the instances cited by Loisel of those who failed to accept the tradition of the French bar and confine themselves to the straight road which led to professional eminence. At first sight the career of 'simple advocat' may appear narrow and barren, but the consciousness and exercise of increasing capacity brought its own reward in independence and reputation. 'Les grands advocats s'advancent assez d'eux-mesmes,' and as the trusted counsellors of royalty and nobility they exercised an influence which no official position could have given them. Such was M. François de Montelon. 'Il avoit acquis,' wrote Loisel, 'une telle reputation de probité, qu'on le croyoit sur ce qu'il disoit, non comme advocat, mais comme s'il eut esté rapporteur d'un procez, sans lui faire lire aucune pièce, Aussi estoit-il un tres-homme de bien, vivant honorablement, sans avarice, ny ambition, venerable, et craignant Dieu.' A strong tincture of letters serves to embellish the pleadings of the advocate formed on this model.[1] It is permitted to him to adorn his pleadings with Greek or Latin 'comme en passant,' provided the quotations be 'si à propos et si significatif, qu'il ne se puisse si bien exprimer en françois et que ce soit sobrement, et sans en faire monstre ny parade.'[2] Having founded 'une belle maison' and trained sons to carry on his tradition,[3] this 'grand homme de palais' was free to retire 'en une sienne maison des champs pour y vivre et mourir en repos ; qui à esté une belle resolution et closture de sa vie.' Pasquier summed up the spirit of this life in a letter to his son : 'Tout l'artifice que j'entends ici vous

[1] A typical instance of the cultivated tastes of these eminent practitioners is afforded in the possession by Pierre Pithou of a collection of precious MSS., including Petrarque's MS. copy of Cicero's works. Cf. Pierre de Nolhac, *Petrarque et l'Humanism* (Paris 1907), i. 227 *n.* The ridicule and contempt which his contemporaries poured on Pierre Lizet, who unworthily filled the office of First President of the Parlement de Paris from 1529 to 1550, emphasised the fact that he was an isolated exception to the high standard of conduct and learning which his professional brethren maintained. Cf. Christie, *Etienne Dolet* (London 1899), p. 422 *et sqq.*

[2] The use of Latin on the bench was prohibited by Francis I. in 1539 in consequence, it is said, of Lizet's ludicrous display of dog Latin. Cf. Christie, *op. cit.* p. 424.

[3] 'Quant à moi, la loi me plait infiniment que l'on dit avoir été observée tant en Egypte que Sparte, esquels lieux il y avait certaines vocations qui se transmettaient successivement de père à fils' (Etienne Pasquier, *Les Lettres*, ix. 6, 'A Théodore Pasquier, son fils').

donner est de n'user point d'artifice ; je veux que vous soyez prud'homme : quand je dis ce mot, je dis tout. . . .[1]

The manner of life of these great practitioners was contained, measured and self-conscious. In more than the occupation of their offices they carried on the tradition of the secularised clerics who had managed legal business in earlier days. They imposed upon themselves regulations and restrictions in conduct which were involuntary in the case of an ecclesiastic, but their point of view was secular and professional. They looked forward to a dignified old age with their books, when their sons were ready to carry on the family tradition, and they retired to a country house, just as eminent ecclesiastics, after a lifetime spent in affairs, were wont to retire to the dignified ease of a provincial bishopric.[2]

In the absence of definite information regarding the early life of Thomas Craig, it may appear an error to lay so much stress upon the characteristics of the French jurists and practitioners of his youth, but justification is found when we turn to his later life and his writings. His long professional career was carefully modelled on the French pattern, and his writings can only be judged as the work of a disciple of the great jurists of the French renaissance. These two influences, the grave humanism of the French jurists and the bourgeois wisdom of the *noblesse de la robe*, were sufficiently strong to limit the effect of the close personal relation which bound Craig to his paternal uncle for a period after his return to Scotland. To the latter was entrusted the completion of the lad's education, which in 1561 meant in effect the assimilation of the atmosphere of the Scottish Reformation. Craig was fortunate in being initiated into this new world by a cosmopolitan whose prestige must have been sufficient to impress his pupil. John Craig, the uncle in question, was an ex-Dominican friar, who had spent much of his life on the Continent and, carried

[1] *Ibid.* In a letter to messire Achille de Harlay (*ibid.* xxii. 9) Pasquier gives a pleasant picture of his retirement in the country : 'Encore que je sois un autre chatreux dedans ma maison.... J'ai d'un coté mes livres, ma plume et mes pensées ; d'un autre, un bon feu, tel qui pouvait souhaiter Martial, quand entre les félicités humaines il y mettrait ces deux mots : *focus perennis*. Ainsi me dorlotant de corps et d'esprit, je fais de mon étude une étuve, et de mon étuve une étude ; et en l'un et l'autre sujet je donne ordre qu'il n'y ait aucune fumée ; au demeurant, étude de telle façon composée, que je ne m'asservis aux livres, ains les livres à moi.'

[2] *E.g.* 'Premierement grand Docteur au fait des loix, puis Doyen en l'Eglise de Paris, en apres Evesque d'Auxerre qui mourut l'an 1300.' Pasquier, *Recherches*, ix. 37.

away by the doctrinaire enthusiasm of Calvin, had fallen into the hands of the Roman inquisition. He escaped by a stroke of fortune, and was destined to form one of the band of regular clergy which gave intellectual force and organisation to the Scottish Reformed Church.[1] Had Craig fallen into other hands he might have been either repelled like William Barclay or carried off his feet and converted into a fanatic of the type of François Hotman. The sanity and theological acumen of John Craig appealed to him sufficiently to make him define himself as a Protestant lawyer but lightly encumbered with theological baggage. During his long life he played a part in the Church Courts, but his part was always that of a lawyer, primarily interested in the Church as an institution. Looking at things from this point of view, he appears to have been disturbed by the chaos to which the ecclesiastical law of Scotland had been reduced by the secularisation of Church property and the subsequent Reformation legislation. Thus, in dealing with chapters and ecclesiastical benefices he writes, 'apud nos hodie nihil fere est, quod fieri non potest' (*Jus Feudale*, i. 13), and this note of impatience is frequently struck.[2]

Craig's long professional career commenced in 1563, when he was admitted advocate, and lasted until his death in 1608. A year after he was called to the Bar he was appointed Justice-Depute, and filled the office for nine years. In 1573 he became Sheriff-Depute of Edinburgh, and in 1592 counsel for the King. On the Union of the Crowns he went to England with the King, and was knighted against his will. After acting as one of the

[1] The best account of John Craig is to be found in Law's *Collected Essays and Reviews* (Edinburgh 1904), 277.

[2] Craig did not hesitate to criticise the Reformed clergy, whose semi-secular position offered a contrast to the complete withdrawal from ordinary life of the monastic ideal. Thus, with reference to the canonical incapacity of clergy to succeed to heritage, he observes: 'Cum moribus nostris hodie Clericatus successioni non obstet.... Nos nullis aliis hodie Clericis utimur, quam ministris verbi Dei; quos ego, si hereditas obtigerit, revocandos a publico verbi ministerio ad administrationem suarum terrarum non putarem; nam qui hodie dominium de Fowlis; et Cruciferi occupat, antea ministerium verbi sequabatur; ut illud dominium hereditatie ei obvenit, a ministerio cessavit' (*Jus Feudale*, ii. 18, § 22).

On the other hand, Craig had little respect for the regular clergy. His criticism of them was based on intellectual and moral grounds. He had a typical Protestant contempt for their cloistered lives and ignorance of affairs, and had no faith in monastic historians (*Scotland's Soveraignty*, London 1695, pp. 46 and 134). His criticism of the Friars Minor is that they took advantage of their prestige to defraud the widows and orphans of those who fell at Flodden and Pinkie (*Jus Feudale*, i. 13, § 12). His view of his own times is expressed in his phrase, 'nos hodie nihil pudendum pudet' (*Jus Feudale*, ii. 3, § 12).

Union Commissioners he returned to Scotland, and died shortly after receiving the appointment of Advocate of the Church. All through these forty-five years Craig remained a practising advocate, and appeared before his son Lewis, who was raised to the Bench in 1604. In these days judicial preferment was almost invariably the reward of political services, and Craig's deliberate temperament was combined with a certain impatience of detail and interest in political and legal theory which disqualified him for complete success as a pleader, and for the dirty work of political intrigue. From time to time he produced respectable Latin verse,[1] but it required the spur of the great change which the year 1603 brought to Scotland to induce him to write his *Jus Feudale* and his posthumous works *On the Union of the Crowns* and on England's claim to homage from Scotland. He married a niece of George Buchanan, but he always remained a moderate Protestant, and only succeeded in converting his aged father when the latter was on his death-bed, *in lecto aegritudinis*. His appointment to the highest office which the Church of Scotland can bestow upon a layman was a tribute to his professional eminence and no evidence of ecclesiastical partizanship. His keen devotion to the cause of Royalty must have been offended by the humiliating position in which King James was kept by the Church and its lay supporters. He lived and died a 'simple avocat' and his intervention in politics had the dignity and force which marked the production by the French jurists of the *Satyre Menippé* in the days of the League. His fame was posthumous, and his reputation never passed beyond the limits of the learned world of Continental jurists. The literary activity of his old age was probably induced by external events, and the death of Queen Elizabeth focussed and made articulate the accumulated experience of a long life.[2] Had he died ten years earlier he would have taken an obscure place by the side of his friends, William Oliphant and Alexander King, 'two good practical lawyers,' whose names he has preserved from oblivion.[3]

[1] *Delitiae Poetarum Scotorum*, i. 221.

[2] Craig's avowed purpose in writing his *Jus Feudale* was to define the Law of Scotland in view of the approaching Union of the Crowns, but the consideration of this aspect of his work must be deferred to a future article.

[3] Cf. *Jus Feudale*, ii. 16, § 19, 'advocatos juris patrii peritissimos'; Stair, iii. 5, § 10; and Riddell's *Peerage and Consistorial Law*, ii. 840 *n*. Robert Johnston in his *Historia Rerum Britannicarum* (1655), p. 231, narrates an interesting anecdote of Alexander King.

It is apparent to every student of Craig's writings that his professional life was to him absorbing and satisfying. The portrait which appears in Baillie's edition of his *Jus Feudale* shows a 'douce' and alert face, with rounded chin and lips on which a smile seems to hover, and the observations and personal reminiscences which are scattered through his treatises reveal his keen appreciation of the rich banquet of personal experience which was offered to him. He brought a well-trained legal mind, with its aptitudes and corresponding limitations, to bear on Scottish life in its most formative period. His colleagues in the Court of Session included men of the most diverse cast. Thus, if we confine ourselves to those to whom he refers, we are faced with legal politicians like John Bellenden, James Elphinstone[1] and James Macgill,[2] who were deeply involved in the plots and intrigues of their day; with distinguished lawyers like William Oliphant,[3] who developed political interests late in life; with David Macgill[4] and Thomas Maclellan,[5] who were eminent practitioners; and with John Sharp,[6] a fellow student and life-long associate. In the midst of these he lived and moved and had his being, taking a part with them in court and in private debates in the formation and definition of the law of Scotland out of the amorphous deposit of custom and abstract theory which their training and professional experience presented to them. His zeal for the solution of open legal problems by a judgment of the Court was too often disappointed by a compromise between the parties to a case. When he came to write his *Jus Feudale*, his treatment of many 'nobiles quaestiones' concluded with the complaint, 'Sane quid Senatus in hac re statuerit, incertus adhuc sum' because 'cum multis argumentis in utramque partem contenderetur, tandem transactione res finita

[1] 'Dominus Jacobus Elphinstoun Secretarius et nunc Senatus princeps dignissimus (*Jus Feudale*, ii. 7, § 23).

