

The 1815 Act to Regulate Madhouses in Scotland: A Reinterpretation

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Introduction

The 1815 Act to Regulate Madhouses in Scotland (55 Geo. III c. 69) made provision for fee paying patients confined in institutions run by private individuals for profit. It is generally acknowledged to mark the beginning of Scottish legislation about the insane.¹ Most historians of Scottish psychiatry refer to the act in a paradoxical manner that is factual yet also framed in broader terms.² Short descriptions of selected provisions are given, which are then evaluated in terms of pre-1857 Scottish lunacy legislation that was limited in scope, custodial, sheriff-led and administratively and medically ineffective.³ The consequence of this prospective approach is that it becomes very difficult to distinguish historical judgements that are specific to the 1815 act. R A Houston adopts a different stance and uses features of the act, and the reporting system it brought in, to look back over Scottish lunacy provision during the “long” eighteenth century.⁴ He identifies continuities and changes associated with it. Pre-existing forms of eighteenth-century professional co-operation between Scottish lawyers and medical men over the

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¹ Daniel Hack Tuke, *Chapters in the history of the insane in the British Isles*, London, Kegan Paul and Trench, 1882, pp. 324–5; Robert Brown Campbell, ‘The development of the care of the insane in Scotland’, *J. ment. Sci.*, 1932, **78**: 774–92.

² See Francis J Rice, ‘Madness and industrial society: a study of the origins and early growth of the organisation of insanity in nineteenth century Scotland, c.1830–70’, PhD thesis, 2 vols, University of Strathclyde, 1981, vol. 1, pp. 272–5; Harriet C G Sturdy, ‘Boarding-out of the insane, 1857–1913: a study of the Scottish system’, PhD thesis, University of Glasgow, 1996, pp. 41–3; Jonathan Andrews ‘They’re in the trade ... of lunacy they ‘cannot

interfere’ – they say”: the Scottish Lunacy Commissioners and lunacy reform in nineteenth-century Scotland, London, Wellcome Institute for the History of Medicine, 1988, pp. 2–6.

³ See An Act for the Regulation of the Care and Treatment of Lunatics, and for the Provision, Maintenance, and Regulation of Lunatic Asylums in Scotland 1857, 20 & 21 Vict., c. 60. In the period between 1815 and 1857 there were two further amending acts: An Act for Altering and Amending an Act Passed in the Fifty-Fifth Year of the Reign of His late Majesty, intitled An Act to Regulate Madhouses in Scotland 1828, 9 Geo. IV cap. 34; An Act to Alter and Amend Certain Acts Regulating Madhouses in Scotland; and to Provide for the Custody of Dangerous Lunatics 1841, 4 & 5 Vict. cap. 60.

⁴ R A Houston, *Madness and society in eighteenth-century Scotland*, Oxford, Clarendon, 2000, pp. 6, 56; *idem*, ‘Professions and the identification of mental incapacity in eighteenth-century Scotland’, *J. Hist. Sociol.*, 2001, **14**: 441–66, p. 449, pp. 454–5; *idem*, ‘Care of the mentally disabled in and around Edinburgh c.1680–c.1820’, *J. Roy. Coll. Phys. Edin.*, 2003, **33** (suppl. 112): 12–20, pp. 12–13; *idem*, ‘Rights and wrongs in the confinement of the mentally incapable in eighteenth-century Scotland’, *Continuity and Change*, 2003, **18**: 373–94, pp. 374–5.

insane informed the provisions of what, nevertheless, was a novel intervention by the state that led to a degree of administrative centralization. The difficulty here is that this retrospective approach tends to highlight features of the act believed to reflect eighteenth-century lunacy arrangements in preference to others that may not have. Generally speaking, the retrospective approach tends to see Scotland's first lunacy act as a measure that had more normative than progressive aspects, while the prospective one tends to see its flaws and insufficiencies.

Historians of British lunacy reform seldom refer to the 1815 act. Instead they emphasize the 1774 measure (14 Geo. III c. 49) that made commissioners appointed by the Royal College of Physicians of London inspectors of private asylums in the City, Westminster and Middlesex, and made other provisions.⁵ It could be argued that the omission is fully justified: the aims of the 1815 act are similar to that of 1774 and therefore old Scottish news. Because of England's historical precedence, historians of Scottish reform compare the 1815 act with late-eighteenth- and early-nineteenth-century English lunacy reform measures. Houston argues that the late coming of the act indicates wrongful confinement was never a serious social or legal issue in Scotland. On the other hand, those who take a prospective view tend to be more critical because no pre-1857 Scottish legislation included measures for pauper lunatics equivalent to the 1808 English act (48 Geo. III c. 96).⁶ This has led to further debate about the differences between Scottish and English Poor Law with respect to lunacy, rather than a re-examination of the 1815 act.⁷

Another important dimension of the relationship between English and Scottish lunacy provision is that the 1815 act was passed during a two-year period (1814–1816) when Parliament's Select Committee on Madhouses met and published its report and evidence, which included a volume on Scotland.⁸ Therefore an obvious question is: were the deliberations of the 1814–16 Committee and the passing of the 1815 act connected? But this is a blind spot in both prospective and retrospective approaches to the act. Was it just a coincidence that the first report produced in conformity with the 1815 act by Sir William Rae, Sheriff-Depute of Midlothian, was also published by the Committee soon

⁵ For discussion of the 1774 act, see Richard Hunter and Ida Macalpine, *Three hundred years of psychiatry 1535–1860: a history presented in selected English texts*, Oxford University Press, 1963, pp. 451–6; William L. Parry-Jones, *The trade in lunacy: a study of private madhouses in the eighteenth and nineteenth centuries*, London, Routledge and Kegan Paul, 1972, pp. 9–18. The main other measures included provincial inspection by Justices of the Peace accompanied by a medical man and a certification procedure.

⁶ For the 1808 act, see Leonard D Smith, 'Cure, comfort and custody: public lunatic asylums in early nineteenth-century England', London and New York, Leicester University Press, 1999, pp. 20–6. It allowed county magistrates to authorize the erection of pauper asylums, to combine together to do so, and to adapt existing subscription asylums by an optional, rather than compulsory, rate assessment.

⁷ Jonathan Andrews, 'Raising the tone of asylumdom: maintaining and expelling pauper

lunatics at the Glasgow Royal Asylum in the nineteenth century', in Joseph Melling and Bill Forsythe (eds), *Insanity, institutions and society, 1800–1914: a social history of madness in comparative perspective*, London and New York, Routledge, 1999, pp. 200–22, on pp. 200–2; Andrew Scull, 'Rethinking the history of asylumdom', in *ibid.*, pp. 295–315, on pp. 305–6; R A Houston, 'Poor relief and the dangerous and criminal insane in Scotland c.1740–1840', *J. Soc. Hist.*, 2006, **40**: 453–76.

⁸ *Third report from the [Select] Committee on madhouses in England, &c. with an appendix*. Ordered by the House of Commons to be printed, 11 June 1816, pp. 3–44. It was also reproduced in PP 1816, vol. VI, pp. 353–402. The Committee's other reports and evidence can be found in *ibid.*, pp. 249–352. Whereas the Select Committee of 1807 played a significant role in securing the 1808 act, no new English lunacy legislation was passed until 1828.

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afterwards? Or did this express a deeper congruence of purpose between the Lord Advocate Archibald Campbell Colquhoun of Killermont, who drafted the bill, and the Select Committee, of which he was a member?⁹

This paper has two main aims. Firstly, to fill a gap in knowledge about the 1815 act by examining the detailed historical circumstances surrounding how it was conceived, drafted, amended and passed. Secondly, to advance the argument that medical corporation-based political considerations prevailed over a variety of social, moral and even medical reasons why the insane should be better looked after locally and nationally, including those put forward publicly by the Select Committee itself. Competition between the Royal College of Physicians of Edinburgh and the Royal College of Surgeons of Edinburgh for control over medical practice in the city and Midlothian offers a convincing explanation of how the legislation originated and was developed, especially with regard to the health and medical inspection of the confined insane.

