Introduction: communities, courts and Scottish towns

JACKSON W. ARMSTRONG
and ANDREW MACKILLOP*
Department of History, University of Aberdeen, Old Aberdeen, AB24 3FX, UK

ABSTRACT: This short essay sets the context for the special section on communities, courts and Scottish towns. Scottish burgh records generally, and Aberdeen's UNESCO recognized collection in particular, are considered in light of their legal character. The changing features of pre-modern political society between the fifteenth century and the early nineteenth century are introduced as a shared problem for investigation, and an *ancien régime* framework is examined as a comparative tool in this field. A vital concern of these articles is with the construction and sometimes contested use of vocabularies of law and authority, privileges and liberties, and ideas of urban 'community'. Courts at the municipal level, and in the world beyond the burgh, are appreciated as legal and governmental *fora*. The ambition of this special section is to prompt European comparisons, and encourage greater dialogue with and consideration of Scottish urban records in future research.

This special section of *Urban History* explores the theme of courts and communities in Scottish towns from the fifteenth century to the nineteenth century. Its broad aim is to explore the continuities and transitions experienced by Scotland's late medieval and early modern burghs through the structures, legal languages and the concepts of justice and community which were deployed in courts both urban and extra-municipal. In many ways, this involves returning to an older conceptualization of what constituted a burgh. As far back as 1916, Adolphus Ballard stressed not just the direct borrowing of English legal practice in the foundation of Scotland's urban sites but that their whole purpose, character and function was largely driven by the regulation of commerce through a series of

interlinked courts.[1] Revisiting this older emphasis on the judicial character of the royal burghs need not entail a retrogressive focus on the structure or administrative history of the urban courts. Instead, these articles explore the ideals and languages of urban community in pre-modern Scotland through the prism of the town's various levels of judicial authority and judicial interactions. It does so with a view to asking how Scotland's urban records can be used in new ways to cast light on political ideas, languages and legal practices that developed in and were particular or distinctive to the kingdom's cities and towns.

The established focus on the major medieval or early modern Scottish burghs as generators of domestic and international commerce, or as assets used by the crown to counterweight the power of the nobility, may be complemented by a shift of attention towards the legal cultures of urban Scotland.[2] The nature of Scottish urban archives validates such a legalistic reading. Most of the early surviving records for the medieval and early modern eras are noticeably judicial in character, reflecting the central role of the head and baillie courts in the official and everyday life of the burgh. This aspect of their nature has enabled their extensive use in linguistic textual analysis of legal principles and assumptions in ways that have revealed the depth, complexity and sophistication of the burgh courts.[3] If the character of Scotland's urban archives facilitates methodologies of textual semantic analysis, they can also speak to the nature of concepts of community as articulated in urban Scotland. One of the ways we have sought to explore these ideas is through the lens of Aberdeen. This group of articles emerges from the Aberdeen Burgh Records Project, an endeavour to examine, broadly across the time period *c*. 1400 – *c*. 1800, themes of continuity and transition, languages and geographies, and more generally the use of urban records for studies beyond 'urban history' itself.[4] In many ways, the city (itself consisting of two neighbouring burghs, what came to be known as New Aberdeen on the River Dee and Old Aberdeen on the River Don) constituted late medieval and early modern Scotland's most significant northern metropole. It functioned as an important port on the north-western rim of a North Sea world that stretched from the Shetland Isles down to the south-east of England, along the Low Countries and the northern German states to encompass Scandinavia and the western approaches to the Baltic Sea.[5]

[1] A. Ballard, 'The theory of the Scottish burgh', *Scottish Historical Review*, 13 (1916), 16–29.

[2] E.P. Dennison, 'Urban society and economy', in B. Harris and A.R. MacDonald (eds.), *Scotland: The Making and Unmaking of the Nation, c. 1100–1707* (Dundee, 2007), 145–65.

[3] J. Kopaczyk, *The Legal Language of Scottish Burghs: Standardization and Lexical Bundles (1380–1560)* (Cambridge, 2013), *passim.*

[4] For information on the Leverhulme Trust Research Project Grant which emerges from this collaboration, *Law in the Aberdeen Council Registers, 1398–1511: Concepts, Practices, Geographies,* see https://aberdeenregisters.org, accessed 3 Jul. 2016.