[2] 'Vir in usu forensi maximum' (*Jus Feudale*, ii. 6, § 29).

[3] 'Vir acutissimus et juris patrii peritissimus' (*Jus Feudale*, ii. 19, § 17).

[4] 'Vir sane magnus, inter advocatos tum primus' (*Jus Feudale*, iii. 1, § 18). James Melville, who had no sympathy with the type of mind represented by David Macgill, describes him as 'a man of als grait, solide, and naturall a wit as in our tyme, excelling thairin all his colleages of the Session and lawers, bot without all sense of God, and with a prydfule disdean and contempt of the ministerie' (*Diary*, ed. 1842, p. 135).

[5] 'Vir magnus, inter primos advocatos in Senatu nobili et rerum nostrarum peritissimus' (*Jus Feudale*, iii. 5, § 9).

[6] 'Vir doctissimus et in jure nostra exercitatissimus' (*Jus Feudale*, ii. 2, § 24).

est.'[1] Even when the *Senatus* had given a decision he was not prepared to accept it without demur if it did not seem to him based on sound legal principle, and he indulged at times in respectful criticism.[2] It is interesting to find him in one passage voicing the complaint which has often been made against the Court of Session since, that the minds of the judges are prejudiced in favour of the Treasury.[3] His free criticism of ecclesiastical administration and the Reformed clergy has already been noted, but his enthusiasm for an ideal feudalism, to which reference will be made later, led him to even more daring flights in his criticism of the passage of large estates into the possession of women. As a man of affairs and a theoretical jurist, Craig was a strong anti-feminist, and some justification for his attitude may be found in the unpleasing rôle which some ladies of rank play in the Public Records and State Papers of sixteenth century Scotland.

The position of women first comes before Craig in connection with entails, which are open to possible objection as depriving women of the right of succession. He is so far in sympathy with the spirit of his time as to seek for guidance in the Old Testament, but he expresses the view that the laws of succession which may be deduced from the scriptures are not 'ad necessitatem trahendae.'[4] and that each *respublica* may have its own rules on the subject. The origin of the unreasonable legal privileges which women have received can be traced, he writes, to the weak subservience of Justinian to his wife, Theodora, which induced him to inaugurate legislation in favour of women. It is right, Craig maintains, that the superior should be protected by his claim to *Maritagio* from the consequences of unsuitable marriages entered into by vassals 'cum vassallorum animi plerumque ex conjugum arbitrio non solum pendeant, sed etiam pervertantur.'[5] When Craig deals with provisions in favour of widows, and the manner

[1] *Jus Feudale*, ii. 14, § 10; cf. *ibid.* iii. 6, § 3. Cujas discusses the nature of a *transactio* in his *Paratitla in librum* ii. *Codicis Justiniani*, i. 4.

[2] *E.g.* 'Id qua ratione Senatus fecerit, aliis judicandum relinquo' (*ibid.* ii. 6, § 13), (*ibid.* ii. 7, § 12), (*ibid.* ii. 16, § 14), (*ibid.* iii. 2, § 29), (*ibid.* iii. 2, § 7). In the question dealt with in this passage Craig approved of the view adopted by the Commissaries, 'viri sane graves,' who were at issue with the *Senatus*. He appears to have had considerable respect for the Commissaries, whom he describes in another place as 'viri acuti' (*ibid.* ii. 18, § 19), cf. also *ibid.* iii 2, § 7.

[3] 'Nescio tamen quomodo, inclinatis in fisci causam animis, judicium illud terminatum est' (*ibid.* iii. 6, § 15).

[4] *Jus Feudale*, ii. 16, § 10. *Ibid.* ii. 21, § 3.

in which heirs were unduly burdened in this respect, he protests, 'Et hic evenit quod sapientissimus Cato censorius futurum praedixerit, si impotente sexui frena permittantur; nam quamprimum pares uxores viris essent, mox etiam superiores evasuras. Sed querimoniis hic non est locus.'[1] A lighter note is struck when he deals with the protection of the female relatives of a feudal superior from the seductions of presumptuous vassals. 'Idem,' he writes, 'si turpes et impudicos sermones injecerit, praecipue si sollicitatio et attractatio accedant. Plerique de osculo dubitant, prope illud:

> Oscula qui sumpsit, si non et caetera sumpsit;
> Haec quoque, quae sumpsit, perdere dignus erat.

Sed hoc ex more regionis aestimatur.'[2]

The interest of Craig's half-playful criticisms of women is to be found in their theoretical grounds. He regarded them from the same point of view from which he regarded the Church of Rome, as an element or factor which tended to disturb the complete absorption of property in a 'high and dry' feudal system. Lord Hales[3] has demonstrated that, from the earliest period of which records remain, Scottish legal practice dealt very liberally with women as holders of property, and their legal position improved as the sixteenth century ran its course. This improvement was due to a variety of causes, among which may be mentioned the prestige which women gained generally through the political importance of the Queens of England, France and Scotland, the close relations between the Reformed ministers and their female supporters in Scotland, and the predominance which women had gained in consequence of the heavy toll which the wars with England had taken of the propertied classes in Scotland. Had Craig's point of view been strictly historical and humanist in the juristic sense of the term, he would probably have been content to take things as he found them, and give to women the position in his map of Scottish jurisprudence which facts seemed to warrant, but his historical sense was blunted by his doctrinaire enthusiasm for an abstract feudal system or ideal. While, however, the grounds on which he proceeded were theoretical, the

[1] *Jus Feudale*, ii. 22, § 8.

[2] *Ibid.* iii. 5, § 26. Cf. *ibid.* ii. 20, § 4, where Craig observes that the guardianship of women is shorter than that of men 'non tam quod difficilius custodiantur, ut vulgus sentit,' but because they are sooner fit for marriage.

[3] *Tracts.*

material which he sought to mould was homely and concrete, and he was too astute to attempt to encounter the growing power of women by reference to his long vanished ideal of a legal system based on personal military service. As has been noted, feudalism had become contractual, and to meet a contractual predominance of women based on the anxiety of fathers to provide for their daughters by marriage settlements, he urged the claims of entails to be accepted as in full conformity with the *ratio feudalis*. Descending into the arena, he opposed to the marriage settlement, by which an astute parent defrauds his daughter's suitor's heir-at-law for her benefit, the deed of entail by which the succession to an estate is generally preserved in the male line by a quasi-contract with the superior. The latter contract seemed to him more consonant with his ideal feudalism, and he adopted it rather than theoretical arguments which would meet with no response. In other words, he preferred an entail, by which a superior and vassal fixed an order of succession, to matrimonial provisions, which too often reflected the generosity of a love-sick youth.[1]

It was probably owing to Craig's absorption in an abstract feudal view of human relations that he turned with contempt from the social distinctions which the growing burgher class were attempting to define.[2] In his pages an attentive reader can observe the feudal system striving to maintain itself in a world in which land law was ceasing to be supreme, in which superior and vassal were leading separate lives, and not working and living together in the development of common interests. Heritable property had become a commercial asset, and a vassal had perhaps several superiors and complicated legal relationships. Thus a vassal might find it more profitable to relinquish heritable property than to retain it and subject himself to feudal exactions which the development of economic life had made arbitrary and without justification.[3]

Throughout this critical period the recently-founded Court of

[1] Montesquieu, *Esprit des Lois*, xxxi. 34.

[2] Cf. *Jus Feudale*, ii. 21, § 25 : 'Sed de burgensibus inter se rara quaestio est, cum nihil pro custodia et servitiis teneant, nihilque debeant; itaque supervacuum est de eorum aut inter se, aut si cum rusticis conferantur, dignitate disputare : fieri tamen potest, ut hi feudum etiam militare, sed ignobile teneant.' The territorial adventures of the modern soft-goods magnate would undoubtedly have caused Craig considerable perplexity.

[3] *Jus Feudale*, iii. 1, § 9.

Session played an interesting part. From one point of view the function of the Senatus in the enforcement of Feudal Law resembled that of the Praetorian Prefect when he had to apply the limited jurisprudence of the Roman city state to new conditions. The 'equity' which the Senatus applied was Civil Law, which seemed to define and temper the vague and far-reaching obligations of a feudal vassal based on custom.[1] Thus we can trace in Craig's treatise an attempt to graft on the amorphous mass of feudal customs subtle refinements regarding the quality of possession and its various degrees taken bodily from Civil Law. This procedure undoubtedly strengthened and made articulate many relationships which Scottish practice had left indefinite. The law of Scotland prior to the sixteenth century is difficult to define.[2] When the redaction of French customary law took place in the sixteenth century the material available was varied and abundant, and a system could be formulated within the limits of this material, but in Scotland the position was different. There was a meagre deposit on which to base a system, for the *Regiam Majestatem* was suspect.[3] It is conceivable that the *Senatus* might have formulated a local customary law had it confined itself to local customs, but it was too late in the field, and was controlled by jurists with a Continental training. In the sixteenth century Scotland was in the position of the French *pays de coutumes* two centuries earlier, and her jurists resorted to Roman Law as 'une sorte de logique universelle appliquée au droit.'[4]

This application of Roman Law by the Senatus was primarily directed to defining the obligations of the vassal, but it had another aspect. The definition cut both ways, and undoubtedly increased the rights of the superior and revived and assisted the enforcement of many claims which might otherwise have fallen

[1] *Jus Feudale*, iii. 6, § 9.

[2] In one passage Craig defines the *jus antiquum* of Scotland as 'libri Regiae Majestates, de Judicibus, Quoniam attachiamenta, Leges Burgorum et Forestarum' (*ibid.* ii. 6, § 25).

[3] Cf. *Jus Feudale*, ii. 6, § 25 : 'Ego sane illum librum Reg. Majest. a nostris hominibus scriptum fuisse, vix possum induci ut credam : Anglorum enim leges et mores potius sapit ex omni parte quam nostros . . .'

[4] The relation between Civil Law and Customary Law in France was never finally determined. On the one hand, Guy Coquille observed, 'Le droit civil romain n'est pas notre droit commun et n'a force de loi en France, mais doit être allégué seulement comme la raison.' On the other hand, Pierre Lizet accepted 'le droit romain pour notre droit commun et y accommodait autant qu'il pouvait notre droit français' (Brissaud, *op. cit.* i. 152).

into desuetude. The contemporary legislation of the Estates also yields evidence of the increasing power of the feudal superior consequent on the conversion of customary claims into legal rights enforceable in a Court of Law. The gradual elimination of ecclesiastical lawyers from the *Senatus*, which marked the latter half of the sixteenth century, left the tribunal in the hands of 'bonnet lairds,' with a legal training whose sympathies were with the landed interest. The substitution of a legal tribunal for the old feudal domestic court had its disadvantages from the point of view of the vassal.[1]

The modern reader of Craig's juristic writings is tempted to dwell on their historical, economic and political sides to the neglect of their strictly legal import, but the temptation must be resisted. Reference has been made to the transformation which can be traced in his pages of heritable property from the badge of an intimate personal relationship into a commercial asset, and much might be written on the rôle which the heritable creditor played in giving the innominate relations between superior and vassal a contractual character. But some observations may be ventured on the political aspect of Craig's writings.