This interpretation draws more upon historiographies within the history of medicine than within the history of psychiatry. The insights of studies about early-nineteenth-century medical professional conflict in England are especially relevant.¹⁰ They show that what appears to be a concern for medical reform can often be better understood in terms of the endemic competition for services and qualifications within a crowded marketplace.¹¹ The same basic historiographical insight has also been used to understand features of the Edinburgh medical community, especially with respect to the institutionalization of rival medical schools, the competition for teaching and hospital posts and, most importantly, disputes over practice between medical corporations.¹² S W F Holloway's historical critique of the connection between medical reform and the passing of the English Apothecaries' Act during the same year as the Act to Regulate Madhouses in Scotland is also an important point of reference. His explanation of how the Royal College of Physicians of London sought to control legislation concerning what they

⁹ See *Third report*, op. cit., note 8 above, pp. 11–18. Colquhoun became a member of the Committee in the spring of 1814. On his wider career, see G W T Omond, *The Lord Advocates of Scotland*, Edinburgh, Douglas, 1883, pp. 224–9. His role in the reform of the Court of Session in 1815 is discussed but there is no mention of the Act to Regulate Madhouses, even though it was passed at the same time. The Whig Henry Cockburn expressed his regret at serving briefly as one of the Tory Colquhoun's deputies after the fall of the 1806 ministry in *Memorials of his time*, Edinburgh, Black, 1856, pp. 228–30. Cockburn resigned soon afterwards and long before the 1815 act, which passed unmentioned in his reminiscences.

¹⁰ S W F Holloway, 'The Apothecaries' Act, 1815: a reinterpretation', *Med. Hist.*, 1966, **10**: 107–29, 221–36; Ivan Waddington, *The medical profession in the Industrial Revolution*, Dublin, Gill and Macmillan, 1984. See also Irvine Loudon, *Medical care and the general practitioner 1750–1850*, Oxford, Clarendon Press, 1980; Anne Digby, *Making a medical living: doctors and patients*

in the English market for medicine, 1720–1911, Cambridge University Press, 1994; M Anne Crowther and Marguerite W Dupree, *Medical lives in the age of surgical revolution*, Cambridge University Press, 2007.

¹¹ For an influential expression of this viewpoint, see Roy Porter, *Health for sale: quackery in England, 1660–1850*, Manchester University Press, 1989.

¹² See Rosalie Mary Stott, 'The Incorporation of Surgeons and medical education and practice 1696–1755 in Edinburgh', PhD thesis, University of Edinburgh, 1984; Christopher John Lawrence, 'Medicine as culture: Edinburgh and the Scottish Enlightenment', PhD thesis, University of London, 1984; Lisa Rosner, *Medical education in the age of improvement: Edinburgh students and apprentices 1760–1826*, Edinburgh University Press, 1991. Michael Barfoot, 'Brunonianism under the bed: an alternative to university medicine in Edinburgh in the 1780s', in W F Bynum and Roy Porter (eds), *Brunonianism in Britain and Europe*, London, Wellcome Institute for the History of Medicine, 1988, pp. 22–45.

regarded as the practice of an inferior branch of medical men is broadly analogous to the one offered here with respect to the Royal College of Physicians of Edinburgh and the 1815 act.¹³

The emphasis within Scottish history on the political management of Edinburgh society—termed by one influential author “the people above”—is also historiographically important in two distinct senses.¹⁴ Firstly, it helps identify the period during which the 1815 act was passed as one of transition between the so-called “Dundas despotism”, in which every aspect of Scottish society was closely managed by the political agents of successive British governments, and the Scottish Reform Act of 1832, when a looser form of control began to emerge, leading to local expressions of what could be termed “democracy”.¹⁵ Secondly, the political management perspective has been used by Emerson, Lawrence, Jacyna and Barfoot to understand features of the Edinburgh medical community.¹⁶ In a variety of different ways, these authors seek to draw upon the general historiography of medical competition and conflict, then apply it to a variety of local developments in Edinburgh medicine, taking account of more general features of the local political management of Scottish society. This wider perspective is necessary to give a sense of other social agencies involved in the 1815 act besides the medical corporations, especially those Scottish lawyers and politicians most closely involved at the time.

The Edinburgh Medical Community and the 1815 Act

In order to progress the discussion effectively, an overview of how the institutional basis of the Edinburgh medical community evolved historically is required, especially with reference to the roles played by physicians and surgeons.¹⁷ A very brief working summary of the main provisions of the 1815 act is also provided as background to subsequent discussion about how particular provisions were developed.

¹³ Although the historical explanations are similar, the contexts of English medicine and Scottish lunacy clearly differed. For example, Holloway deals with the impact of the Apothecaries' Act on medical education in the second part of his paper, and there is no exact equivalent to this with respect to the 1815 act. However, the medical inspection system it created is an equally important consequence, but this is reserved for discussion elsewhere.

¹⁴ Alexander Murdoch, *'The people above': politics and administration in mid-eighteenth century Scotland*, Edinburgh, Donald, 1980; *idem*, 'The importance of being Edinburgh: management and opposition in Edinburgh politics, 1746–1784', *Scot. Hist. Rev.*, 1983, **62**: 1–16. See also John Stuart Shaw, *The management of Scottish Society: power, nobles, lawyers, Edinburgh agents and English influences*, Edinburgh, Donald, 1983; Gordon Neil Pentland, 'Radicalism and reform in Scotland 1820–1833', PhD thesis, University of Edinburgh, 2005; Jeffrey Charles

Williams, 'Edinburgh politics: 1832–1852', PhD thesis, University of Edinburgh, 1972.

¹⁵ Michael Fry, *The Dundas despotism*, Edinburgh University Press, 1992; Laurence James Saunders, *Scottish democracy, 1815–1840: the social and intellectual background*, Edinburgh, Oliver and Boyd, 1950.

¹⁶ Roger L Emerson, 'The founding of the Edinburgh Medical School', *J. Hist. Med. Allied Sci.*, 2004, **59**: 183–218; Christopher Lawrence, 'The Edinburgh Medical School and the end of the "old thing" 1790–1830', *History of Universities*, 1988, **7**: 259–86; L S Jacyna, *Philosophic Whigs: medicine, science and citizenship in Edinburgh, 1789–1848*, London, Routledge, 1994; Michael Barfoot (ed.), *To ask the suffrages of the patrons': Thomas Laycock and the Edinburgh Chair of Medicine, 1855*, London, Wellcome Institute for the History of Medicine, 1995.

¹⁷ This draws upon sources cited under notes 12 and 16 above and unpublished research by the author.

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Originally founded as an Incorporation in 1505, the Royal College of Surgeons (1778) was the historic bedrock of the Edinburgh medical community.¹⁸ Despite the founding of the Royal College of Physicians in 1681, surgeons dominated medical practice in and around the city and they continued to do so up to the time of the 1815 act.¹⁹ Within the pre-Union system of medical patronage, the Incorporation was the pre-eminent craft guild in Edinburgh's Town Council and able to exert influence through it upon the Scottish Parliament and the Convention of Royal Burghs. Its members were burghesses of considerable local standing who, on occasions, were able to display polite learning as well as phlebotomy lances. In the post-Union medical patronage system that developed after 1707, the creation of a medical faculty in the Town's College or University (1726), and the Royal Infirmary of Edinburgh (1729) certainly offered new opportunities for Edinburgh's physicians to make inroads upon medical education and hospital medical practice.²⁰ Despite being under-represented in both these institutions, surgeons nevertheless maintained their hold upon medical practice by adopting a hybrid surgeon-apothecary role broadly equivalent to the general practitioner, a term that gradually replaced it during the early years of the nineteenth century. They also succeeded in developing a rival form of non-University or extramural medical education. This bolstered both the Incorporation's long-standing apprentice-based qualification and the College's diploma system that eventually replaced it.

University educated members of the Royal College of Physicians, on the other hand, remained formally tied to a learned consultation role, prohibited from surgery, from owning apothecary shops and compounding medicines, although a previous restriction on midwifery was removed in 1778. There were still many golden guineas for physicians to earn in affluent enlightened Edinburgh. However, surgeon-apothecaries remained medical gate-keepers to most families, even those of high standing who could actually afford to consult a physician. While all physicians could mix socially at medical societies and clubs in the city, and some individuals entered into partnerships with surgeons in order to improve their private practices, relations at the corporate level were competitive, bitter and resentful.²¹ From their inception as a corporate body, the Physicians sought to control the practice of internal medicine, regulate apothecary shops and assay the

¹⁸ Helen M Dingwall, *'A famous and flourishing society': the history of the Royal College of Surgeons of Edinburgh 1505–2005*, Edinburgh University Press, 2005; *idem*, *Physicians, surgeons and apothecaries: medicine in seventeenth-century Edinburgh*, East Linton, Tuckwell, 1995; Clarendon Hyde Creswell, *The Royal College of Surgeons of Edinburgh: historical notes from 1505 to 1905*, Edinburgh, Oliver and Boyd, 1926.

