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An “illegal Union of Lawyers, and Writers, and Political Baronets”: The Conservative Party and Scottish Governance, 1832–1868

Gary D. Hutchison

Introduction

In the 1830s, a radical broadsheet described the then-Conservative administration of Scotland as an ‘illegal Union of Lawyers, and Writers, and Political Baronets’.¹ In fact, Scottish governance was anything but united. This chapter explores how partisan politics affected the character of Scotland’s governance within the mid-nineteenth century Union.² It asserts that the Conservative party played a role in rendering modes of governance variable and uncertain.³ First, the party’s role in governing Scotland through the office of Lord Advocate, the Faculty of Advocates, and on a local level will be examined.⁴ This illustrates the ways in which inter- (and, more significantly, intra-) party struggles made the office of Lord Advocate one of fluctuating importance and influence. Following on from this, the ways in which the UK party leadership influenced Scottish affairs will be discussed.⁵ Rather than a relationship defined by top-down headquarters imposition, governing Scotland in fact involved negotiation and compromise between central and peripheral party branches. Finally, the ways in which this set of circumstances fostered an innovative Conservative attitude to Scotland’s place within the Union will be explored. This will uncover how the party

originally came to embrace its longstanding commitment to administrative devolution.⁶ It will argue that influential elements within the Conservative party had a long pedigree of support for Scottish administrative devolution in various forms. This suggests that its later role in supporting successful bipartisan efforts in this direction should not be overlooked.

Central and Local Scottish Governance: 1832 – 1868

The Lord Advocate was, in a formal sense, merely an advisor to the Home Secretary.⁷ In practice, however, the post-holder was the *de facto* Minister for Scotland at Westminster and head of governance within Scotland. They generally possessed a substantial amount of autonomy, in addition to their legal duties as Scotland's premier law officer. Given Sir Robert Peel's long periods in office, Conservative Lord Advocates effectively ran Scotland for much of the early post-1832 period. After 1847, however, the short-lived nature of Derbyite Conservative governments, combined with broader changes taking place within Scottish civil society, increasingly restricted the party's formal and informal influence over Scotland's governance.

The post of Lord Advocate was an inescapably political one, as was that of the Lord Advocate's deputy, the Solicitor-General. The Conservative George Patton was chosen for this latter position in 1859, for instance, largely because he had donated substantial sums to the party, and had spent years actively promoting the party's interests in his native Perthshire.⁸ Patton triumphed because he was a 'most useful and active Conservative'.⁹ Though the opinions of prominent Scottish Conservatives held significant weight when choosing the senior Scottish law officers, the ultimate decision rested with the Westminster leadership, and in every case a clearly partisan figure was chosen.

This primacy did not prevent the Scottish branch of the party from coming into frequent conflict with the UK Conservative apparatus. A lawyer-dominated faction within the Scottish party, headed initially by the Scottish judge Sir John Hope, was most influential before 1832 and immediately after it. Hope was in fact the ‘political baronet’ referred to in the radical broadsheet. In 1834, however, a conflict which flared up over Scottish legal appointments presaged the shift in party power from the faction of Edinburgh lawyers to a patchwork of Scottish county magnates. The appointment of Sir William Rae as Lord Advocate was uncontroversial, given his good working relationship with Peel and longstanding service as Lord Advocate in the Liverpool, Canningite, and Wellington-Peel Ministries.¹⁰ The appointment of relatively junior lawyer Duncan McNeill (see Figure 6.1) as Solicitor-General, however, split opinion in the Scottish party, as some had expected that another, more senior Advocate would be appointed. One partisan stalwart thought that the ‘party is sorely annoyed and disappointed by the recent law appointments here’.¹¹

[insert Figure 6.1 here]

Figure 6.1. Lord Colonsay (Duncan McNeill) from ‘Modern Athenians. No.39’ by Benjamin W. Crombie, originally published 1848. Image courtesy of James Gregory.

This discontent eventually became known to new Scottish party leader, the Duke of Buccleuch (see Figure 6.2 below). He in turn informed Peel of the discontent, adding that many thought McNeill’s surprise appointment by Peel had been a result of Hope’s plotting: ‘the cry arose “that the old jobbing system was revived and that none but those favoured by a Hope or a Dundas would get office in reward”’.¹² This was a reference to the area of lesser legal appointments, such as County Sheriffs and minor judicial posts, which had previously been in the gift of Hope and Robert Dundas.¹³ Though Hope hadn’t actually had anything to

do with the appointment, these widespread assumptions illustrate that Hope's clique was disliked both within the Faculty of Advocates and by the wider public.¹⁴ Eventually, Buccleuch decided to personally intervene to cool tensions. His decisive role in this matter is a clear indication that Hope was being marginalised even by his fellow lawyers, and that Buccleuch's star was in the ascendant, shifting the interconnected forces party, legal, and governmental influence from Edinburgh lawyers to county magnates.¹⁵ As such, the union of lawyers and the political baronet was broken, replaced by the political duke and allied aristocrats.