In his treatment of political questions, as in every other branch of his work, Craig's indebtedness to French influences is apparent. His political views are based on an interesting *mélange* of the theories of Bodin and a political interpretation of the feudal system. The great French publicist is frequently quoted by Craig, but it is difficult to conceive that the trend of his views was appreciated by the exclusively legal mind of the Scottish lawyer, and all that one gets in Craig's writings is an effort to engraft on a feudal over-lord the attributes of Bodin's centralised monarchy. The penetrating political analysis which is to be found in the *Vindiciae contra tyrannos* and Buchanan's *De jure regni*, and in the French and Scottish polemical treatises which these works evoked, is absent from Craig's pages.[2]

[1] This consideration appears, *e.g.* in Craig's treatment of the doctrine of Non-Entry which had to be enforced by a declaratory action before the *Senatus* (*Jus Feudale*, ii. 19, § 20 *et sqq.*), and in his discussion of Adjudications (*ibid.* iii. 2, § 20). When he deals with *Recognitio* he writes, 'Haec fortasse prolixius; sed cum hae recognitiones quae nihil aliud sunt quam retractationes (. . .) apud nos hodie sunt frequentissimae, nec rationem aut ullum aequitates fundamentum habere a plerisque putentur, et propterea inter causas odiosos vulgo numerentur. . . .' (*ibid.* iii. 3, § 10).

[2] Craig's political views are sufficiently defined in the description which Brissaud gives of an earlier phase of the disintegration of feudalism in France. 'Le

The foundation of Craig's political philosophy is to be found in the words of the Psalmist, 'The heaven, even the heavens, are the Lord's; but the earth hath he given to the children of men.' *Imo*, he writes, *si rem omnem ea qua decet Christianos reverentia, eaque mentis integritate et acumine, id est, nude et simpliciter, expendere velimus, haec imperia et regna gravissima pura et recta feuda sunt et cum definitione feudi quam praemisimus aptissime conveniunt.*[1] These supreme *feuda* are granted by the divine superior on the condition of just administration and in consideration of *fides seu fidelitas*. They imply *servitia*, which are '*pura et honesta: denique vere militaria; nempe, ut sub signis Filii sui unigeniti, contra humani generis hostes dimicemus . . .*' The only ground upon which such *feuda* may be lost is '*infidelitas et in Dominum ingratitudo.*' In his definition of Kingship he follows closely on Bodin: '*In usu nostro sub Regis nomine quilibet comprehenditur, qui superiorem non agnoscit, unde vulgatum illud, Quilibet Rex in suo regno Imperator est.*'[2] But this sweeping definition is modified by a number of references to the *Lex Regia*,[3] a political conception which was made use of by the Republican theorists and subsequently by the Jesuit pamphleteers of the sixteenth century. The King is not entirely free from responsibility to his subjects; he has duties to them as well as to God. '*Certum enim est dominos etiam vassallis suis obligari, quoque antiquior est dominus, eo magis obligatur et tenetur: nam et Rex in multis subditis suis obligatur, quod populum sibi a Deo commissum, secundum Divini verbi mandata, legesque regni Dei verbo non adversantes, regat et gubernet; a subditis vim, injuriam et omne genus oppressionis propulset; judicia sine corruptione*

seigneur fut le propriétaire unique ou tendit a le devenir; sa propriété se doubla de droits politiques, et il y eut un tel enchevêtrement entre les attributs de la propriété et ceux de la souveraineté qu'on les distingua mal et qu'on les traita souvent de meme façon; ainsi la justice conçue comme une dépendence du domaine se transmet, se vend, s'echange, se partage, s'infœde' (Brissaud, *op. cit.* i. 659). 'Le vassal ne dépend que de son seigneur; il n'est pas l'homme du suzerain; celui-ci ne peut l'atteindre, en principe, que par l'intermédiaire de son seigneur, mais il y a une forte tendence à l'immediatisation' (*ibid.* i. 659).

[1] *Jus Feudale*, i. 12, § 1.

[2] *Ibid.* i. 12, § 5. Cf. *ibid.* § 6: 'Plura de hac materia qui cupit legat Bodinum in sua repub.' Cf. also *ibid.* i. 6, § 32.

[3] *E.g.* 'Magistratuum creatio lege Regia in Imperatorem translata est' (*Jus Feudale*, i. 16, § 35), and with reference to the fisc Craig writes, 'Nam lege Regia, constituto Principe, ad decorem majestatemque ejus conservandam, a S.P.Q.R. pecunia etiam publica decreta fuit' (*ibid.* i. 16, § 46).

exerceri curabit; quod unumquemque in suo ordine et dignitate se habiturum jurabit.[1]

Craig's primary tendency was to identify political sovereignty with feudal superiority, and the political observations which are to be found in his juristic writings invariably take the form of an application of a feudal rule to facts which have primarily a political significance. Thus he inquires whether a king can adopt a son to rule along with him, and finds the answer in the *natura feudorum*, which is opposed to the division of jurisdiction to the prejudice of vassals.[2] The tendency led him into difficulties when he found it necessary to refer from time to time to the claims of James VI. to the English Crown. He discusses, *e.g.*, the lawfulness of holding a *feudum* in alien territory, and in view of the King's expectations has to express the view that feudal regulations are purely domestic, and that the question of the English succession must be ruled by natural equity and the law of nations, '*nam certum est aliud jus esse in regno, aliud in feudo.*'[3] Again, when the same important national interest looms behind his treatment of the question of the acquisition of *feuda* by *testamentum*, he observes that the right of testamentary alienation is contrary to the *ratio feudalis*, but, he has to add in view of his former *dictum*, *regna* are not *feuda*. He can only evade the admission of Elizabeth's full power of testamentary disposal by adding, '*At neque regna omnino a feudorum nomine excludi possunt, quorum omnium Deus Opt. Max. directus est dominus, de quo Reges regna sua tenent, et ad servitia eidem domino suo servanda et praestanda tenentur.*'[4] Other instances of the difficulties into which Craig was led by his attempt to apply feudal law to the modern state are found in his treatment of forfeitures and the conflicting claims of the King and the fisc[5] and in his discussion of Barratry.[6] They are all based on his identifica-

[1] *Jus Feudale*, ii. 12, § 33. [2] *Ibid.* i. 12, § 26. [3] *Ibid.* i. 14, § 8.

[4] *Jus Feudale*, ii. 1, § 16. In the argument which follows Craig maintains that a Parliamentary enactment is not effective to alter the line of succession which is based on *jus naturale*, *jus gentium*, and *jus Divinum* (*ibid.* § 20).

[5] *Ibid.* iii. 6, § 8. The following passages from the *Vindiciae contra Tyrannos* indicate that the question involved was receiving attention from political theorists. 'Propterea vero quaecunque Rex aut bello acquiret aut cum finitima occupat jure belli, aut jure dicundo, ut quae in fiscum rediguntur, acquiret ipse Regno, non sibi.' 'An vero patrimonii regii, publici, inquam, dominii proprietarius dominus est? Nolandum hoc primum, aliud esse fisci, aliud principis patrimonium.'

[6] 'An haec poena Regi applicatur, an dominus feudi, incertum est. Quod ad me attinet, non puto poenam barratriae domino feudi competere, sed tantum Regi, quia in Regem, tanquam patriae patrem peccatur' (*ibid.* iii. 5, § 15).

tion of jurisdiction and feudal superiority.[1] The *magistratuum creatio* is one of the *Regalia*, and can be granted to vassals by the King.[2] Thus he has to admit a distinction between the relations to the King of the holders of *feuda legia* and the vassals of subject superiors, and can only regularise the position of the latter by the introduction of political sovereignty in the modern sense of the term.[3] The effect of the delegation of jurisdiction to subject superiors is to confine the direct action of the ruler to his immediate vassals. From this abstract and antiquarian point of view Craig deals with the question of the mutual obligations of superior and vassal, but though in the course of his discussion he rises to the level of public law, his treatment remains obsolete. Commencing with a reference to the *Libri feudorum* he notes the treatment which the question received in the Civil Law, and refers to the trenchant polemic of François Hotman. What constitutes a *justum bellum*? The primary duty of the vassal, by which term he includes subject, is obedience, and the task of weighing conflicting claims is not imposed on him. A *justum bellum* is *quod a Principe, pro defensione religionis, patriae, propriae personae, aut pro repetitione rerum suarum, aut damni illati reparatione suscipitur, praeeunte semper denunciatione.* Some hold, he adds, that the vassal is not bound *contra patriam*, but this view is unsound, *nam vassallus legius omnia bona sua et personam domini jurisdictioni subjacit, et proinde in quaestione patriae non est vassalli cognitio.* It is clear that the archaic feudal terminology which Craig imposed upon himself forced him to pass over the most keenly debated ground of the political speculation of his day in an abstract and summary manner.[4]

In the field of political speculation Craig presents himself as a

[1] 'Haec itaque feuda postquam hereditaria, esse coeperunt, ut disci, semper annexam jurisdictionem, tanquam sui feudi comitem, habebant; quae quidem jurisdictio, simul cum ipso feudo, ad heredes transibat' (*Jus Feudale*, iii. 7, § 3); and 'In feudis tamen hoc proprium est, ut semper concomitantem habeant jurisdictionem' (*ibid.* iii. 7, § 8).

[2] 'Barones autem, ut et burgi et ipsi magistratus suos creant; nam imperium merum, id est, gladii potestatem, et mistum habent sibi commissum' (*ibid.* i. 16, § 35).

[3] *Ibid.* i. 12, § 21.

[4] *Jus Feudale*, ii. 11, § 13-17. Cf. 'At si quid mihi deferatur, non minus putarem in his rebellionibus, quae ex causa publica procedunt, eschetam quam vocant bonorum moventium ad Regem pertinere, quam in forisfacturis, ubi praesentatio feudi, quod reus ab alio domino tenuit, non ad dominum suum, sed ad Regem devolvitur, ut habeat suae injuriae solatium' (*ibid.* iii. 6, § 8).

sharply defined feudalist, and offers a striking contrast to the doctrinaire Republicanism of the Classical revival expressed in the *Vindiciae contra tyrannos* and the *De jure regni* of Buchanan, and to the historical democracy of François Hotman. As a jurist his position is more complicated. While his political point of view is blunt and abstract, his range as a jurist is wide and exhaustive, and in his treatment of the legal heritage of his day it is possible to define the following elements:

1. Ratio feudalis.
2. Libri feudorum.
3. Local feudal usages.
4. The work of commentators on Feudal Law.
5. Civil Law.
6. Canon Law.
7. The influence of the Court of Session.
8. Scottish legislation.

His *Jus Feudale* is, indeed, a *pastiche* in which the foregoing elements blend. It is a difficult task to claim originality for a legal treatise, and even a modest acquaintance with the voluminous writings of the feudalists tends to convince the student that much of their time was spent in taking in one another's washing. Further, Craig's views on important topics varied, and his writings contain inconsistent statements regarding such subjects as the authority of the Civil Law in Scotland and the value of the *Regiam Majestatem*. Subject to these important reservations, the following observations are suggested by an examination of his *Jus Feudale*.

I. In the course of his treatise Craig frequently refers to the *ratio feudalis*.[1] In a somewhat similar sense he uses the terms, *communis feudi natura*,[2] *jus commune feudorum*,[3] *lex naturalis feudi*,[4]

[1] 'Licet domino superiori immediato praestitur juramentum, tamen semper antiquioris domini et mediati persona, et patria, quae communia omnium est domina, excipiuntur: et licet non exprimantur, aut specialis de eis mentio fiat, non minus tamen subintelleguntur; adeo ut vassallus domino suo, contra mediatum superiorem, aut patriam, consilio aut auxilio adesse non teneatur: et praecipue domini legii persona semper excipienda, cujus prima ratio semper habenda; non tantum quia pater patriae est, sed etiam ex ratione feudali, quod omnia feuda et beneficia ab eo proficiscantur, et ex eo teneantur' (*Jus Feudale*, ii. 12, § 21); '... neque minus esse juris Feudalis censendum, quod ex ratione juris Feudalis pendet, quam si in ipsa textu contineretur' (*ibid.* ii. 19, § 1); '... nam priora haec, ratione juris communis feudorum, et ex ejus dispositione procedunt' (*ibid.* iii. 1, § 12). Cf. *ibid.* ii. 17, § 12.