¹⁹ W S Craig, *History of the Royal College of Physicians of Edinburgh*, Oxford, Blackwell, 1976; Morrice McCrae, *Physicians and society: a social history of the Royal College of Physicians of Edinburgh*, Edinburgh, Donald, 2007.

²⁰ Guenter B Risse, *Hospital life in enlightenment Scotland: care and teaching at the Royal Infirmary of*

Edinburgh, Cambridge University Press, 1986; A Logan Turner, *Story of a great hospital: the Royal Infirmary of Edinburgh, 1729–1929*, Edinburgh, Oliver and Boyd, 1937.

²¹ Practice alliances between physicians and surgeons, as well as competition between younger and older members, meant that intra-College conflict could, on occasions, be as virulent as the warfare between the two corporations. Also, the situation is further complicated on the individual level because some surgeons—especially those practising anatomy and midwifery—became physicians and left one College for the other; and some did not, but acquired medical degrees to enhance their qualifications and status.

materia medica compounded in them. For some time before the 1815 act, this was no longer actively pursued due to what the physicians perceived as a lack of judicial will to prosecute surgeon-apothecary offenders in the Edinburgh courts. However, related issues remained contested and the Royal Infirmary was often at the heart of clashes. For example, having been excluded as a body from attending patients there, the Incorporation was behind a rival Surgeons' Hospital in the 1730s which resulted in a political accommodation being reached about their attendance in the new and much expanded Infirmary building (1741). Around 1800, animosities were rekindled over reforms to surgical attendance there.

The distinctive pressure points, faults and fissures between Edinburgh's Royal College of Physicians and Royal College of Surgeons had become so engrained in the city's medical community by the early years of the century that friction between them over the 1815 act was predictable. The act itself had two main provisions. Firstly, annual licences were required "for the reception and the care and confinement of furious and fatuous persons and lunatics" kept for profit in private madhouses containing more than one person. Secondly, twice yearly inspections were to be conducted by sheriffs accompanied by a nominated medical man during one such visit. In addition, sheriffs could order the inspection of any public asylum, hospital or poorhouse in which lunatics were kept. To anticipate, the early skirmishes between Edinburgh's warring medical corporations addressed the theoretical question: what was the nature of mental disease practice? Later, the battle lines were drawn over the practical issue of what kind of practitioner should accompany the Sheriff-Depute of Midlothian on inspections of private madhouses and under what terms.

Andrew Duncan's Opening Shot for a Scottish Lunacy Act

In his *History of the Royal College of Physicians of Edinburgh*, W S Craig reviews external policy between 1682 and 1858.²² Topics discussed include College involvement with epidemic disease, Poor Law, public health and lunacy issues. The latter included its sponsorship of the Edinburgh Lunatic Asylum, which, after a gestation that stretched back to the early 1790s, admitted its first patient in 1813.²³ Craig also draws on the historical muniments of the College to sketch out some key events during the period from December 1813, when the prospect of lunacy legislation was openly discussed, and July 1815, when the Physicians were successful in having certain clauses in the bill removed in the House of Lords.²⁴ Such sources remain unexplored and deserve closer scrutiny.

At an extraordinary meeting held on 18 December 1813 the elder Andrew Duncan drew the attention of the College Council to a recent bill dated 14 July 1813 that aimed to replace the 1774 English act.²⁵ He had received a copy of the bill from a London Scot,

²² Craig, *op. cit.*, note 19 above, pp. 178–214.

²³ *Ibid.*, p. 196.

²⁴ *Ibid.*, pp. 198–9, p. 230. See also McCrae's recent account, *op. cit.*, note 19 above, pp. 123, 131, 216–19.

²⁵ Royal College of Physicians of Edinburgh (hereafter RCPE) Muniments, Minutes 1806–22, fols 2254–2256 (transcript). The Council consisted of seven resident fellows who elected the president and other office bearers of the College as specified in its Charter. For an English translation of the 1681

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Dr Matthew Baillie, who agreed that better regulation of madhouses in both kingdoms was now required.²⁶ Duncan had helped to secure a Charter of Incorporation for the Edinburgh Lunatic Asylum in 1807. Yet this apparent overlap of concerns does not fully explain his actions in this instance. The tabled bill followed the principle of exempting charitable asylums from proposed legislation about asylums run for profit. Furthermore, there is no evidence that Duncan or any other Council member, or resident fellow, sought to extend legal provision for Scotland's public institutions for the insane beyond shrieval inspection.²⁷

A clearer and more convincing idea of what informed Duncan's initiative is contained in the minutes of the Council meeting. He recommended that the Lord Advocate and the Lord Provost "should be requested to get the same powers for licencing and regulating private mad-houses [for Scotland] as are proposed by that bill to be granted to the College of Physicians of London [for England]".²⁸ It was not the first time the Council had considered the same subject. In 1791 a committee Duncan set up when he was president also reported to this effect, although there was no reference to any bill or prospects of legislation then.²⁹ Second time around, as it were, it is still unclear whether the Edinburgh College envied the actual powers to licence, regulate and inspect private madhouses that had been given to their sister body.³⁰ Or was the attraction that such powers were sanctioned in law by Parliament and conceded by other London medical corporations? A surviving draft of a proposed amendment to the 1813 bill to make it applicable to Scotland tends to support the latter.³¹ It envisaged five College commissioners with powers to grant licences for the reception, care or confinement of lunatics in private asylums in Edinburgh and Midlothian and to inspect the same. Arrangements inside the city and the county were presented as a mirror image of London, Westminster and Middlesex. Non-medical roles analogous to physician commissioners were relegated to areas outside the jurisdiction of the Edinburgh College. For example, Judges of the

original, see Craig, *op. cit.*, note 19 above, pp. 1043–8. At this period its membership was dominated by University medical professors. Duncan was professor of the institutes of medicine, a medical publisher and an inveterate founder of local medical societies and clubs of various kinds. For a contemporary view, see Cockburn, *op. cit.*, note 9 above, pp. 284–5. For a recent treatment, see M McCrae, 'Andrew Duncan and the health of nations', *J. Roy. Coll. Phys. Edin.*, 2003, **33**: 2–11.

²⁶ RCPE Muniments, Letters 1811–17, Matthew Baillie to Andrew Duncan, 25 Oct. 1813. A nephew of William and John Hunter, Baillie was a well-connected, London-based, expatriate Scot physician who was sympathetic to the College. The parliamentary paper he sent was: A Bill (as Amended by the Committee) to Repeal an Act made in the Fourteenth Year of His Present Majesty, intituled, 'An Act for Regulating Madhouses, and for Making other Provisions and Regulations thereof, 13 July 1813'.

²⁷ For the wider background to asylum and other confinement for the insane in Scotland, see R A

Houston, 'Institutional care for the insane and idiots in Scotland before 1820', *Hist. Psychiatr.*, 2001, **12**: 3–31 (Part 1); 177–197 (Part 2).

²⁸ RCPE, Minutes, 18 Dec. 1813, fol. 2256.

²⁹ RCPE, Minutes 1776–1806, 2 Aug. 1791, fols 1723–4 (transcript).

³⁰ This extended to those within seven miles of London and Westminster and in Middlesex. See Sir George Clark, A M Cooke and Asa Briggs, *A history of the Royal College of Physicians of London*, 4 vols, Oxford, Clarendon Press, 1964–2005, vol. 2 (by George Clark), pp. 583–8.

³¹ RCPE, Miscellaneous, Proposed amendments on Mad House Bill. This document was enclosed in a 10 March 1814 letter from the president to the College secretary, Alexander Boswell WS. However, the latter's annual accounts indicate the secretary made two copies of a "proposed addition for the regulation of madhouses presented to Parliament" on 10 Feb. See RCPE Accounts, Vouchers for the Treasurer's accounts 1814–17, Account of charge and discharge ... 1814, item 24.

Court of Session and Court of Justiciary and Sheriff-Deputes could order an inspection of madhouses licensed by Justices of the Peace.