[5] For discussion of the idea of an integrated North Sea World, see T.R. Liska and L.E.M. Walker (eds.), *The North Sea World in the Middle Ages: Studies in the Cultural History of North-Western Europe* (Dublin and Portland, OR, 2001), *passim.*

The city's surviving archive is what explains the prominence given to Aberdeen here. In light of Scotland's status as a typical northern European society, with low levels of urbanization and a relatively underdeveloped economy based overwhelmingly on rural products, it is hardly surprising that the volume of surviving town records is small and fragmentary compared to that in England, the Low Countries or northern Italy.[6] Yet amidst this relative dearth of records relating to urban life in the north, Aberdeen's surviving burgh archive is impressive, not just in a Scottish context but across northern Europe more generally. With extant council registers from 1398 onwards (excepting a gap spanning 1414 to 1434), its records are the most continuous of their kind in Scotland. Their international importance, recognized by their inscription in the UNESCO UK Memory of the World Register, lies in the fact that they form an almost unbroken record for a major regional nucleus of political and judicial power within the realm, a key episcopal seat, the site of one of Europe's most northern university towns, and an entrepot with extensive hinterlands and hinterseas.[7]

Intellectual problems

One of the obvious benefits of relating Scottish urban records to wider perspectives on the changing nature of pre-modern political society is that such an approach shows how contentious debates over the *ancien régime* nature of England (and indeed Ireland) may in fact be better applied to pre-1832 Scotland. Urban records may thus be used to investigate the distinctiveness of late medieval and early modern Scotland, its similarities with England and how such urban approaches can have a wider value beyond Scotland itself. One such debate where the example of Scotland has been curiously absent or underplayed relates to the concept, first articulated by J.C.D. Clark in the mid-1980s, that much of the pre-1800 history of the British-Irish Isles is best understood in terms of *ancien régime* political, religious, economic and social structures and mentalities. Clark's proposition entailed a quite deliberate attempt to move the history of England away from models of exceptional development, Whig liberty and teleological assumptions about modernity. Leaving aside its own ideological basis, the value of assessing the character of society in such a way lay in the fact that it underscored the importance of the highly corporatized structure of English society, its languages of 'liberty' and

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

[7] D. Ditchburn and M. Harper, 'Aberdeen and the outside world', in E.P. Dennison, D. Ditchburn and M. Lynch (eds.), *Aberdeen before 1800: A New History* (East Linton, 2002), 377–407. For the UNESCO citation, see www.unesco.org.uk/2012-uk-memory-of-the-world-register, accessed 3 Jul. 2016.

privilege and its ongoing 'confessional' character.[8] If contentious in the context of understanding early modern England, the idea that Ireland might also be best considered as an *ancien régime* society sparked even more intense debate.[9] What is surprising in this context is that the concept has never really been applied to Scotland. Yet there is a strong case for arguing that it is the northern kingdom which best fits some of the key political, economic, social and cultural characteristics associated with the era. Scotland was a highly corporatized society, with distinct 'estates' and interests regulated and managed through a dense set of legal liberties and privileges. Even the parliament's official title, 'the Estates of Scotland', speaks to the way in which the country's internal ordering envisaged a hierarchy of lords, barons, burghs, university colleges, legal professions, trade guilds operating in a kingdom with multiple sites of political legitimacy and legal authority. Viewing late medieval and early modern Scotland in this way frames the articles here by showing how urban records can better illuminate the structures, legal cultures and languages of law and community that enabled and perpetuated the country's markedly *ancien régime* character.

A second problem of concern here is that of 'community', well known as a knotty and difficult term. As is set out in Claire Hawes' article, it has been the subject of debate among late medieval and early modern historians, of England in particular. For a generation or so researchers stalked the 'county community' and assembled a historiographical larder full of local studies of the sort which English governmental records dispose themselves well towards, in the treatment of particular shires as units within the kingdom. Through all this effort, the precision and utility of the concept of 'community' has been called into question by some, and defended by others.[10] Yet it has been subject to far less thorough interrogation among historians of Scotland. It has played a role in approaches to Scottish urban society, but it has tended to be treated either as a real group of people there to be identified in source materials, or as a constructed representation.[11] The chief innovation of the approach demonstrated by Hawes in this

[8] J.C.D. Clark, *English Society, 1688–1832: Ideology, Social Structure and Political Practice during the Ancien Regime* (Cambridge, 1985), 6–7.