[2] *Ibid.* ii. 3, § 28, and ii. 4, § 22. [3] *Ibid.* i. 2, § 30. [4] *Ibid.* ii. 17, § 12.

naturalis omnibus inhaerens feudis qualitas,[1] *ipsius juris Feudalis principia et fundamenta*,[2] and *mens et sensus juris Feudalis*.[3] On examination it will be found that Craig has recourse to the abstraction indicated by these terms when he is faced with a point of feudal law which he finds it difficult to reconcile with the more advanced opinion of his times. The *ratio feudalis* is appealed to by Craig as having an apologetic value. Thus, to take a matter which has already been referred to, he appeals to the *ratio feudalis* when he has to reconcile the feudal relationship with the political ideas of the sixteenth century, and the other synonyms enable him to defend such unpopular usages as entails, and such rights of superiority as non-entry. While the use which Craig makes of these abstractions is suspect, they have another significance, and define an aspect of his work which merits consideration. His consciousness of an underlying *ratio* behind local feudal usages defines him as a humanist and a philosophical jurist. He was not satisfied, like some of his predecessors, to produce a commentary on the *Libri feudorum* or to treat Feudal Law as Customary Law.[4] He was not exclusively a legist, but he was interested in the development and the maintenance of feudal institutions even in a world which was alien to their spirit. He regarded the *feudum* as much as an ideal human institution as a juristic concept. He had a keen historical sense, but his consciousness of the past led him to attempt to carry complete on his overweighted shoulders a vanished and rapidly disintegrating scheme of life into an alien world. To a modern reader his treatise seems to resemble the systems of ecclesiastical law which are studied in the Roman seminaries of our day. Just as these abstract treatises fascinate by their comprehensive completeness, and are at the same time essentially alien to the *communis consensus* of our time, so in the sixteenth century Craig's doctrinaire feudalism was 'high and dry'

[1] *Jus Feudale*. Cf. *ibid.* ii. 21, § 3. [2] *Ibid.* ii. 21, § 3. [3] *Ibid.* ii. 16, § 1.

[4] The conception which Craig indicated by the term *ratio feudalis*, etc., was common to the humanist school of Feudalists. It is found even in Rebuffus, one of the most conservative members. 'Natura feudi,' he writes, 'est quaedam qualitas innata a principio generationis feudi sive tempore investiturae, ex qua virtus contractus perficitur et semper videtur inesse, nisi per pactum improprietur' (*Feudorum declaratio* in Zilettus, x. p. i. p. 300). Cujas also refers to the *natura et substantia feudi* (*De Feudis*, i. Introduction, *ad fin*). The definition of the *natura feudi* given in the *Libri feudorum* (Lib. i. tit. 3) by no means covers the ground to which the term was afterwards applied. Cujas summed up this definition in the words: *Propria feudi natura haec est, ut sit perpetuum, nec temere vassallo eripi possit sine causa* (*Commentarii*).

and abstract. His merit lies in the fact that he was conscious of the difficulties of his position, and his gallant attempt to impose his rigid framework on the fluid material which presented itself to him cannot fail to excite sympathy and a kind of admiration.

This view of feudalism as an institution led Craig to place the legal aspect of feudalism in the position of a secondary product. Feudalism being the reasoned interpretation of certain related elements which are found in different times and in different regions, the juristic aspect of these relations must necessarily reflect the local conditions to which it is applied. Unlike the ultimate *ratio feudalis*, *jus feudale* is local and variable.[1]

II. While all sound general rules in the sphere of law can be traced to the existence of underlying common institutions, it seemed natural in the sixteenth century that these juristic principles should find authoritative expression in some concrete body of legislation. The *corpus* of feudal law was the *Libri feudorum*. The majority of Craig's predecessors had been content to accept them as a kind of *depositum fidei* capable only of exposition and elaboration by the production of *glossae*. On the whole, Craig was impatient of this conservative and Bartolist attitude. He refers to the *scriptum feudorum jus*,[2] to the *jus antiquum feudorum*,[3] and even to the *jus commune Feudorum*,[4] but he was not prepared to accept the *Libri feudorum* as more than an interesting historical document.[5] The exact significance which he attaches to the term *jus feudale* is difficult to define. He did not confine it to the *Libri feudorum*, and probably included in it the text of these enactments and the *glossae* of the early Italian commentators, but his use of the term varies.

III. In his elaborate exposition of the juristic aspects of feudalism, Craig attached great weight to local customs. In his eyes *jus nostrum* or *usus noster* could maintain its position even when that involved a variance from *jus feudorum*, *i.e.* the enactments of the

[1] 'Nam ut monui saepius, jus feudale locale est et pro diversitate locorum saepissime variatur' (*Jus Feudale*, i. 11, § 19). 'Itaque recurrendum necessario est ad illud generale, statuta Feudalia esse localia, nempe pro varietate locorum varia' (*ibid.* ii. 1, § 27). Cf. *ibid.* ii. 12, § 3; and 'jus Feudale quod moribus introductum est' (*ibid.* ii. 21, § 16).

[2] *Ibid.* iii. 1, § 12. Cf. *ibid.* iii. 5, § 2.

[3] *Ibid.* iii. 3, § 33.

[4] *Ibid.* iii. 3, § 5.

[5] 'Mediolanses, qui principalem sibi juris Feudalis cognitionem arrogant' (*ibid.* ii. 18, § 24). Cf. 'Neque minus esse juris Feudalis censendum, quod ex ratione juris Feudalis pendet, quam si in ipso textu contineretur' (*ibid.* ii. 19, § 2).

Libri feudorum and the work of the classical commentators.[1] It was no doubt true that the Law of Scotland was a daughter of *jus feudale*,[2] but this fact did not involve slavish adherence to the parental customs.[3] On the other hand, a local custom or statute must be strictly interpreted,[4] in particular when it appeared to be contrary to the feudal ideal (*ratio feudalis*).

IV. A further element which can be traced in the material with which Craig laboured was the work of the Feudalists who preceded him. A full treatment of this aspect of his treatise would involve an examination of the contributions of jurists who flourished from the thirteenth to the sixteenth century, and a few general observations must suffice. Craig displays an extensive acquaintance with

[1] *Jus Feudale*, i. 15, § 21 ; ii. 15, § 15.

[2] 'Jus Feudale unde et nostrum descendit et cum quo consentit' (*ibid.* ii. 13, § 17). Cf. i. *ibid.* iii. 5, § 30.

[3] 'Sequitur jus Feudale, quod jus proprium hujus regni ab initio diximus, quod non est ita absolute intelligendum, ut nulla sit inter mores nostros et jus Feudale dissensio. Nam Mediolanenses, Cremonenses, Veronenses, Papienses, jus Feudale ut proprio, utuntur, et uti dicuntur, qui tamen in gravissimis quaestionibus et argumentis saepe inter se dissidunt : itaque quoties mores nostri a jure Feudali differunt, obiter, tantum notandum putavi' (*ibid.* ii. 13, § 24). Cf. *ibid.* ii. 7, § 29.

[4] 'Feuda fere omnia sunt localia et consuetudo regionis regulam in eis facit : sed quando statuto vel consuetudine alienatio permittitur, illa consuetudo sive statutum stricte accipiendum est' (*ibid.* iii. 3, § 32). Craig's note on this passage is significant. The authority of local customs is dealt with in the *Libri feudorum*, ii. (1) *De feudis sive eorum consuetudine Mediolanensi.* Cujas' commentary on this title is masterly. 'Plus potest consuetudo, quam lex, in his quae lege nominatim comprehensa non sunt. At si qua in re in feudorum causis mores defecerint, tum decurritur ad jus commune civium Romanorum, id est, quod eo jure in aliis rebus cautum est, cum nondum feuda in usum venissent, producitur etiam ad feuda' (*Commentaria, loc. cit.*). Cujas was willing to give a more final say to Civil Law than Craig, who turned to the Court of Session and the Estates as ultimate living authorities. Rather than have recourse to Civil Law, Craig would appeal to the law of a neighbouring state. 'Neque enim eum errari puto,' he writes, 'qui cum nullum apud nos jus municipale scriptum de quavis quaestione reperiatur, jus illud sequatur, quod in vicinorum bene constitutes respublicis frequentatur' (*Jus Feudale*, ii. 4, § 22). This was the view of the French customary lawyers.

The commentary of Pet. de Ravenna on the passage of the *Libri Feudorum* referred to is interesting : *Et conclude in hac materia, quod in materia feudali attendenda est primo consuetudo, si extat. Secundo proceditur de similibus ad similia in materia consuetudinis. Tertio recurritur ad legem scriptam, si extat, ut hic. Quarto, si non extat, tunc recurrendum est ad argumenta legum, quae valida sunt jure Romano.* (Zilettus, x. p. 2, p. 17), cf. Curtii, *de feudis Tractatum*, cap. 2, *s.v. Argumenta legum non sunt in materia feudorum admittenda* (Zilettus, x. p. 2, p. 44).

this field, and makes frequent references to a long list of commentators.[1] The latter fall naturally into two classes, the classical Feudalists such as Alvarotus and the modern school represented by François Hotman, with an intermediate class represented by Cujas. The characteristic of the first class was absorption in an abstracted *depositum juris* generally found in the *Libri feudorum*; that of the second was a keen political interest which made use of legal institutions for polemical purposes; while the third class represented the historical and humanistic school of jurists, who sought to give juristic institutions a place in human history without attempting to subordinate them to any other element. The use which Craig makes of these three classes of jurists is significant, and goes far to define his position. He describes Alvarotus as 'maximus feudista,' and refers to him and his like on questions of detail which involve for their proper treatment a sane appreciation of feudal theory. If Craig had been asked where he found his *ratio feudalis*, he would probably have turned to these early commentators, who in spite of their unhistorical point of view had seized on the golden age of feudal institutions and made it articulate. On the other hand, the class represented by François Hotman attracted and at the same time repelled him. Like himself, Hotman was alive to the close relation between law and politics in the sixteenth century, but instead of finding in feudalism a support to the theories of absolutism which prevailed, Hotman associated feudal institutions with the aims of doctrinaire democracy, and with the same semi-political interests as Craig arrived at the opposite conclusion. We accordingly find Craig frequently criticising the views of Hotman on both legal and political matters, though his criticism is always tempered with expressions of admiration of his genius. Hotman exercised a strong influence on the left wing of the Scottish Reformers, and Craig possibly found it prudent to treat him with respect.[2] At the same time, Craig and Hotman agreed in their view of the scope of Civil

[1] The following is the list in the order of their importance in Craig's estimation as indicated by the use which he makes of them: Hotman, Cujas, Schonerus, Alvarotus, Zasius, Bartolus, Baldus, Curtius, Rebuffus, Speculator (Durandus), Paul de Castro, Struvius, Praepositus, Matt. de Afflictis, Silemanus, Tiraquillus, Martinus Lavdensis, Joannes le Cercier, Gulielmus Terrensis, Jason, Duarenus, and And. de Iserna.

[2] Craig has a number of references to Hotman's political treatise, *Francogallia*; e.g. *Jus Feudale*, i. 12, § 9. Instances of his criticism of Hotman as a jurist are found in *Jus Feudale*, ii. 6, § 29, and ii. 11, § 10.