Some of the practical difficulties experienced in administering successive renewals of the 1774 act were dealt with in the 1813 English bill. It proposed new national roles for physician commissioners and also for the treasurer of the London College of Physicians. As well as granting licences within their local area, commissioners were to be sent copies of all other licences granted by Justices of the Peace elsewhere in England, and minutes of visits to inspect all madhouses. They were also to receive copies of committal and medical certificates directly from proprietors. The College treasurer, as well as keeping his own accounts, was empowered to receive certain monies relating to the wider administration of the proposed bill and to supply information about the confined insane when requested to do so.³²

The nascent national bureaucratic dimensions of the 1813 bill may well have led Duncan to fire the opening shot in a new campaign, given his familiarity with state-led approaches to medical police on the Continent.³³ Yet, judging from the draft amendment, a wider Scottish national role seems to have been more problematic and perhaps less important to other Council members. While it envisaged that Thomas Spens, the College treasurer, would have analogous financial powers to those of his London equivalent, it is not clear how far these extended beyond Edinburgh and Midlothian.³⁴ There is also a general catch-all statement that “in all other respects the licencing [*sic*] and visiting and inspecting of Houses . . . shall be on the same footing and liable to the same regulations [and] provision as are contained in this act for . . . England”. This may imply bureaucratic and other procedures analogous to the London College’s proposed wider role.³⁵ However, it seems to be more of a general afterthought in comparison with very specific and definite statements about the jurisdiction of the College of Physicians in Edinburgh and Midlothian.

A Salvo from the Surgeons

Duncan’s suggestion was taken up by the president, James Hamilton Junior, and a committee in the name of the Council was formed to consider it.³⁶ At a quarterly meeting

³² Bill, op. cit., note 26 above, fols 8–9, fols 11–13.

³³ McCrae, op. cit., note 25 above, p. 9, suggests that, as a lecturer, Duncan discussed but did not endorse the interventionist approach to public health by the state found in Germany and France. However, Duncan was certainly in favour of it with respect to the provision of asylums for Scottish pauper lunatics. See Andrew Duncan, *A letter [to His] Majesty’s Sheriffs-Depute in Scotland, recommending the establishment of four national asylums for the reception of criminal and pauper lunatics*, Edinburgh, Patrick Neill, 1818.

³⁴ Spens was the son of a former College treasurer. He and his father belonged to the Royal Company of Archers, like Duncan. Connected by marriage to the Wood family of Edinburgh surgeon-

apothecaries, he was also a Physician to both the Edinburgh Lunatic Asylum (1813?–42) and the Royal Infirmary of Edinburgh (1802–1842). See Turner, op. cit., note 20 above, p. 164.

³⁵ Proposed amendments, op. cit., note 31 above.

³⁶ Hamilton moved from the College of Surgeons to the College of Physicians in 1792. He was professor of midwifery at the University of Edinburgh (1800–1839), succeeding his father Alexander to the chair and the local General Lying-in Hospital (1793). Holders of this position were amongst Edinburgh’s richest mid-eighteenth- to mid-nineteenth-century professional practitioners. For an indication of Hamilton’s status, wealth and property ownership, see Lothian Health Services Archive, GD1/71, James Hamilton papers. See also Lisa Rosner, *The most beautiful man in existence: the scandalous life of*

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on 1 February 1814 Spens reported back that contact had been made with Sheriff-Depute William Rae. At the request of the Lord Advocate Colquhoun, Rae had already begun to compile information on madhouses in the city and its neighbourhood. Before proceeding further, however, he wanted the opinion of James Clerk Rattray, his immediate predecessor as Sheriff-Depute of Midlothian, who had since become a Baron of Exchequer.³⁷

The outcome of these discussions is unknown, but subsequent events can be pieced together from copies of correspondence between the College and Matthew Baillie.³⁸ Although Rae apparently reported back to Colquhoun that he favoured legislation, neither man could attend to it due to pressure of other business. Therefore the College appealed to George Rose MP, again via Baillie.³⁹ Rose was the principal parliamentary sponsor of the English bill on behalf of the London College and proved to be equally responsive to the suggestion of its Edinburgh counterpart that the current draft should be adapted to cover Scotland as well as England.⁴⁰ However, this overture was abruptly terminated in early March, when the Lord Advocate stepped in and stated the government's intention to bring in a separate madhouse bill.⁴¹ Rose had little option but to defer to the Scottish Lord Advocate's official intention, although he still remained involved in the bill's early stages through Parliament. What made Colquhoun change his mind and attend to this subject? The main determinant was probably objections to the Physicians' initiative subsequently raised by the Royal College of Surgeons of Edinburgh.

The first reaction of the Surgeons is recorded in their minutes of 2 February 1814.⁴² Their president, James Law, stated he understood a bill was before Parliament that proposed all public and private madhouses in and around Edinburgh were to be placed "under the Regulation and controul" of the College of Physicians. He considered this would be injurious to the Surgeons because they had a large share of the city's medical practice and that the establishments in question "were so intimately connected with this practice". As well as being a clear reminder of the role of the Edinburgh surgeon-apothecary, Law's statement probably alluded to a much more specific connection between members of his College and neighbouring private madhouses. When Duncan's proposals for what became the Edinburgh Lunatic Asylum were transmitted to the Surgeons in 1792, one of their members, Thomas Wood, agreed to defer his scheme for a private madhouse, which his College agreed to give their formal approval to.⁴³

Alexander Lesassier, Philadelphia, University of Pennsylvania Press, 1999, pp. 26–30 and *passim*.

³⁷ On Colquhoun's early involvement, see Andrew Halliday, *A letter to the Right Honourable Lord Binning . . . containing some remarks on the state of lunatic asylums, and on the number and condition of the insane poor in Scotland*, Edinburgh, Francis Pillans, 1816, pp. 4–5.

³⁸ RCPE, Letters, Thomas Spens to Matthew Baillie, 19 Feb. 1814 (copy drafted on behalf of the president).

³⁹ RCPE Muniments, Miscellaneous Papers no. 331, Part 1, Lunatic Asylums 1814–20, Thomas Spens to Matthew Baillie, 21 Feb. 1814 (copy). Rose was a leading sponsor of English lunacy reform in Parliament during the 1800s and 1810s who introduced several bills on the subject and also guided

the deliberations of the Select Committee on Madhouses. The overlaps between the English and Scottish lunacy initiatives during the second decade of the nineteenth century are complex and deserve further comparative study in relation to other aspects of the Government's legislative programme.

⁴⁰ RCPE, Miscellaneous, George Rose to [Matthew Baillie], 1 March 1814.

⁴¹ *Ibid.*, Thomas Spens to James Hamilton, 11 March 1814; George Rose to James Hamilton, 16 March 1814.

⁴² Royal College of Surgeons of Edinburgh (hereafter RCSE) Muniments, Minutes, vol. 8, 1810–22, fol. 137. Attendance at meetings was not recorded at this time.

⁴³ *Ibid.*, vol. 6, 1771–93, 13 Feb. 1792, fols 399–400.

When the former flagged, Wood's went ahead and, by 1814, it was Midlothian's premier private asylum for the well-off.⁴⁴

The Surgeons then requested an immediate conference with their sister body, which took place two weeks later on 17 February. Two *précis* of the discussion were preserved by the Physicians.⁴⁵ James Hamilton confirmed that the bill was being adapted for Scotland and that the Physicians were in communication with Sheriff-Depute Rae about this, as well as with the Committee of the House of Commons now dealing with redrafting it.⁴⁶ Law agreed that national madhouse legislation was required and he offered the Surgeons' co-operation towards that end. When asked what form this might take, Law proposed that members of the College of Surgeons, and qualified Scottish surgeons elsewhere in Scotland, should all be on the same footing as physicians. This was unacceptable to the Physicians. A verbal exchange of their underlying views appears to have then taken place. They held that insanity was a disease that clearly fell within internal medicine, their sphere of practice. Law stated it sometimes arose from a mechanical cause that surgeons might be able to remove. He also pointed out that their own Charter included surgical practice in neighbouring counties as well as the City of Edinburgh and its suburbs, knowing full well that the Physicians' Charter gave them no jurisdiction there.⁴⁷

The Surgeons did not meet again as a body until 18 March. Law's report then merely stated that no satisfactory information had been obtained at the conference with the Physicians a month previously. By this time, his strategy had already moved away from possible rapprochement towards a direct appeal to the Lord Advocate, who "promised to attend so far as in his power to the interests of the College".⁴⁸ The exact date that Law waited upon the Lord Advocate and got this assurance is unknown. However, the date of his report is very close to Spens' 11 March letter informing Hamilton that the Lord Advocate was now in favour of a separate bill for Scotland and that their tactics also had to change.⁴⁹ Thereafter, the English and Scottish legislative processes began to diverge.⁵⁰

A "Council of Health" for Scotland?

On 8 June 1814 Archibald Colquhoun and George Rose were given leave to bring in a Bill to Regulate Madhouses in Scotland. It received its first reading on the same day and

⁴⁴ Although the date of commencement of "Thomas Wood's Asylum for Lunatics" is unknown, a College Committee was set up in 1796 to visit and inquire into its "Regulations and internal Government" (*Ibid.*, vol. 7, 1793–1810, 11 Nov. 1796, fol. 73). They reported back in early 1797 "to recommend the encouragement of the undertaking to the warmest support and protection of the public" (*Ibid.*, 2 Feb. 1797, fol. 75). This became known as Saughton Hall Asylum. For a very favourable account of its subsequent development, see Rae's comments in *Third report*, op. cit. note 8 above, p. 14.