[9] S.J. Connolly, *Religion, Law & Power: The Making of Protestant Ireland, 1660–1760* (Oxford, 1995), 2, 63, 103–5, 312–13.

[10] C. Carpenter, 'Gentry and community in medieval England', *Journal of British Studies*, 33 (1994), 340–80; A. Gross, 'Regionalism and revision', in P. Fleming, A. Gross and J.R. Lander (eds.), *Regionalism and Revision: The Crown and its Provinces in England, 1200–1650* (London, 1998), 2–5; S. Walker, 'Communities of the county in later medieval England', in M.J. Braddick (ed.), *Political Culture in Later Medieval England* (Manchester, 2006), 75; P. Withington, 'Introduction', in P. Withington and A. Shepard (eds.), *Communities in Early Modern England: Networks, Place, Rhetoric* (Manchester, 2000), 1–12.

[11] M. Lynch, 'Introduction: Scottish towns 1500–1700', in M. Lynch (ed.), *The Early Modern Town in Scotland* (London, 1987), 1–35, at 2, 13–17, 28; E.P. Dennison, 'Power to the people? The myth of the medieval burgh community', in S. Foster, A. Macinnes and R. MacInnes (eds.), *Scottish Power Centres: From the Early Middle Ages to the Twentieth Century* (Glasgow, 1998), 100–31.

collection is to treat 'community' as both an analytical concept and as a historical term, and to concentrate her focus of analysis on the uses to which it was put in the past. In this regard, she reveals how the rhetoric of community to a degree was a tool which defined urban, corporate, social organization. It also facilitated processes of inclusion and exclusion.

In these ways, the special section aims to recover better the nature and tone of Scottish urban government, an objective previously identified in the historiography as long overdue.[12] The three articles presented here span from the end of the late medieval period to the end of the early modern period. This chronological range is perhaps more familiar in a continental context (spanning from 'Renaissance' to 'Revolution') than in a Scottish one,[13] although a similar range has recently been applied to the history of Dundee.[14] One matter which emerges in this regard concerns the analytical categories we use as scholars and their utility across historic time. Hawes and Mackillop prompt questions about the interpretation of words and concepts, such as '*communitas*' and 'reform', especially when focusing on the language of law and authority. In this way, we might ask how apparent similarities or continuities across our selected period may mislead. For example, with Hawes' and Mackillop's articles in mind, should the use of the word 'community' in 1472 be understood to refer to the same concept as when it was used in 1785?[15] Bearing such potential difficulties in mind, we would argue that the chronological span adopted here is a bridgeable one – and useful in the bridging – for begging such questions of periodization, and of the balance between change and continuity across the period. How far, one might ask with reference to the articles by Harris and Mackillop, is the pre-revolutionary *ancien régime* of a continental and American frame of reference helpfully applied in Scotland, where a governing framework underpinned by legally defined liberties and hierarchical corporate privilege came to be challenged and redirected with processes of reform and legal contestation? Do these court-driven trends, and the vocabulary or rhetoric of privilege accompanying them, help trace the end of *ancien régime* Scotland just as surely as better known phenomena such as industrialization, and political radicalism?

Still another issue concerns ways to think about law and authority, especially national and urban legal and political cultures, themes which are explicitly covered in Bob Harris' article. Indeed, one of the longest standing definitions of what constituted a town is that it is a legally or

---

[12] Lynch, 'Introduction: Scottish towns 1500–1700', 16.

[13] For example, see J. Dewald, *The European Nobility, 1400–1800* (Cambridge, 1996).

[14] C. McKean, B. Harris and C.A. Whately (eds.), *Dundee: Renaissance to Enlightenment* (Dundee, 2009).