Law as applied to feudal institutions, and this community of view may account for the respect which the former always manifested for the latter.[1] As regards the third class of jurists, the humanists, Craig's treatise may be said to represent the most elaborate application of their method to the exposition of Feudal Law. He had the advantage of profiting by the labours of Zasius, Cujas and their school, but in the field of Feudal Law he worthily closes the line to which they belonged. He was the last, but not the least. A study of the treatises of the Feudalists collected by Zilettus in his vast *Tractatus Universi Juris* does not incline one to overrate the novelty of Craig's treatise, and acts as a salutary check on the tendency to attach importance to some of his statements as evidence of the condition of Scotland in his day.[2] His treatise, on the other hand, has features which give it a special character. It is not in any sense a commentary on the *Libri feudorum*, and is based on an examination of institutions rather than on written authorities.[3] It is a polemical treatise in respect that the author struggles to impose a system of law which was essentially inadequate on the confused and growing forces of the Scotland of his day. The attempt appears to have been based to a considerable extent on political considerations, and the resulting product has a breadth and suggestive interest which one seldom finds in juristic writings.

[1] *Vide* p. 296 n.

[2] In his effort to apply feudal principles to the political issues of his day, Craig recalls the dictum of Curtius Junior (d. 1533): 'Cum igitur inter caeteras utriusque juris materias (ut quotidiana forensium causarum docet experientia) feudorum materia non minus lucrosa, quam subtilis sit, quod in ea inter Principes et Magnates arduae quaestiones tractantur' (*Tractatus feudorum, Praefatio*; Zilettus, x. p. ii. 43). Cf. Zasius' political application of the question: 'Dominus, an et quomodo possit feudi dominium directum in alium transferre invito vassallo?' He concludes, 'Princeps civitatem invitis civibus alienare non potest' (*In Usibus Feudorum epithome*; Zilettus, x, p. i. 304). Again Rebuffus discusses the question: 'An Rex Franciae possit alienare ea quae sunt regni?' (*Feudorum Declaratio*; Zilettus, x. p. i. 300).

The reader of Craig is at first tempted to attach historical significance to his treatment of the powers of Chapters as indicating the disorder of ecclesiastical administration in Scotland, but in this matter he simply follows his predecessors. Zasius, *e.g.*, poses the question: 'Capitulum praelatura vacante feudum dare potest?' (*ibid.* p. 1, 304).

[3] Rebuffus in his preface to his very costive treatise states that his object is divisiones colligere quasdam et consuetudines contra consuetudines feudorum scriptas, nunc in viridi observantia in hoc regno existentes (*op. cit.*). The description would be much more suitably applied to Craig's treatise.

V. The position which Craig gives to Civil Law, and the distinctions which he draws in his treatment of it, are sufficient to stamp him as a legal humanist. He shows himself well versed in the gradual development of Roman Law, and marks the stages represented by the Twelve Tables, the *media jurisprudentia*, and the Imperial Constitutions.[1] He seems to have confined the use of the term *jus Civile* to the second stage, and his criticism of Justinian's feminist legislation leads one to the conclusion that he found the golden age of Civil Law in the period of the classical jurists.[2] In his use of such phrases as *merum imperium*, and in his treatment of *regalia*, he steers clear of the fallacious extension of the terms of Civil Law to a product which was essentially feudal,[3] but the most notable instance of his refusal to apply the *criteria* of Civil Law to feudal material is found in his treatment of the attempt of Cujas and the 'recentiores' to deny the division of a *feudum* into *dominium directum* and *dominium utile*, and to treat the latter as a kind of usufruct.[4] In this question he found himself in agreement with F. Hotman in maintaining the double nature of *dominium*, and refusing to apply the conceptions of Civil Law. It is easy to interpret this attitude of Craig as unhistorical, and to treat it as an attempt to ignore a long period in the development of Feudal Law, but this view cannot be maintained. Craig had a keen sense of feudalism as an institution, and the fact that for a time this institution was interpreted in terms of Civil Law appeared to him simply as an accident, from which it was not difficult to disentangle the independent development of Civil Law and of feudalism.[5] On reading the early chapter in which

[1] *Jus Feudale*, i. 2 and ii. 12, § 3.

[2] In this respect Craig had much in common with François Hotman, whose criticism of Civil Law was based on an attempt to draw a distinction between classical Roman Law and the work of Justinian. Cf. 'Mais si je fay grande difference entre le droit civil des Romains, et les livres de l'Empereur Justinian, je ne pense pas dire chose qui soit esloignée de verité' (*Anti-Tribonian*, cap. 1); and 'En quoy on peut aisément juger de la misere et infelicité de cet estude, lequel on nous presche et recommande pour le droit civil des Romains: comme ainsi soit que les plus grandes et solennelles observances de leur discipline, soient maintenant esvanouées, d'autant qu'elles ont esté supprimées et aboliés par les Empereurs de Constantinople, et principalement par Justinian' (*ibid.* cap. 5).

[3] Cf. Woolf's *Bartolus*, p. 133 *et sqq.* As has been noted, Craig is not so discriminating when he deals incidentally with political theory. In that field his work is marked by an absence of historical perspective.

[4] *Jus Feudale*, i. 9, § 10.

[5] While Hotman and Craig were at one in their refusal to interpret feudal

Craig deals with the authority of Civil Law in Scotland one is inclined to give it a larger place in his scheme than is justified. In particular, his statement that Feudal Law is, in fact, part of the Civil Law because the *Libri Feudorum* had Imperial authority and were generally printed along with the texts of Roman law, is obviously an attempt to maintain the independence of the former without affecting the dignity of the latter.[1] Further in this passage Craig restricts the term *Jus Feudale* to the *Libri Feudorum*.

VI. The place which Craig assigned to Canon Law is an interesting manifestation of his moderation, and the clear insight which marks his writings. He subjects the legislative work of the Papacy to severe criticism, and refers to Canon Law as partaking of the hybrid nature of a mule, '*sicut natura mulina composita ex equina et asinina.*'[2] Again, in dealing with the respective effects of investiture and possession, he makes merry at the expense of John XXII., *beatissimus pater*, who, like all the Canonists, held that possession was the best title.[3] On the other hand, when dealing with purely legal questions, in the course of his treatise he treats Canon Law as an important body of articulated jurisprudence which maintained its place when the authority of the Papacy had ceased to be acknowledged.[4] In this instance, as in others, he maintains a clear view of the development of law in its various fields, and is prepared to give consideration to the contribution of Canon Law to the manifold heritage which Scotland had to administer in the sixteenth century. It was left to the

relations in terms of Civil Law, they were swayed by different considerations. Craig's motives were legal and historical, while those of Hotman were political. The latter as an exponent of the democratic institutions of ancient France was apprehensive of the Imperialistic conceptions to be found in the legislation of the later Emperors.

[1] On this subject, *vide* note 4, p. 293, and *Jus Feudale*, i. 2, § 15, and *Epistola Nuncupatoria Auctoris*: 'Jus Feudale sub jure civili comprehendo.'

[2] *Jus Feudale*, i. 3, § 23.

[3] *Ibid.* ii. 2, § 4.

[4] *Ibid.* i. 3, § 24. Cf. *ibid.* ii. 7, § 12: "... tamen quia sic in jure civili, sic in Canonico praestitutum est, observandum nemo bonus dubitabit, praecipue cum usus noster cum his conveniet.' Cf. *ibid.* ii. 18, § 17, and ii. 21, § 3, and iii. 1, § 17. 'Nam in beneficiis ecclesiasticis, a quibus ad beneficia feudalia commode satis argumenta deduci possunt...' (*ibid.* i. 14, § 9). In this respect Craig followed in the footsteps of Cujas. Cf. *Jacobi Cujacii Consultationes*, xvii. *De Feudis*, and Curtius, *Op. cit.* i. 12: '*Cum in feudi materia jus Pontificum et Civile discrepant, utrum horum sequendum sit.*'

succeeding generations to refer to 'the dunghill of the Canon Law.'[1]

VII. In turning to the work of the Court of Session, we have to deal with material of a different character from the remains of the classical jurists and canonists and the antiquities and customary usages of Feudalism. The change is one from theory to practice, but that only to a limited extent. The Court of Session was confronted with competing bodies of jurisprudence, ranging from Roman Law of the classical period through the Imperial legislation and Canon Law to written and customary Feudal Law. To some extent its choice was limited by political and religious considerations and by the statutes of the Estates, but a wide field remained open. The decisions of the Court of Session during the period covered by Craig's active life were consequently of more importance from the point of view of jurisprudence than the decisions of even a supreme Court of Appeal in modern times.[2] In many matters, particularly in those arising from the economic development of Scottish life, local authorities were defective or entirely awanting, and the Court was often left to choose a ground of judgment from one or other of the historical legal systems. The Civil Law of the classical period had no doubt been largely adopted by the Canonists and Feudalists as a kind of 'logique universelle appliquée au droit,' but many diversities remained. As reflected in the pages of Craig's treatise, the Court of Session appears to have tended to ignore where possible the local customary usages which Craig embraces under the terms *mos* or *usus noster*, and to apply Civil Law, or to treat a customary claim as a legal right to be interpreted and enforced in terms of classical jurisprudence. As has been noted, the result was in many cases largely to increase the claims of the feudal superior at the expense of the vassal, whose vague obligations were enforced by a tribunal with a preference for the clarity of Civil Law.[3] The situation was curious. In the course of the sixteenth century the different bodies of local customs were collected in France and published as complete systems, but in Scotland any redaction of customs which may be

[1] This phrase, which is frequently found in the ecclesiastical records of seventeenth century Scotland, may be a translation of Hotman's 'l'ordure de droit canon' (*Anti-Tribonian*, cap. 13).

[2] E.g. *Jus Feudale*, ii. 22, § 19. 'Sed hactenus hoc usu receptum non vidi; licet hoc ipso tempore, aliquot de hac reverentia maritali actiones coram Senatu pendeant, quarum eventus pro lege erit.'

[3] E.g. *Jus Feudale*, iii. 3, § 10.

said to have taken place is to be found in the decisions of the Court of Session, where they received unsympathetic handling. On the other hand, the Senatus apparently found it necessary to offer remedies to vassals against the revived exactions of feudal superiors, thus depriving the latter of their jurisdiction.[1] In short, the new tribunal gradually drew to itself questions between superior and vassal which had previously been dealt with by the baronial courts and the Privy Council. By statute and by usage it gradually acquired a species of equitable jurisdiction,[2] but its growing activities did not altogether commend themselves to Craig, to whom the intervention of this external tribunal must have seemed a breach of his ideal feudal system. He refers to the Court of Session, accordingly, with a combination of disapproval and ironical respect.[3] It appeared to him to interpret statutes in an arbitrary manner to suit the occasion.[4] Reference may be made to an interesting passage in which Craig shows the Senatus dealing with a point of constitutional law in which the positions of the King as political sovereign and as feudal superior were involved. In the case to which Craig refers, the King was held to be a proper judge in his own case in a dispute with the Earl of Angus. The decision was arrived at by the Senatus, and the King's right was affirmed, 'interveniente Senatûs auctoritate.'[5] The position of semi-sovereignty in which Craig places the Court of Session in this instance is somewhat modified by his reference to another case in which that Court declined to deal with a question which raised new issues, and left it to the Estates as the supreme legislative authority.[6] It is possible, moreover, to trace in his pages evidences of conflicts of jurisdiction or competing claims to jurisdiction between the Senatus and the Commissaries and *Vicecomites*.[7]

VIII. The remaining element which can be defined in the material dealt with by Craig is the Statute Law of Scotland.

[1] *Jus Feudale*, ii. 19, § 11. With reference to Non-entry, Craig quotes the remark of William Oliphant: 'actio haec ex non-introitu est odiosa, et compescendam eam, et recidenda putamina Senatus e rep. esse censuit' (*ibid.* ii. 19, § 17).

[2] Cf. *Jus Feudale*, ii. 21, § 28.

[3] He refers to a decision of the Senatus as 'contra juris communis regulas' (*ibid.* ii. 6, § 12). Cf. *ibid.* ii. 6, § 13, and *ibid.* iii. 1, § 18: 'Mihi haec antiqui juris et consuetudinis novatio omnino non placet.'