⁴⁵ RCPE, Miscellaneous, Report and Scroll Minute of Council meeting 17 Feb. 1814. Both versions are factually similar but differ slightly in tone.

⁴⁶ Presumably this was the Select Committee on Madhouses, rather than a committee of the whole House of Commons.

⁴⁷ For the Surgeons' original Seal of Cause of 1505, subsequent charters and the events leading up to the granting of a Royal Charter in 1778, see Dingwall, op. cit., note 18 above, pp. 18–27, 87–91; Creswell, op. cit., note 18 above, pp. 160–2.

⁴⁸ RCSE, Minutes, vol. 8, 18 March 1814, fol. 139.

⁴⁹ RCPE, Miscellaneous, Thomas Spens to James Hamilton, 11 March 1814.

⁵⁰ The English bill was redrafted and rejected several times more before new English and Scottish Lunacy Acts were passed ten years after Rose's death and thirteen after the 1815 act had been in operation.

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was ordered to be printed, after which it had a rapid second reading and was referred to a committee of the whole House.⁵¹ The president of the Edinburgh College of Physicians, James Hamilton, expressed “satisfaction at the prospect of so necessary a measure being carried forward under his L[or]dship’s directions”. He asked whether there was time for Council to consider its provisions before the bill passed and also requested some copies for members.⁵² Colquhoun replied that none were left.⁵³ This succinct response can be read as a barometer of the low relations between both men at this time. It also suggests that the Physicians had very little direct involvement in the early drafting of the bill once it was taken up by Colquhoun officially. However, they were still in contact with Rose at this point, who may have continued to represent their views, if indirectly.⁵⁴

On the basis of a copy of the bill forwarded to him by another Council member, Professor Thomas Charles Hope, Hamilton called an extraordinary meeting of resident fellows. In the absence of any copies to distribute, he supplied them with a printed summary of its main provisions.⁵⁵ On 6 July Hamilton reported to the seven other people present that the bill still needed “material alterations” to “make the operation of it fully beneficial to Scotland”.⁵⁶ There were two outcomes. Firstly, Hamilton, Spens and Hope were appointed as a committee to wait upon the Lord Advocate and suggest further alterations. Secondly, the committee was given power to petition the House of Peers in the name of the College, should this be found necessary.⁵⁷

Although the president and attending resident fellows could not have known it, the day before the Physicians met, further parliamentary progress on the bill was deferred.⁵⁸ Colquhoun informed them on 7 July and invited further discussion.⁵⁹ He was in Edinburgh at the time and Hamilton, Spens and Hope met him the next day. He requested their views in writing and these were forwarded shortly afterwards.⁶⁰

There is already an indication of the Physicians’ attitude towards the Lord Advocate’s bill in a comment made at the meeting of 6 July that any proposed legislation should benefit Scotland as a whole. Spens developed this line further during the drafting of the response to the Lord Advocate.⁶¹ He suggested that as the College was “the Council of Health for Scotland [and] as the chief purpose of the Houses under consideration was to restore to health the unfortunate people confined therein, [it] had thought it a duty” to suggest some amendments. Hamilton adopted this key phrase “Council of Health” and emphasized the

⁵¹ *Journals of the House of Commons* (hereafter JHC), vol. 69, Nov. 4 1813–Nov. 1 1814, p. 338; *ibid.*, p. 350 [13 June 1814].

⁵² RCPE, Miscellaneous, James Hamilton to Lord Advocate, 25 June 1814.

⁵³ *Ibid.*, Lord Advocate to James Hamilton, 25 June 1814.

⁵⁴ RCPE, Minutes, 3 May 1814, fols 2268–9.

⁵⁵ RCPE, Miscellaneous, Circular, 4 July 1814.

⁵⁶ RCPE, Minutes, 6 July 1814, fols 2269–71. The roll of resident fellows has not survived for this period. Therefore it is difficult to know the exact size of the membership. However, judging from attendance at annual election meetings and the fines for absentees, active resident fellows probably numbered less than twenty at this time.

⁵⁷ *Ibid.*

⁵⁸ JHC, vol. 69, p. 434 [5 July 1814].

⁵⁹ RCPE, Miscellaneous, Lord Advocate to James Hamilton, 7 July 1814. There is no suggestion that the delay was to allow this to take place in Edinburgh. Rather the reason given was that the English bill was unlikely to be carried before the end of the parliamentary session and the Scottish one would be held up as a result.

⁶⁰ RCPE, Letters, Note to Lord Advocate, 8 July 1814. The written comments were sent on 13 July.

⁶¹ RCPE, Letters, Thomas Spens to James Hamilton, 10 July 1814. He also sent a copy of the contentious clauses of the bill, the printed circular and the proposed amendments.

need to secure recovery. He added that “no personal considerations whatever ha[d] actuated the members of the College”.⁶² One significant amendment reflects this perspective to an extent: Sheriff-Deputes should make proper rules and regulations concerning recovery only with the “advice and concurrence of medical persons”. It was also explicitly stated that no remuneration should be paid for conducting inspections. However, other aspects of their response help to define the limits of this envisaged public role.

Having started from the position of wanting to become physician commissioners on a par with their London counterparts, the College actually made a series of significant concessions during the drafting process. The most significant of these was relinquishing control over licensing.⁶³ Nor did they insist on rigorous medical certification as an essential part of the sheriff-led admission process, a provision of the bill that was weak in comparison with its English counterpart. In fact, the College did not make any suggestions about admission or licensing procedures for individuals in private asylums; nor did they question the narrow focus of the bill itself. The exemption of public asylums except for inspection, should sheriffs decide to visit them, also drew no comment. Instead, their response was, in the main, focused where it had always been: exclusive power of the College to appoint madhouse inspectors for Edinburgh and Midlothian. Surgeons should be appointed only if no physicians were available, something that would never have occurred in Edinburgh. The College showed very little concern about inspection arrangements for Lanarkshire, nearby counties also under the jurisdiction of the Faculty of Physicians and Surgeons of Glasgow, and other areas of Scotland.⁶⁴

This lack of concern at the wider regional level, as well as the politics of excluding other local practitioners, tempered any aspirations of the College to be a so-called Council of Health for Scotland. More generally, their response to this stage of the legislative process reveals a corporate contradiction. The College professed a national role in promoting Scottish mental health yet acted to protect the interests of its resident fellows at all times. This reflects an on-going crisis of identity within the College that stretched right back to limitations of its Charter of Incorporation, and also forward to the structure of medical practice in Edinburgh at the time of the bill. It deepened further in the way the College continued to respond during the lead-up to the Act to Regulate Madhouses in Scotland becoming law on 7 June 1815.

The College Presidents and the War of the Clauses

Brief factual up-dates were given at the routine meetings of each College; otherwise, the remainder of 1814 was uneventful.⁶⁵ In the spring of 1815, the Lord Advocate

⁶² RCPE, Letters, Note to Lord Advocate, 14 July 1814 (copy dated 27 March 1815).

⁶³ One of the notes accompanying the March 1815 copy of the written submission to the Lord Advocate stated, “The granting of licences should be confined to Sheriff deputies”. This suggests that the Physicians made this concession themselves, rather than having it forced on them by the Lord Advocate.

⁶⁴ It was stated that the proposed arrangements for “country men” were acceptable but those at the

“permanent seat of a College of Physicians” were not. See RCPE, Letters, Memorandum for Messrs Gregsons, 26 April 1815 (copy). Two years later they opposed Glasgow’s attempt to become a Royal College on the ground that it was prejudicial to their interests. See RCPE, Minutes, 23 Oct. 1817, fol. 2369.

⁶⁵ RCSE, Minutes, 21 July 1814, fols 151–2; RCPE, Minutes, 1 Nov. 1814, fol. 2777.