[15] For a recent discussion of related issues, see J. Braekevelt, 'Popular voices within princely legislation: assessing the discourse of Flemish petitions and Burgundian *narrationes*', in J. Dumolyn, J. Haemers, H.R. Oliva Herrer and V. Challet (eds.), *The Voices of the People in Late Medieval Europe: Communication and Popular Politics* (Turnhout, 2014), 149–65.

constitutionally defined entity.[16] The three articles in this special section are especially interested in the role of towns as *fora* for processes of legal action, as parties themselves in legal action (including in extra-mural jurisdictions), and as hubs for the mixing of legal (and political) cultures and vocabularies. All this is pertinent not least because, as already outlined, urban sources from this period are predominantly legal records. In these articles, close attention is paid to aspects of legal language and legal process, and of social conflict more generally; but law is also understood from wider perspectives, including the governmental and the practical. In this way, the urban elites examined by Hawes used legal language as a tool of governance in the fifteenth century, and Mackillop's urban reformers of the eighteenth century looked back to their own medieval civic archive as the justification for their political agenda, so as to frame reform not as modernization but as legal restoration. This culture of politics was underscored by the use of the complex hierarchy of burgh courts, as well as public meetings and committees of burgesses, as legitimate platforms to normalize the idea and languages of reform. The contribution by Harris brings this judicial emphasis forward most explicitly. The 'use' of language here relates not only to the instrumental deployment of law, as a party might do in raising a particular claim in a particular court, but also to the use of concepts shaped by law – such as privilege, kinship, neighbourhood or community – within the argumentation of claims, or within the framework of the remedy applied. Harris examines the supreme judicial body at the Scottish national level, the court of session in Edinburgh, and how it was used as a means to negotiate local authority. He shows the session played a vital role as the accepted interpreter of contested claims of 'privilege' and as a hitherto underappreciated vehicle for the sort of reform explored in Mackillop's article. It is notable, furthermore, that in this way he also touches on related contestations of the rhetoric of 'improvement'. Thus, legal records generated by a national supreme court provide a window onto the legal and political culture of civic societies.

The use of the language of authority is another salient theme in this set of articles. Hawes and Mackillop speak most directly to this topic, addressing the ways in which governing elites (and those further down the social scale) used what might be described as a rhetoric of authority to express, justify and normalize political actions. Hawes examines the concept of *communitas* and related communitarian terminology deployed by urban governing elites in the fifteenth century, especially as they enacted local ordinances. Her focus is on the ways in which particular terminology was used to identify the 'community' of the burgh with the burgesses themselves and to draw a malleable distinction between those included within and those excluded from that community. Equally,

---

[16] Ballard, 'The theory of the Scottish burgh'.

Hawes' article illustrates in a novel and subtle way how a particular range of language was used as a tool for linking local governmental action with the collective interests of urban society, both instinctively and more deliberately.[17] In doing so, she opens up an important line of enquiry into the political culture of late medieval Scotland. Mackillop similarly addresses the use of the language of authority, albeit an authority contested in the context of a long-term process of urban reform. He considers an artisanal dispute as a window onto the political culture of Aberdeen (and indeed, of Scotland, and beyond), and onto competing visions of civic authority. His article reveals the broad social spectrum encompassed in burghal politics at this time, extending from governing officials down to organized groups of trades apprentices. Through cross-examination of sources including the trades' minute books, the council registers, the press and national court records, he demonstrates the way in which a national and international rhetoric of reform was utilized by local civic activists, and offers a tantalizing suggestion of the substantial impact of the ideas and rhetoric of the American War of Independence on Scotland.

As a collection, the articles presented here prompt a longer-term appraisal of Scottish towns, their historical records and the construction of vocabularies of law and authority, privileges and liberties and ideas of urban 'community'. They seek to address and explore the contested uses of these languages, and how they were articulated through judicial interactions in urban governing structures, chiefly municipal courts, and in the world beyond the town, chiefly in courts at the national level. Our hope is that this special section will bring these matters, addressed in a Scottish context, to the foreground of comparative European-wide discussion, and in so doing also encourage greater dialogue with and consideration of Scottish urban records in future research.

---

[17] Useful comparison may be made with comments on 'idiom' in C. Fletcher, 'What makes a political language? Key terms, profit and damage in the common petition of the English parliament, 1343–1422', in Dumolyn, Haemers, Oliva Herrer and Challet (eds.), *The Voices of the People*, 91–106, at 92.