[4] *Jus Feudale*, i. 8, § 9; ii. 17, § 20.

[5] *Ibid.* iii. 7, § 12.

[6] *Jus Feudale*, i. 11, § 17: 'Memini... Senatum quaestionem ad Comitia regni publica rejecisse, ne in re nova aliquid videretur sibi arrogare.'

[7] *Ibid.* iii. 2, § 7 and ii. 22, § 12.

While in his treatment of the theories of Feudalists and the decisions of the Senatus we find him ready to maintain his ideal feudal fabric by references to the abstractions dealt with under the first head of this analysis, he makes little attempt to criticise the legislative work of the Estates.[1] He claimed for his treatise the character of a practical work suited to the student and the practitioner, and while this claim has often been called in question, it was sufficient to restrict his treatment of statutes, which could not be questioned by professional readers.[2] But even in this matter he found it possible to retain his freedom by a critical examination of the *Regiam Majestatem*[3] and by insisting on the Scottish doctrine of desuetude.[4] The result was that he was able to confine Scottish Statute Law within the comparatively narrow limits of the legislation of the fifteenth and sixteenth centuries.[5]

The foregoing analysis of the factors dealt with by Craig is based on an examination of his treatise, but it does not agree in all respects with the arrangements of his material which he gives from time to time. Thus, in the general historical introduction which occupies part of the First Book, he lays down the following table of legal precedence :

1. Statuta.
2. Consuetudines.
3. Jus Feudale.
4. Jus Civile.
5. Jus Canonicum.[6]

It is probable, however, that the order in which the elements have been treated above more nearly manifests Craig's ultimate point

[1] For exceptions, cf. *ibid.* ii. 5, § 8, and ii. 16, § 12 *et sqq.* But cf. *ibid.* ii. 16, § 14 : 'Quod ad me attinet, nunquam committam, ut, in re tanta, meam sententiam ulterius interponam, quod ut illud tester, eum qui jus commune patriae sequitur, legesque ipsas testes conscientiae suae habeat, meo judicio non errare.' Cf. *ibid.* i. 8, § 12.

[2] *Jus Feudale*, i. 8, § 9 ; iii. 2, § 7 ; ii. 16, § 14.

[3] For Craig's estimate of the *Regiam Majestatem*, vide *ibid.* i. 8, § 11 ; ii. 13, § 39 ; i. 11, § 1 ; ii. 20, § 34.

[4] *Ibid.* i. 8, § 9.

[5] *Ibid.* ii. 4, § 22. For Craig's estimate of the authority of the *statuta, quae a Principe et suo concilio secretiori publicantur* ; vide *ibid.* i. 8, § 9. His view of the *statuta, quae in conventionibus Statuum sive Ordinum extra Parliamenta fiunt* is expressed in *ibid.* i. 8, § 10.

[6] *Jus Feudale*, i. 8, § 12 *et sqq.* Cf. *ibid.* ii. 4, § 22, on the authorities on the interpretation of an investiture, and *ibid.* ii. 13, § 19 *et sqq.* on the Laws of Succession.

of view. He was an historian and student of institutions with all the doctrinaire enthusiasm of an antiquarian for the life of an earlier and simpler world than that in which he lived. The *Jus Feudale* of which he treats is a system of land tenure surviving with difficulty in a modern world, and twisted from its old symmetry by alien economic developments, by the intricate relations of debtor and creditor, by the intervention of non-feudal tribunals, and by the application of doctrines of possession and usufruct borrowed from Civil Law. Time and again he turns from the sordid feudalism of his day, 'deflorescente illa gloria militari, et feudali disciplina senescente,'[1] from the *feuda* which had deteriorated into *feudastra*[2] to the *virilis Feudi aetas*,[3] and when an opportunity presents itself he enlarges on the intimate and almost romantic tie which unites the feudal superior and vassal. To his mind the relation between the two was closer than that between husband and wife or parent and child, and could not be contained in the framework of juristic categories.[4] He attempts at times to define the bond in terms of Civil Law as a *societas*, as an expression of the rule *causa data, causa secuta*,[5] and as a *contractus stricti juris*, and to place the vassal in the position of a *usufructuarius* or a *fideicommissarius*, but his object in so doing is merely illustrative. When he is dealing with concrete feudalism in practice he has recourse to other categories, and in interpreting the respective liabilities of superior and vassal he turns in the first instance to the *tenor investiturae* and then to the *mos regionis*.[6] In this matter, as in others, he manifests that keen historical perspective to which reference has already been made. He was prepared to apply the principles of classical Roman Law to the exposition of the abstracted elements of the Feudal relationship, but when he came to deal with concrete feudalism he confined himself to the

[1] *Jus Feudale*, ii. 18, § 29. Cf. *ibid.* ii. 11, § 5.

[2] *Ibid.* i. 9, § 6. Cf. 'hodie feudorum concessio in quaestu et promercalis tantum est' (*ibid.* ii. 11, § 5).

[3] *Ibid.* i. 4, § 12; i. 14, § 1.

[4] 'Sed quod ad postremum vinculum matrimonii attinet, profecto dum societatis hujus vinculum cum eo comparatur, nullum societatem, nullam amicitiam, nullum foedus, arctius aut sanctius coli debere, hac ipsa comparatione demonstratur; et profecto vinculum hujus conjunctionis omnia alia vincula, sive ea sint naturae, qualia sunt sanguinis, sive affinitatis, sive amicitiae contractae inter duos aut tres familiares, de qua tot libri a viris eruditissimis scripti extant, longo post se intervallo haec omnia vincula relinquit' (*ibid.* iii. 3, § 1). Cf. *ibid.* ii. 11, § 13.

[5] *Ibid.* iii. 3, §§ 9, 10.

[6] *Ibid.* iii. 3, § 31.

terms of the grant and local customs, with recourse, in the event of both failing, to *communis feudorum natura*.[1] This combination of antiquarian idealism and keen appreciation of the conflicting claims of the legal theories and institutions of his day constitutes the main interest of Craig's treatise to modern readers.

DAVID BAIRD SMITH.

[1] *Jus Feudale*, ii. 11, § 1 ; *ibid.* iii. 3, § 31, and ii. 3, § 28 : 'nam licet Tenor pro pactione, contra communem feudi naturam interposita, in jure Feudali sumatur, ex usu tamen omnium gentium . . .' Cf. also *ibid.* ii. 11, § 1 : '. . . et hoc, vel secundum tenorem et conventionem investiturae, aut saltem secundum consuetudinem loci, si nihil sit expressum in investitura. Quod si neque consuetudo appareat, tum ad communem feudorum naturam recurrendum.' Cf. Joan. Ferrarii Montani Collectanea (Zilettus, x. p. 2, p. 95), 'Monendi sumus, ante omnia investiturae tenorem inspicii debere, ad quem, ceu ad sacram anchoram oblatis difficultatibus feudorum perpetuo recurrimus.'

John Stewart of Baldynneis, The Scottish Desportes

ONE of the latest volumes issued by the Scottish Text Society contains the poems of John Stewart of Baldynneis, poems which have up till now remained in manuscript.[1] The volume containing the introduction has yet to be published, and consequently we are without particulars as to the poet's life. From his poems, which are dedicated to King James VI., it is to be gathered that Stewart had concluded his poetical work some time after the year 1583.

At that date the influence of French literature in Scotland was not yet at an end. In France, the abbé Philippe Desportes (1546-1606), the last remaining star of the Pléiade group of poets, the man whom Ronsard himself described as the first French poet, was at the height of his fame. It was the work of this celebrated Court poet that inspired Stewart with a large part of his poems.

The study of comparative literature is often looked upon as rather barren employment. But it is by no means such a superficial and vain study as at first sight appears. An intelligent student realises that the results obtained by such research form an important part of the history of the development of expression, which in turn must form an important chapter of the history of civilisation. In no direction does research give more interesting results than when we come to consider the influence of French literature upon the early authors of Scotland.

It is, then, desirable to form some estimate of the worth of the French poet whom Stewart took as model. In his day, Desportes was one of the most prominent figures at the French Court, and achieved such prosperity that he was able to act the patron to authors in less affluent circumstances. So many benefices did the abbé manage to secure, that Saint-Beuve re-

[1] *Poems of John Stewart of Baldynneis*, ed. Crockett, vol. ii. (Text), Edinburgh and London, printed for the Society, 1913.

marks: 'When we look into the sky on a clear night, we discover there star beyond star; the more we look into the life of Desportes, the more abbeys do we discover there.'[1]

The less said about the methods by which such prosperity was attained the better. Chief amongst them was the poetic aid which Desportes lent in advancing certain affairs of gallantry at the degenerate court of the Valois. It is said that in return for one sonnet penned for such an object he was rewarded with an abbey. Balzac comments upon the incident thus: 'Monsieur the Admiral de Joyeuse gave an Abbey for a Sonnet. . . . The trouble which M. Desportes took to make verses, acquired for him a leisure of 10,000 écus of income; my father, who has seen him, has assured me of it. But he has assured me also that in this same Court, where these liberalities were exercised, and where these fortunes were made, several Poets died of hunger; without counting Orators and Historians, whose destiny was not better. In the same Court, Torquato Tasso has had need of an écu, and has begged it by way of alms from a lady of his acquaintance. He carried back into Italy the clothing which he had carried into France, after having made a year's sojourn there, and yet I am assured that there was not a stanza by Torquato Tasso which was not worth as much at least as the Sonnet which was worth an Abbey. Let us conclude that the example of Monsieur Desportes is a dangerous example; that it has indeed done harm to the Nation of Poets and caused rhymes and measures to be lost. This leisure of 10,000 écus of income is a Rock against which the hopes of 10,000 Poets are broken.'[2]

For the greater part, the sonnets of Desportes are wretched specimens of debased Petrarchism, justifying the remark of an Italian critic, Flamini, that Desportes is the 'legitimate heir' of Melin de Saint-Gelais, an earlier Court poet, an uninspired imitator of the Italian strambottists.[3]

Yet, as the same critic admits, Desportes has profited something by his acquaintance with Italian poetry, particularly the poetry of the school of Bembo. Desportes, according to Flamini, has succeeded better than all other French writers of his period, in turning the phrase, in giving sound unity and euphony to

[1] Sainte-Beuve, *Tableau de la poésie française au seizième siècle*, nouvelle edition, Paris, Charpentier, p. 427 note.

[2] *Œuvres*, Paris 1665, ii. 400.

[3] *Studi di storia letteraria italiana e straniera*, Leghorn 1895, p. 352. This estimate Flamini owes to Sainte-Beuve (*Tableau*, p. 109).

verse, and in endowing it with polish; without him there could have been neither a Corneille, a Racine, a Boileau, a Molière.[1] To that list I would add the name of Voltaire. To me the following song seems not unworthy of being compared with the airy lyrics of Voltaire:

Rozette, pour un peu d'absence,
Vostre cœur vous avez changé,
Et moy, sçachant cette inconstance,
Le mien autre part j'ay rangé;
Jamais plus beauté si legere
Sur moy tant de pouvoir n'aura:
Nous verrons, volage bergere,
Qui premier s'en repentira.

Tandis qu'en pleurs je me consume,
Maudissant cet esloignement,
Vous, qui n'aimez que par coustume,
Caressiez un nouvel amant.
Jamais legere girouëtte
Au vent si tost ne se vira;
Nous verrons, bergere Rozette,
Qui premier s'en repentira.

Où sont tant de promesses saintes,
Tant de pleurs versez en partant?
Est-il vray que ces tristes plaintes
Sortissent d'un cœur inconstant?
Dieux, que vous etes mensongere!
Maudit soit qui plus vous croira!
Nous verrons, volage bergere,
Qui premier s'en repentira.