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wrote again to Hamilton on the subject of the bill.⁶⁶ This was approximately eight months after his 8 July face-to-face meeting with members of the College committee, which had been followed up by their submission in writing. Colquhoun stated that he planned to reintroduce the bill to Parliament and had made some alterations to it in the interim. In so doing he “tried to adopt as many of the suggestions contained in your letter to me of [14 July 1814] as could consistently [*sic*] with the general plan of the bill to be adopted”.⁶⁷ Rose appears to have dropped entirely out of the picture by this time, and the Scottish members William Dundas, General Wemyss and the Lord Advocate were given leave to introduce the amended bill.⁶⁸ It then received a rapid first reading and was printed; after the second reading, it was amended by a Committee of the House and read again; then it was passed and sent to the House of Lords.⁶⁹

As the final amendments in the House of Commons were being agreed towards the end of April, the presidents of both Edinburgh Colleges became increasingly concerned about changes that had been made. William Newbigging, Law’s successor as president, seems to have obtained a copy of an early pre-Parliament draft of the bill originally dated 12 March 1815.⁷⁰ He responded by writing to Robert Saunders Dundas, second Viscount Melville, who managed most of the Scottish business on behalf of the government.⁷¹ Newbigging considered the bill affected the Surgeons’ interests in Edinburgh and that he “would take it as a particular favour if your Lordship would give it your attention when the bill comes before the House of Peers”. On the same day, 24 April, he also wrote to the Lord Advocate stating the Surgeons’ objections in more detail.⁷² In his correspondence about the amended bill, Hamilton wrote on several occasions of receiving his copy of the bill by “accident”, which Craig suggests was a naïve acknowledgement on his part.⁷³ In fact, a copy of the bill printed on 12 April was sent to him by Newbigging.⁷⁴ Given the circumstances, it would have been difficult for Hamilton to acknowledge his adversary was also his source on this occasion. His choice of language was probably also deliberate in order to allude to what he perceived as the Lord Advocate’s ill-mannered failure to send him a courtesy copy. Nevertheless, the episode does suggest that the Physicians had not been actively monitoring the bill’s later progress. They needed to catch up quickly.

⁶⁶ RCPE, Letters, Lord Advocate to James Hamilton, 27 March 1815.

⁶⁷ *Ibid.*

⁶⁸ JHC, vol. 70, Nov. 8 1814–Jan. 17 1816, p. 207 [12 April 1815].

⁶⁹ *Ibid.* (first reading and printing); p. 218 [17 April 1815] (second reading); p. 236 [24 April] (committee and amendments), p. 238 (amendments read and agreed to “and a Clause was added, and several Amendments were made to the Bill”); p. 245 [26 April] (third reading, passed, and sent to House of Lords).

⁷⁰ This version has not been located. On Newbigging, see M H Kaufman, ‘Sir William Newbigging (1772–1852) and Patrick Newbigging

(1813–1864)—father and son presidents of the Royal College of Surgeons of Edinburgh’, *J. med. Biog.*, 2004, 12: 189–95.

⁷¹ Wellcome Library for the History and Understanding of Medicine (hereafter Wellcome), MS 5122/114, William Newbigging to Viscount Melville, 24 April 1815.

⁷² Wellcome, MS 5122/114, William Newbigging to Lord Advocate, 24 April 1815.

⁷³ Craig, *op. cit.*, note 19 above, p. 198. See, for example, RCPE, Letters, James Hamilton to the Earl of Lonsdale, 30 April 1815 (copy).

⁷⁴ RCPE, Letters, William Newbigging to James Hamilton, 24 April 1815.

The Physicians' secretary, Alexander Boswell, and Hamilton conferred about the bill on 24 and 25 April.⁷⁵ The president wrote to the Lord Advocate immediately afterwards and to Melville on the following day; Colquhoun replied on 29 April, three days after the bill was passed by the Commons.⁷⁶ Hamilton then delayed a second letter to the Lord Advocate until 3 May, that is, after he began corresponding with the Earl of Lonsdale, the Marquis of Douglas and Clyde and the Physicians' London solicitors J and J Gregson.⁷⁷ The manoeuvres in the campaigns fought by Hamilton and Newbigging make up a complex sequence of events. Their letters discussing the wording of certain provisions and how they changed in different versions of the bill descend to minute details. Of greater importance, however, is what the war of the clauses reveals about how the Physicians and the Surgeons perceived their customary and legal rights to practise medicine in Edinburgh—and to deal with mental disease in particular—had been infringed.

The Surgeons considered their counterparts had received preferential treatment in the bill. They argued that this “ought not to be the case considering the state of medical practice in this part of the Island”.⁷⁸ They presented the mode of medical attendance prescribed in the bill as evidence of excluding practitioners who were not qualified physicians. They held up the Glasgow Faculty as an exemplar of equality as far as surgeons and physicians were concerned and stated there was no reason why Sheriff-Deputes should not be allowed to call upon members of either Edinburgh College to be madhouse inspectors.⁷⁹ This was not the only comment about medicine outside Edinburgh and Midlothian. They pointed out that the bill misunderstood the nature of practice in other counties, where the majority of practitioners held the Edinburgh Surgeons' diploma. Nor did the bill take into account the fact that holders of the College diplomas were not actually members. As a result of careless wording, such qualified practitioners might be passed over “in preference to them [*sic*] who have no diplomas at all and who never had the benefit of a regular medical education”.⁸⁰ The Surgeons also picked up on deficiencies in the proposed arrangements for medical certification and doubted whether the suggested record-keeping mechanism via the Court of Justiciary would ensure the lunatics' confidentiality. The Surgeons' response consistently argued for *de facto* recognition of their dominant position within Edinburgh medical practice. It also took into account the nature of practice nationally and made an analogy with Glasgow's Faculty. The Surgeons also raised some other concerns that had completely passed the Physicians

⁷⁵ RCPE Muniments, Accounts, Account . . . respecting proceedings for procuring amendments on the bill at present in progress through Parliament for the better regulation of madhouses. Boswell charged the College 6s 8d and half a guinea for each meeting, which suggests the discussions were lengthy.

⁷⁶ RCPE, Letters, James Hamilton to Lord Advocate, 25 April 1815; Wellcome, MS 5122/116, James Hamilton to Lord Melville, 26 April 1815.

⁷⁷ No copies appear to have survived, but the letter can be dated to 3 May from Boswell's charges for copying and circulating it and also from a note of this date from him to the president.

⁷⁸ Wellcome, MS 5122/115, William Newbigging to Lord Advocate, 24 April 1815.

⁷⁹ For background, see J Geyer-Kordesch and F MacDonald, *Physicians and surgeons in Glasgow: the history of the Royal College of Physicians and Surgeons of Glasgow 1599–1858*, London, Hambledon, 1999. Judging by their titles, two physicians and two surgeons were appointed to serve as the first madhouse inspectors. See Royal College of Physicians and Surgeons of Glasgow (hereafter RCPsG), Muniments 1/1/1/5, Faculty Minutes 1807–1820, 3 Oct. 1815 (unpaginated).

⁸⁰ Wellcome, MS 5122/115, William Newbigging to Lord Advocate, 24 April 1815.

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by. Their tactics were both realistic and specifically targeted at two powerful national office holders whom they believed would take into account the College's position in the civic, as well as the medical, life of Edinburgh and Scotland.

The mode of the Physicians' response was more diffuse and drew upon a wider range of cultural as well as political allegiances and sympathies. Written representations were sent to members of the House of Lords who may well have already known Hamilton socially, perhaps even personally. There was a general expectation that the nobility would have a similar conception of the physician as not only differentiated in terms of the division of medical labour, but also as someone of higher social standing and educational attainments than a surgeon. The other dimension of the Physicians' reaction was directed towards members of the legal profession. Continuing to draw upon the legal training of their secretary, they attempted to lay out their case to the Lord Advocate and, at the same time, explain to Gregson, their London solicitor, why the College was so aggrieved.

The Physicians' arguments were very similar to those of the Surgeons, although there were some differences of emphasis, and certainly tone, depending on the addressee. They consistently opposed the Surgeons' *de facto* position with a *de jure* outlook based upon the College Charter and its ratification document. The key phrase returned to again and again is that certain clauses in the bill "trench" upon physicians' rights by seeming to allow surgeons to visit madhouses in Edinburgh and its vicinity, when these were clearly "matters strictly belonging to the duties of the Physician".⁸¹ They collectively accepted that Edinburgh Surgeons already practised as physicians without legal sanction and that they controlled two thirds or more of medical practice in the city.⁸² They acknowledged it was due to the Surgeons' powerful position as an incorporated trade represented on Edinburgh Town Council, to failures of the courts to uphold the Physicians' rights and to flaws in their own Charter.⁸³ If the bill were passed as it stood, this would "convey the authority of Parliament to exercise the Profession of Physic on all occasions".⁸⁴

With respect to some of the wider issues raised by Newbigging, the Physicians were largely indifferent to what kinds of country practitioners were employed outside Edinburgh and Glasgow, while certification and confidentiality were not considered to be problematic. Instead, invidious comparisons were repeatedly made with the position of the London College expressed in the draft English bill. Edinburgh's demands were described as "modest [and] moderate ones" considering the extent of the respected rights given to the sister College.⁸⁵ The previous sticking point about the need for medical

⁸¹ RCPE, Letters, James Hamilton to Lord Advocate, 25 April 1815 (copy).