Celuy qui a gaigné ma place,
Ne vous peut aimer tant que moy;
Et celle que j'aime vous passe
De beauté, d'amour et de foy.
Gardez bien vostre amitié neuve,
La mienne plus ne varira,
Et puis nous verrons à l'espreuve
Qui premier s'en repentira.[2]

[1] Flamini is again indebted to Sainte-Beuve, who inquires: 'Why have not Desportes and his friends . . . been immediately followed by a generation like that of Corneille, Racine, Boileau, and La Fontaine?' (*Tableau*, p. 105). It would, of course, be easy to over-estimate the debt due by Desportes to Italian influence.

[2] *Œuvres de Philippe Desportes*, ed. A. Michiels, Paris 1858, p. 450.

According to the historian Vitet, it was this *villanelle* that the Duke of Guise hummed to his weeping mistress at the Castle of Blois on the 22nd of December, 1558, that night of terror and of pleasure which was to be the last for him. Nor can we deny merit to the two lyrics which I shall have occasion to cite later. These three poems are about the best things that Desportes has written.

Let us now return to Stewart. Stewart has entitled his manuscript thus: 'Ane abbregement of roland furiovs translait ovt of Ariost, togither vith svm rapsodies of the authors yovthfvll braine, And last ane schersing ovt of trew felicitie, composit in scotis meitir be J. Stewart of Baldynneis.'

The first item, the abridgement of Roland Furious, occupies a large part of Stewart's pages. As the form of the title betrays, it is the outcome, in part, of a perusal of 'Roland Furieux,' and, probably, other passages from Ariosto's romance, penned in French by Desportes. One parallel will be sufficient to prove the Scottish poet's dependence on Desportes. The 53rd and 54th lines of the first canto of Stewart's version contain this reference to Orlando's prowess with his sword, Durindana:

> As lustie falcon litle larks dois plume
> So harneis flew, Quhair Dvrandal discends.

Now, in Desportes, lines 55 and 56 run thus:

> . . . car rien ne les deffend
> Maille ny corselet, quand Durandal descend.

Since Desportes is here introducing a passage which occurs in the 12th canto of Ariosto's romance, stanza 79,

> Perchè nè targa nè cappel difende
> La fatal Durindana ove discende,

it becomes at once obvious that Stewart undertook his translation as a result of reading Desportes. The Scottish poet, however, shows clearly that he had also read the Italian original. He is very free in his innovations, borrowing, for example, such words as 'spelunc' from the Italian, and 'esmoy' from the French.

The next borrowing from Desportes which I have noted occurs in the 'rapsodies of the authors yovthfvll braine,' which said rhapsodies embrace the following sonnet, 'Of ane Fontane':

> Fresche fontane fair And springand cald and cleine,
> As brychtest christall clear vith silver ground,

Close cled about be holsum herbis greine,
Quhois tuynkling streames yeilds ane luiflie sound,
Vith bonie birkis all vbumbrat round
From violence of Phebus visage fair,
Quhois smelling leifs Suawe Zephir maks rebound
In doucest souching of his temperat air,
And titan new hich flammyng in his chair
Maks gaggit erth for ardent heit to brist,
Than passinger, quho Irkit dois repair,
Brynt be the Son, And dryit vp vith thrist,
Heir in this place thow may refreschment find
Both be the vell, The Schaddow, and the vind. (p. 152.)

This is a translation of a sonnet by Desportes, 'D'une fontaine,' which has been thought worthy of inclusion in many French anthologies, though for myself I agree with Flamini in thinking it a rather flat performance compared with its models.

Cette fontaine est froide, et son eau doux-coulante,
A la couleur d'argent, semble parler d'amour :
Un herbage mollet reverdit tout autour,
Et les aunes font ombre à la chaleur brûlante.
Le fueillage obeyt à Zephyr qui l'évante,
Soupirant, amoureux, en ce plaisant sejour ;
Le soleil clair de flamme est au milieu du jour,
Et la terre se fend de l'ardeur violante.
Passant, par le travail du long chemin lassé,
Brûlé de la chaleur, et de la soif pressé,
Arreste en cette place où ton bonheur te maine.
L'agreable repos ton corps delassera,
L'ombrage et le vent frais ton ardeur chassera,
Et ta soif se perdra dans l'eau de la fontaine.[1]

Desportes cannot claim this sonnet as an original production, for it is merely a rendering of a celebrated epigram by the Italian neo-Latinist poet Navagero, commencing : 'Et gelidus fons est : et nulla salubrior unda,'[2] which had already been turned into a sonnet by the Italian poet Luigi Tansillo.[3]

Here is another sonnet by Stewart, 'In going to his luif' :

O siluer hornit Diane, nychtis queine,
Quha for to kis Endimeon did discend,

[1] *Œuvres*, p. 434.

[2] *Carmina quinque illustrium poetarum*, . . . Venetiis, ex officina Erasmiana Vincentii Valgrisii, 1548, p. 25.

[3] *Poesie liriche . . . di Luigi Tansillo*, ed. F. Fiorentino, Naples 1882, p. 27, sonnet liii.

Gif flamme of luif thow haid don than susteine,
As I do now that instant dois pretend
T'embrasse my luif, not villing to be kend,
Vith mistie vaill thow vold obscuir thy face
For reuth of me that dois sic trauell spend.
And finding now this vissit grant of grace,
Bot lett it be thy borrowit lycht alace,
I staying stand in feir for to be seine,
Sen yndling eine Inwirons all this place,
Quhois cursit mouths ay to defame dois meine.
Bot nether thay Nor yit thy schyning cleir
May cause appear my secret luif synceir. (p. 188.)

This is only a brief rendering of certain stanzas by Desportes, which, set to music, continued to be sung down to the time of the minority of Louis XIV.:

O Nuict, jalouse Nuict, contre moi conjurée,
Qui renflammes le ciel de nouvelle clarté,
T'ay-je donc aujourd'huy tant de fois desirée,
Pour estre si contraire à ma felicité ?

Pauvre moy ! je pensoy qu'à ta brune rencontre
Les cieux d'un noir bandeau deussent estre voilez :
Mais, comme un jour d'esté, claire, tu fais ta monstre,
Semant parmy le ciel mille feux estoilez.

Et toy, sœur d'Apollon, vagabonde courriere,
Qui, pour me descouvrir flambes si clairement,
Allumes-tu la nuict d'aussi grande lumiere,
Quand sans bruit tu descens pour baiser ton amant ?

. . . . . .

Si tu avois aymé, comme on nous fait entendre,
Les beaux yeux d'un berger de long sommeil touchez,
Durant tes chauds desirs, tu aurois peu apprendre
Que les larcins d'amour veulent estre cachez.

Mais flamboye à ton gré, que ta corne argentée
Fasse de plus en plus ses rays estinceler :
Tu as beau descouvrir, ta lumiere empruntée
Mes amoureux secrets ne pourra deceler.

Que de facheuses gens, mon Dieu ! qu'elle coustume
De demeurer si tard en la ruë à causer !
Ostez-vous du serein ; craignez-vous point le rheume ?
La nuict s'en va passée, allez-vouz reposer.[1]

. . . . . .

[1] *Œuvres*, p. 378.

If Stewart has imitated Desportes here, Desportes in turn has taken his stanzas from Ariosto (7th elegy, 'O ne' miei danni più che 'l giorno chiara'). I think that Tolomei and Paterno have sonnets somewhat in the same vein.[1]

Stewart has not confined himself to such a good model as Desportes. Amongst the rhapsodies of his youthful brain he puts before us 'ane new sort of rymand rym,' commencing thus:

> This hym I form to your excellent grace
> Grace gyd yow ay for god yow hes lent grace.
> Grace lent from god guwerns fra all misdeid:
> Misdeid finds grace be doing almis deid:
> Deid dochtie—— (p. 149.)[2]

But hold, enough! I quote this atrocity in order to point out that Stewart is here experimenting in a form of versification known to the old rhetorical school of French poets, who amused themselves, but not their readers, by composing verses in which the last two syllables were identical, this sort of verse being called 'equivocal.' Stewart adds to his crime by commencing each line with the last word of the preceding line. This, too, was an achievement he had found in the old French poets. But I am not sure that his direct model was not the sixteenth century biographer, Du Verdier, who, I think, has also produced a 'new rhyme' of much the same nature in his biographical dictionary.

Stewart concludes his volume with an allegory, 'Ane schersing ovt of trew felicitie.' Here he blossoms out as an original poet, and no mean one at that. There is a surprising mastery of rhythm and verse in this poem. Doubtless Stewart had profited by his study of foreign models, although in this particular composition his chief models would probably be the poets of his own island.[3] The strain of moralising in this poem warns us that we

[1] Ronsard has imitated these Italian sonneteers in his ode, 'Chère Vesper, lumière dorée' (ed. Blanchemain, vol. ii. p. 274). The original source of these versions is a piece assigned to Bion.

[2] On the Rob Stene mentioned in this rhyme, see the *Scottish Historical Review*, vol. ii. p. 253.

[3] Stewart mentions Lindsay, and among his other Scottish models was undoubtedly Dunbar ('The Merle and the Nychtingaill,' and 'The Dance of the Sevin Deidly Sins'). Stewart's concluding 'Fairweill to the Musis,' seems to have been inspired by Du Bellay's 'L'Adieu aux Muses,' in turn translated from the Latin of George Buchanan.

are already in touch with that dour Presbyterian puritanism which the historian Buckle has so fiercely attacked.[1]

GEOFFREY A. DUNLOP.

[1] 'When the Scotch Kirk was at the height of its power, we may search in vain for any institution which can compare with it, except the Spanish Inquisition. . . . Both were intolerant, both were cruel, both made war upon the finest parts of human nature, and both destroyed every vestige of religious freedom' (*History of Civilization in England*, 1867 ed., ii. 279).

Britain's First Line of Defence, and the Mutiny of 1797

BACON, in his Essay *Of Greatnesse of Kingdomes and Estates*, discussing the advantages of sea power, pithily sums up the matter: 'But thus much is certaine; that hee that commands the sea is at great liberty, and may take as much, and as little, of the warre as he will.' What the command of the sea means to us can be realized by comparing the position of our country with those parts of France, Poland, Austria, and above all Belgium, where the present war is raging. As Burns wrote:

> Does haughty Gaul invasion threat?
> Then let the loons beware, sir,
> There's wooden walls upon the sea
> And volunteers on shore, sir.

We have now volunteers, such as Burns's day never saw, and an army far surpassing in numbers any that was ever raised in our country, but the navy is still, as it has always been, our first and best line of defence. If the old wooden walls are gone, we have now ramparts of steel. Time and again in the history of our country threats of invasion have proved no more than empty words, while any attempt to carry them into execution has been foiled by the skill and valour of our seamen.

The two outstanding occasions are the Spanish Armada, and Napoleon's threatened invasion in 1804-5. It is a matter of nice speculation what might have happened in 1588 if Medina Sidonia had succeeded in embarking Parma's veteran troops at Dunkirk, and had been able to land them, in addition to the soldiers on board the Armada, on the southern shores of England. So too in 1805. If Napoleon could have gained for twenty-four hours the command of the channel, what would have been the course of history? Nor were these the only occasions on which our country has been in danger of invasion.

The late M. P. Coquelle contributed to the *Revue d'Histoire*

Diplomatique,[1] in 1901 and 1902, articles on *Projets de descente en Angleterre, d'après les Archives des affaires étrangères*. The account of these *projets* covers the period from 1666 to 1783, and proves that without command of the sea an invasion of this country was, if not impossible, at all events so difficult that it never came off. Once at least the French had that command, when, in 1690 (after the battle of Beachy Head), Tourville was for some weeks master of the Channel, but, luckily for England, the French had no army ready. For many years after, the authors of the *projets* placed too much dependence on the support of the Jacobites. These, however, showed that, like the celebrated Major Galbraith, they knew more about the *bottle* than the *battle*. They were excellent hands at sentimental vapouring, and at toasts to 'the King over the water,' but to take up arms, and risk life and lands in a very uncertain venture, was quite another thing. Even when Prince Charlie made his great attempt, and marched with his army into the heart of England, the support given by the English Jacobites was practically *nil*. At that time too (again luckily for this country) France had quite enough on her hands on the Continent to be able to afford any real help.