⁸² See James Gregory, *Memorial to the Managers of the Royal Infirmary*, Edinburgh, Murray and Cochrane, 1800, pp. 185–6, where the figure is put at between three quarters and nine tenths.

⁸³ RCPE, Letters, Memorandum for Messrs Gregsons, 26 April 1815 (copy).

⁸⁴ *Ibid.* The Scot, Hamilton, had to explain the wider professional, social and political circumstances

affecting his College to the English lawyer, Gregson. In the process, implicit taken-for-granted features of the Edinburgh medical community were spelled out. What is perhaps more surprising is the fact that he had to go through more or less the same process with the Lord Advocate.

⁸⁵ RCPE, Letters, Memorandum for Messrs Gregsons, 26 April 1815 (copy).

advice, should Sheriff-Deputes “make rules and regulations which may tend to the due preservation of the health of Lunatics”, was not wholly abandoned.⁸⁶ However, the wider underpinning of the “Council of Health” is absent in letters to the Lord Advocate and Gregson, and the whole subject entirely omitted in letters to peers. The contention that only physicians could be madhouse inspectors for Edinburgh and Midlothian predominates over other strands of the College’s response. The earlier and subsidiary justification that the diseased mind was an aspect of internal medicine, and therefore the physician should advise and treat it, was occasionally rehearsed in full. However, it always took second place to the main argument that the legal chartered corporation rights had been trampled.

Compromises and Casualties

The Surgeons’ entreaties were not backed up by any significant threat of further action. Their only request was that all references to them should be expunged from the bill if their College was not treated on a par with the Physicians as far as madhouse inspection in Edinburgh and Midlothian was concerned. The Physicians responded entirely differently. When Gregson informed his clients that the bill had passed the Commons, Hamilton, Spens and Hope, acting as a committee, immediately exercised the authority previously given to petition the House of Lords. Their petition was presented by Lord Melville on 2 May and was ordered to lie until the second reading of the bill there.⁸⁷ After the Physicians made a final written representation to the Lord Advocate, Gregson reported that Colquhoun and Melville:

... seem anxious that the Bill should be modified and put into such a form as that the Royal College of Physicians, as well as the Royal College of Surgeons may be satisfied, still however the Lord Advocate does not seem disposed to adopt all the suggestions made by the College of Physicians, he is however consenting that so much of the Bill as relates to the Appointment of Inspectors by the College of Surgeons should be omitted or struck out and the Bill as now altered is according to the Copy inclosed [*sic*] and which form I presume it will pass into law. Lord Melville does not seem disposed to insist upon the other objections and he is willing to hope the alteration above mentioned and those which had before been made by the Lord Advocate will be satisfactory to the College of Physicians.⁸⁸

Gregson advised that the resigned response of the Surgeons made it unlikely counsel would be heard in the House of Lords about the petition. Through Boswell, the solicitor offered the opinion that the College’s main objection to the bill had now been removed.⁸⁹ Nevertheless, Hamilton insisted upon one further interview between Gregson and the Lord Advocate, which took place on 12 May. No further concessions were obtained except for one or two minor errors of wording that Colquhoun agreed to correct.⁹⁰ As men of place and preferment, Colquhoun and Melville probably considered

⁸⁶ RCPE, Letters, James Hamilton to Lord Advocate, 25 April 1815 (copy); Memorandum for Messrs Gregsons, 26 April 1815 (copy).

⁸⁷ *Journals of the House of Lords*, vol. 50, 8 Nov. 1814 to 2 Jan. 1817, p. 193 [2 May 1815]. No copy has been located.

⁸⁸ RCPE, Miscellaneous, J Gregson to Alexander Boswell, 4 May 1815.

⁸⁹ *Ibid.*, and 6 May 1815.

⁹⁰ RCPE, Miscellaneous, J Gregson to Alexander Boswell, 12 May 1815.

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that the Physicians' objections were made in pursuit of similar ends. As ordinary citizens of their time, both men may also have been generally unsympathetic to the notion that physicians—or even medical practitioners of any kind—were appropriate and legitimate therapeutic guardians of the mental health of the confined insane.⁹¹

In the aftermath of these events, Hamilton wrote to thank those who had supported him in the House of Lords.⁹² His concluding reflections suggest that his commitment to a hierarchy of medical practice upheld upon the basis of legal entitlement remained what it had been when the controversy began. The next time the Physicians dealt with Scottish private madhouse business in an official capacity was when they elected the first madhouse inspectors in response to a request from Sheriff-Depute Rae.⁹³ The president, Newbigging, made a statement about the bill at a meeting of the Surgeons on 15 May. He received a unanimous vote of thanks for his actions.⁹⁴ The proposer was Andrew Wood, who accurately observed that the Physicians' petition had been based upon their Charter giving them exclusive rights to cure all internal diseases, including insanity, in the City of Edinburgh and its suburbs. He considered this argument was "absurd". Instead of attacking the reasoning that insanity necessarily always had an internal cause, as Law had done at the conference held in February 1814, he made an entirely different point. The petition, he concluded, was absurd because there were no madhouses in the specified location "except the common hospital of Bedlam attached to the poor house", but this was a public rather than private institution.⁹⁵

Conclusion

In one sense the Physicians "won" because they prevented national legislation that would have forced them to share the patronage of madhouse inspection in Edinburgh and Midlothian. They also avoided a legislative precedent they feared would legitimize their being treated on a par with members of the College of Surgeons. Yet the Physicians also "lost" because the outcome did nothing to resolve the contradiction of their anomalous position concerning Edinburgh medical practice. Their corporate identity remained in crisis. They also failed to get any legislative backing for the idea that physicians knew best how to care for, and perhaps even restore, the confined insane. While this failure may not have significantly retarded public approval for such a role at this time, it did nothing to advance it either. Furthermore they were saddled with an inspection regime that was medically weak in comparison with a new expression of Scottish shrieval power, which, potentially at least, extended to the organization of Scottish private

⁹¹ This notion is certainly almost entirely absent from lunacy measures at this time. At a later stage in the English bill this prompted John Scott, Lord Chancellor Eldon, to remark that "its regulations would tend to aggravate the malady with which the unfortunate persons were afflicted, or to retard their cure. It was of the utmost importance . . . that they should be under the superintendence of men, who had made this branch of medical science their peculiar study, and that the superintendence of physicians should not be interfered with." See *Hansard's*

Parliamentary Debates, vol. 40, 3 May–30 July 1819, cols 1345–6.

⁹² RCPE, Letters, James Hamilton to Marquis of Douglas and Clydesdale, 17 May 1815.

⁹³ RCPE, Minutes, Extraordinary Meeting, 3 July 1815, fols 2291–4.

⁹⁴ RCSE, Minutes, vol. 8, 15 May 1815, fols 196–8.

⁹⁵ *Ibid.* See also Arthur Birnie, 'The Edinburgh Charity Workhouse, 1740–1845', *Book of the Old Edinburgh Club*, 1938, 22: 38–55.

madhouses and the health of those confined there. The unaltered state of Edinburgh medical politics ensured it would be some time before the Physicians' role as a national council of mental health would be taken seriously.⁹⁶

The Surgeons also "lost" their battle and even failed to get their name omitted from the act. Yet they "won" in several respects as well. Their position as preferred local Edinburgh family medical attendants, or general practitioners, remained entirely unaltered by their response to the 1815 act. Surgeons were usually the first to be consulted by family members concerned about the mental health of their relatives. Their advice about the appropriate form of treatment, whether in an asylum or otherwise, continued to be respected and valued, even if it was not always followed. Thomas Wood and his colleague James Bryce continued to run Saughton Hall very successfully and in contrast to the fledgling Edinburgh Lunatic Asylum, which received a damning report from Rae in 1816.⁹⁷ The Surgeons' local civic standing as the leading craft guild within Edinburgh Town Council also remained unchallenged. They took full advantage of close connections with local government and continued to make corporate advances. This is especially evident in relation to the education of its diplomats, then beginning to win greater national recognition. Newbigging was knighted in 1838.