Possibly the most imminent danger of invasion was in 1759. In that year Marshal Belle-isle and the Duc de Choiseul had planned an attempt, very much on the same lines as were afterwards adopted and perfected by Napoleon. A large number of flat-bottomed boats were built at Havre, Dunkirk, Brest and Rochfort, while a hundred transports were hired, on board which 50,000 troops were to be embarked for the invasion of England, and at the same time 12,000 more were to descend upon Scotland. A number of *prames* were also built and fitted out as floating batteries, in order to protect the flotilla when crossing the Channel. Choiseul was, however, advised that it would be courting disaster to make the attempt, unless the mastery of the sea were first secured. With this object it was decided that a junction should be effected between the Toulon and the Brest fleets, which, having joined hands, were to sweep away the English squadrons watching the Bay of Biscay and the Channel. De la Clue accordingly left Toulon in August with twelve ships of the line, and managed to get through the straits unmolested. He was at once pursued by Boscawen, who was lying at Gibraltar with fourteen ships, with the result that five of his ships took

[1] See *Blackwood's Magazine*, March, 1915, for an interesting article by Mr. David Hannay, founded on Mons. Coquelle's researches.

refuge in Cadiz, five were burnt or taken off Lagos Bay, and only two got away. At Brest, Conflans had twenty ships of the line, and when Hawke had been compelled by a strong gale of westerly wind to bear up for Torbay, he slipped out of the harbour and steered for the south. Hawke, as it happened, left his anchorage on the same day, and coming up with Conflans near Quiberon, at once attacked and broke up the French fleet. Six vessels were taken or destroyed, and the remainder put out of action for many months to come. As Mahan says: 'All possibility of an invasion of England passed away with the destruction of the Brest fleet. The battle of Nov. 20th, 1759, was the Trafalgar of this war.'[1]

To quote Mr. Newbolt's spirited sea ballad:

> The guns that should have conquered us
> they rusted on the shore,
> The men that would have mastered us
> they drummed and marched no more.

How great the feeling of relief was in England, is shown by the doggerel lines said to have been sung in the fleet. When the danger was over, the necessities of our sailors were (not for the first time) not too well cared for, hence the lines:

> Ere we did bang Mounseer Conflans
> You sent us beef and beer,
> But now he's beat, we've nought to eat,
> For you have nought to fear.

Seeing that our immunity from invasion, possibly from conquest, has been secured by our fleet, we may recall the one occasion on which it failed us, when indeed it proved not only a broken reed, but one likely to pierce the hand that leaned upon it.

In the history of the navy there have been incidents one would rather forget. It is true that only one admiral was shot on the quarterdeck; but that no more proves that others did not deserve a similar fate, than the fact that Lord Ferrers was the only member of the House of Lords to suffer at the hands of the hangman, is proof that there were no other members of that assembly who, to use Lord Braxfield's words, would have been 'nane the waur o' a hanging.' There was at times no lack of incapable and irresolute commanders—of mutinous or pusillanimous crews—but once, and once only, have we seen a concerted

[1] *The Influence of Sea Power upon History*, p. 304.

scheme on the part of our seamen to refuse obedience to authority, and to decline to 'carry on.'

For this they must not be too hastily condemned. An impartial consideration of the great mutiny of 1797 must lead to the conclusion that the blame for the outbreak lay with the Admiralty, rather than with the men. It is difficult for the present generation to conceive the conditions of seafaring life in the eighteenth century. That it was 'a dog's life at sea' was not then a proverbial and half-humorous expression, but a very serious fact. Dr. Johnson is credited with having said that no one would go on board a ship who had ingenuity enough to get into a jail, a remark as true as it was bitter. The seamen of that day were exposed to what would now be regarded as absolute misery—wretched quarters, badly found ships, often leaky, and always stinking of bilge water. The discipline was of the severest, enforced by brutal punishments. The food was not only insufficient in quantity, but too often of such a quality as to be absolutely uneatable, while the water, being kept in wooden casks, after a time became foul and unwholesome. In addition to these conditions, which were common to all who 'went down to the sea in ships,' the seamen of the fleet had special grievances, being often little better than prisoners on board, and shamefully treated with regard to pay and other important matters. The events of the time helped to bring matters to a head, for, as Sir William Clowes[1] points out, there was a feeling of unrest pervading every class of society, which undoubtedly precipitated the crisis. As he says: 'It would almost seem as if the state of unrest among the seamen was rather of the nature of an epidemic, the germs of which were afloat in the air of the age, than the result of any more obvious causes.' To most people it will seem that, in the treatment and general conditions of service in His Majesty's navy at that period, there were plenty of 'obvious causes' for discontent and worse. It is at all events certain that disaffection was rife, which was at first manifested in isolated cases, though it must be admitted that these took place on board vessels commanded by captains of the best, as well as by those of the worst reputation.

[1] See Sir William Clowes, *History of the Royal Navy*, iv. 167-181. The story of the mutiny is also told, in greater detail, in the *History of the Mutiny at Spithead and the Nore* (London: Thomas Tegg, 1842). This, which was published anonymously, is stated in Halkett and Laing's *Dictionary of Anonymous and Pseudonymous Literature* to have been written by William Johnson Neale. It is Vol. lxxx. of the Family Library.

One of the first cases was in December, 1794, when a mutiny broke out on board the *Culloden*, commanded by Capt. Thomas Troubridge, an officer quite competent to deal with such an outbreak. It was not until 1797 that things came to a crisis, and there was an organized movement among the seamen. In February of that year a petition from each of the line-of-battle-ships lying at Spithead was forwarded to Lord Howe, to which no attention was paid. Early in March the fleet went for a short cruise, and on their return there was a general agreement throughout the fleet that no ship belonging to it should again weigh anchor so long as their grievances were unredressed. On April 15th Admiral Lord Bridport ordered the fleet to prepare for sea, whereupon the crew of the *Queen Charlotte* (the flagship) ran up the shrouds and gave three cheers, the signal for mutiny, which was answered in like manner by the rest of the fleet, consisting of sixteen sail of the line. On the 21st April Lord Alan Gardner, Port Admiral, and Vice-Admiral Colpoys met the men's delegates, but were assured that no conclusive arrangement could be made, unless it were sanctioned by Parliament, and accompanied by a proclamation of general pardon. On the 23rd April Lord Bridport informed the mutineers that the redress craved had been granted, and that he had the king's pardon for the offenders.

The chief grievances set forth in the petition were: that the rate of pay had been unaltered since the time of Charles II.; that the provisions served out were short in weight, and of inferior quality; that the sick were not properly attended to; that not enough liberty was granted when in harbour; and that the wounded were deprived of their pay when on the sick list.

The assurances of the Government (which promised partial redress) not being considered sufficient, the fleet, on 7th May, refused to go to sea. This was followed by an outbreak of violence on board one or two of the ships, and on 14th May Lord Howe (who was always popular with the seamen) came to Portsmouth with plenary powers, including an Act of Parliament dealing with the grievances, and a new proclamation of pardon for all who would return to duty. On the 15th the mutiny ceased, and next day the fleet went to sea.

It will be seen that the demands of the seamen were very reasonable, and that, apart from the act of mutiny, their conduct on the whole did them credit. Above all, they all along asserted that they were ready to do their duty if the French fleet put to sea.

The trouble, however, was not yet over, as, a few days after the men returned to duty at Portsmouth, mutiny broke out in the North Sea fleet, and in the ships at the Nore. The men demanded all that had been granted to the fleet at Spithead, and other concessions, including increased wages, and more liberal arrangements in the matters of leave and distribution of prize money. On the 26th May Admiral Duncan put to sea in the *Venerable*, but by the 31st he was deserted by his whole fleet, except the *Adamant* (50 guns). On board the flagship there was an attempt at mutiny, which was quickly suppressed by the Admiral; if the story is true, literally *vi et armis*. By the 6th June the ships at the Nore whose crews had mutinied consisted of twelve sail of the line, two of 50 guns, six frigates, and six smaller craft. As at Spithead, two delegates from each ship were appointed, the President being Richard Parker, a man of some education. He had at one time been a midshipman, but was reduced for misbehaviour in 1793, and next year was discharged the service as insane. There is little doubt that the leaders, or some of them, were in communication with the enemy, and had a project of carrying the fleet across the Channel. This, however, would certainly have been repudiated by the general body of the seamen. As the Government showed no signs of giving way the men became desperate, and resolved to coerce the city of London into supporting their demands. With this object the mutineers drew four vessels across the channel, from the Nore sands to Southend, and prevented any ships going up or down. The city was in a state of terror, fearing that the fleet might be surrendered to the French, that the mutineers might attack the forts and arsenals on the Thames and Medway, or that the enemy's fleet might put to sea and meet with no resistance. The greatest consternation prevailed, and the 3 per cent. Consols fell to 45½. In the House of Commons Sheridan remarked: 'If there was, indeed, a rot in the wooden walls of England, decay and ultimate ruin could not be far distant.'

The Government, however, refused to be intimidated. They seemed indeed to think that no concessions should be granted, but that the men should be treated with greater severity. They accordingly took active measures to suppress the outbreak, new batteries being erected on the Thames, with furnaces for heating red-hot shot, while the buoys at the mouth of the river were removed. Troops were held in readiness on shore, and Commodore Sir Erasmus Gower was ordered, if necessary, to

attack the mutineers. Preparations with that object were almost completed when, on June 9th, the movement showed signs of collapsing. The rebels were deserted by several vessels, which on the 10th hauled down the red flag. River traffic was re-opened on the 13th, and the general body of the disaffected said they would submit to the authorities if a general pardon were granted. On the 14th the *Sandwich* was carried under the guns of Sheerness, and Parker, the chief delegate, arrested. He was tried by court martial and found guilty on the 22nd June, being executed on the 29th. A number of the other ringleaders were also hanged, several flogged, and some imprisoned.

Mutinies did not cease with the collapse at the Nore, there being outbreaks on board a number of individual ships for some years after. The epidemic spread to the Mediterranean fleet, which luckily was commanded by Lord St. Vincent. If the authorities at home had in some cases showed too much leniency, Lord St. Vincent at all events did not err in that direction. The case of the *Marlborough* may be cited as an instance of his firmness and determination. The crew of this vessel, which was one of those that had mutinied at Spithead, showed signs of insubordination on the voyage out, and one of the seamen was tried and condemned to death by a court martial. St. Vincent ordered him to be hanged forthwith, and by the crew of the *Marlborough* alone. The captain stated that the men would not allow him to be hanged on board that ship, but was told that if he could not command his vessel measures would be taken to carry the sentence into effect. The result was that the crew had to run the condemned man up to the yardarm in sight of the whole fleet, and, as St. Vincent remarked, 'discipline was preserved.'[1]

There were also sporadic outbreaks of mutiny at the Cape, and on board various ships at other stations, in 1798, 1800 and 1801, the last serious case being in December, 1801, on board the *Temeraire*, on being ordered to sail for the West Indies. Gradually the mutinous spirit died down, luckily never to emerge again on such a scale. Wherever large bodies of men are gathered together in a small compass there will always be some discontent, but with firm, and fair, treatment it is inconceivable that it should ever again rise to such a pitch as in the mutiny of 1797.

T. F. Donald.

[1] See Tucker's *Memoirs of St. Vincent*, i. 103.