Hamilton's third successive presidential year did not end in ignominy, even though he failed to extend the Physicians' professional authority in any meaningful way. He remained bitter about how the Lord Advocate had treated him personally and continued the fight in another direction by pressing—unsuccessfully—for more power over patient welfare for the Medical Board of the Edinburgh Lunatic Asylum.⁹⁸ Nevertheless, his lucrative practice as Scotland's leading accoucher went from strength to strength. Apart from Duncan's opening shot, there is little evidence of his impact upon subsequent events. The College treasurer was far more influential throughout. Although Spens failed to control any licence revenue paid for private madhouse patients, he enjoyed almost all the patronage of madhouse visiting for many years thereafter. Despite what the College professed in their submission to the Lord Advocate, Spens was always paid for his services.⁹⁹ The College revenues burgeoned over the period he was treasurer and he was rewarded with a present of £100 from the College, twice what it gave to support the fledgling Edinburgh Lunatic Asylum.¹⁰⁰ The act did not lead to any tangible

⁹⁶ Lunacy reform was eventually taken up within the College by Richard Poole during the late 1830s.

⁹⁷ *Third report*, op. cit., note 8 above, pp. 16–17.

⁹⁸ See Lothian Health Services Archive, LHB7/1/1, Minute book of the Association for Instituting a Lunatic Asylum, 1792–1816, 22 May 1815, pp. 148–50; 5 Oct. 1815, pp. 152–3. As presidents of their respective Colleges, Hamilton and Newbigging were members of the Medical Board of the Edinburgh Lunatic Asylum under the terms of its Royal Charter.

⁹⁹ Spens received a total of 35 guineas for five inspections and a report he produced between 20 Dec. 1815 and 29 March 1816. See RCPE Miscellaneous, Account of monies received [and discharged] by the

Sheriff Clerk of the County of Edinburgh . . . 7 June 1815 to 30 April 1816 and of all expenses incurred in carrying the said act into execution. There is an unexplained gap in inspections after this date and until 1820, when they resumed and full records were kept. See RCPE Muniments, Miscellaneous Papers no. 331, Part 2 (Lunatic Asylums) 1821–30; Part 3 (Lunatic Asylums) 1831–45. Copies also survive in National Archives of Scotland, Court of Justiciary records, JC51/1–8.

¹⁰⁰ RCPE, Minutes, Extraordinary Meeting, 2 May 1820, fol. 2447. From 1816 Spens was also remunerated by the Edinburgh Lunatic Asylum for his services as a non-resident physician, formerly an honorary unpaid post.

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economic benefits for the membership as a whole, but 1815 was definitely a good year for Boswell, as his secretarial account shows.¹⁰¹

There is little direct evidence about Colquhoun's views. Dr Andrew Halliday stated that the Lord Advocate's interest in the extent of lunacy in Scotland commenced in 1812, which would predate his membership of the Select Committee on Madhouses by two years.¹⁰² The provisions of his bill were more reminiscent of the old penal code than any future lunacy one and seem at variance with many of the views publicized by the Select Committee on Madhouses.¹⁰³ Given that Colquhoun's first initiative was a fact-gathering one, it is possible that his Committee membership contacts with Rose and the overture of the College of Physicians subsequently made it difficult for him not to proceed with public legislation.

Colquhoun's conception of the public good with regard to the privately confined insane diverged markedly from the hierarchical professional medical services model subscribed to by the College president, Council and resident fellows. J Gregson "found the Lord Advocate in the several communications [he] had with him open [and] communicative, ready to hear [and] correct errors", although Hamilton begged to differ.¹⁰⁴ Whatever the personal differences between both men, it is difficult to imagine how events surrounding the passage of Scotland's first legislation concerning private madhouses could have engendered a lasting spirit of co-operation between legal and medical professionals in this area. Writing to Rae in 1817, Rattray commented afterwards that the Edinburgh Lunatic Asylum had not met with as much "public favour" as he expected "owing very much to the jealousy of the medical men".¹⁰⁵ No evidence has been found of high level consultation involving either Edinburgh College in the lead-up to the 1828 act.

As regards "the people above", Melville, like his father Henry Dundas, sought to manage conflict within the Edinburgh medical community by achieving a balance between the corporate interests of the Physicians and the Surgeons. Furthermore, Melville appears to have been committed to doing so when he and the Lord Advocate were preoccupied with other better known and, arguably, more important Scottish legislation proceeding through Parliament at the same time.¹⁰⁶ The fact that the dispute continued right up to

¹⁰¹ See RCPE, Accounts, which shows that Boswell received £12 4s 10d for his work "Respecting Mad House Bill". This was in addition to his annual salary of £10 and £12 14s 5d charged for other business in 1815. See *ibid.*, General account to the Royal College of Physicians 1815.

¹⁰² Halliday, *op. cit.*, note 37 above, p. 4.

¹⁰³ Hamilton observed that it put "Lunatics [and] Criminals on the same footing, which indeed was always the principle of his [ord]ships Bill". See RCPE, Letters, James Hamilton to the Earl of Lonsdale, 30 April 1815.

¹⁰⁴ RCPE, Miscellaneous, J Gregson to Alexander Boswell, 12 May 1815. No evidence has been found that the Lord Advocate consulted with the Glasgow Faculty of Physicians and Surgeons about arrangements for Lanarkshire before the Sheriff-Depute there informed the Faculty of their responsibilities with respect to the act nearly four

months after it became law. See RCPSG, Faculty Minutes, *op. cit.*, note 79 above, 3 Oct. 1815 (unpaginated), reporting upon a meeting of 26 Sept. between the Sheriff-Depute and two members of the Faculty. The four members elected as inspectors stated they knew of no private madhouses operating within the jurisdiction of the Faculty.

¹⁰⁵ National Register of Archives for Scotland, Baillie-Hamilton papers, 3503/1/21/4, J Clerk Rattray to William Rae, 5 April 1817. See also Houston, 'Care of the mentally disabled', *op. cit.*, note 4 above, p. 16, where this passage is cited as part of an argument that tensions between different elements of the medical community could be productive with respect to local institutional provision for lunatics.

¹⁰⁶ Scottish acts concerning records of the Court of Session and hawkers and pedlars received royal assent at the same time. Cockburn, *op. cit.*, note 9

the passage of the bill in the House of Lords, rather than being resolved far earlier, may indicate a difference in style and effectiveness of the political management of Edinburgh at a time after the French Revolution and before the rise of the Whigs. It also shows that the Edinburgh College of Physicians' conservative, medical hierarchical attitude towards the 1815 act could nevertheless bring them into conflict with a profoundly Tory Scottish political administration. Whereas a considerable amount is known about the politico-legal stance of the Scottish Whigs, the position of their opponents at this period remains far from clear.¹⁰⁷

The Edinburgh medical response between late-1813 and mid-1815 has been described and explained in terms of local College-based political considerations. This resembles Holloway's explanation of the English Apothecaries' Act: neither measure promoted reform; both became vehicles to advance the interests of medical corporations. Yet it is important, finally, to note a significant difference between narratives of early medical reform in England and lunacy reform in Scotland. With respect to the former, a concern to improve medicine appears very evident in public rhetoric at the time. The concern to improve lunacy care is entirely absent from discourse about the 1815 act. A wider Scottish moral, social, religious and medical rhetoric on the subject did exist, for example in printed pamphlets in support of Edinburgh's charitable asylum and regional public establishments for paupers.¹⁰⁸ However, it is misleading to interpret the 1815 act in such terms. This does not mean that the wider humanitarian narrative about the insane should be dismissed as insignificant.¹⁰⁹ A range of methodological approaches will be required in order to appreciate how it evolved in the light of successive legislative, institutional and cultural changes in England as well as Scotland. Nevertheless, one important means of doing so is to study the developing narrative of lunacy reform within specific local contexts where it was deployed to achieve definite ends.

above, p. 231, considered that the whole Scottish administration at this time "had no taste for good internal measures, on their own account", a judgement that may also be relevant to Melville and Colquhoun's approach to the 1815 act.

¹⁰⁷ N T Phillipson, *The Scottish Whigs and the reform of the Court of Session 1785–1830*, Edinburgh, Stair Society, 1990.

¹⁰⁸ For example, [Andrew Duncan] *Address to the public respecting the establishment of a lunatic*

asylum at Edinburgh, Edinburgh, James Ballantyne, 1807. This was a bound group of pamphlets that also included the original 1792 'Proposals for establishing a lunatic asylum in the neighbourhood of the city of Edinburgh'; *idem*, op. cit., note 33 above.

¹⁰⁹ Thomas Lacquer, 'Bodies, details and the humanitarian narrative', in Lynn Hunt (ed.), *The new cultural history*, Berkeley, University of California Press, 1989, pp. 176–204.