[insert Figure 6.2 here]

Figure 6.1. The fifth duke of Buccleuch, a carte de visite portrait by William and Daniel Downey. Image courtesy of James Gregory.

The Conservative party played a prominent role in the workings of the wider Faculty of Advocates, but it is also true that the Faculty itself played a prominent role in the party's, and the country's workings. While Scottish public opinion, parliamentary representatives, and leading politicians were predominantly Liberal, especially after 1847, the composition of the judiciary and faculty did not reflect this: 'There will be no great difficulty in finding fit persons to be selected for promotion to the Bench; it is curious that with the exception of Rutherford late Lord Advocate, every Advocate of eminence is Conservative'.¹⁶ Many middling Conservative Lords Advocate proved to be far better members of the senior judiciary than political animals. Duncan McNeill served as Lord Justice General and Lord President of the Court of Session between 1852 and 1867, while John Inglis served as Lord President of the Court of Session from then until 1891, and was described by Omond as 'the central figure in the legal world of Scotland'.¹⁷

This Conservative judicial predominance had a significant impact on the course of Scottish history. Indeed, because common law was an important element of the Scottish legal firmament throughout the period, much of the everyday regulation of Scottish society was undertaken by the courts, rather than parliament.¹⁸ The party's influence was essentially negative, insofar as it had a disproportionate ability to thwart political reforms, or was exercised in the courts, which were ostensibly separate from the arena of public and popular politics. For these reasons, the Conservatives' impact on Scotland in the mid-nineteenth century more broadly has been somewhat overlooked in subsequent scholarly work.

The notable talent of Scottish Conservative lawyers did, however, hinder the party's ability to source and retain adequate Lords Advocate. The loss of Conservative Lords Advocate to the Scottish judicial bench was a constant problem throughout the period. Scottish Conservative lawyer Archibald Campbell Swinton summed up the drawbacks of the position neatly: put off by the 'brief tenure of office which any Conservative Crown Counsel is likely to have', even those who did seek the office were eventually 'seduced ... to claim the softer cushion of the bench'.¹⁹

Quite apart from the arduous and uncertain nature of the job, potential Conservative Lord Advocates also had the additional insecurity of their electoral base to consider. It was expected that Lord Advocates should hold a seat in parliament, which could throw up considerable difficulties when the policy decisions related to the post clashed with the necessities of electioneering. Some Lord Advocates had represented English constituencies before 1832, though this was recognised as less than ideal. In order to placate constituents on the Isle of Bute in 1841, Sir William Rae was forced to repudiate the religious policy of his own government. He defended himself to Sir John Hope, writing that he was obliged to 'sail

as near to the wind as possible', by expressing vague misgivings about an official position which he himself had played a prominent role in formulating.²⁰ Given that Bute was the closest the party had to an ultra-safe nomination seat in Scotland, this highlights that Conservative Lord Advocates were perennially hampered by the electoral requirements of the job.

Between 1832 and 1868, however, a new unofficial convention was formed, as Scottish Lord Advocates were increasingly expected to sit for Scottish constituencies. This underlines that even the seemingly stable attributes of the post of Lord Advocate were subject to subtle change over time. Between 1832 and 1868, Lords Advocate of all parties sat for Scottish constituencies, with only two (Conservative) exceptions. Ultimately though, this was also a big problem for the Conservative party, as they had few Scottish seats to spare.

These factors contributed to the generally underwhelming quality of Conservative Lords Advocate. Duncan McNeill was the last Conservative Lord Advocate to enjoy a lengthy tenure; subsequent Lords Advocate only served during the brief periods when the party was in office. No subsequent Conservative Lord Advocate up to 1868 (excepting the final post holder) lasted more than ten months in the position. Though there were a great many capable Conservative lawyers, almost none of them wanted the job because of the electoral hurdle. It was important for a Lord Advocate to hold a Scottish seat, yet a near-impossible task to find one willing to return a Conservative (and a carpetbagger Conservative at that) to Westminster. For instance, Lord Advocate John Inglis stood for Orkney in 1852 but was very narrowly defeated. He then contested the County Antrim constituency of Lisburn at a by-election, but lost by a mere three votes. A Scottish Lord Advocate seeking election for an Irish constituency was highly unusual.²¹ During his second stint in office in 1858, Inglis was

forced to sit for the English borough of Stamford. Inglis's break with convention prompted his successor David Mure to unsuccessfully request in 1859 that 'a quiet Borough in England [be] found for him' – he was eventually returned as member for Bute.²²

These issues continued to dog the Scottish party up to and beyond 1868, as Mure's successor ran into similar trouble. George Patton was elected for the notoriously venal English seat of Bridgwater in an 1866 by-election, defeating the Liberal candidate Walter Bagehot, who was then Editor of the *Economist*.²³ He was obliged to contest the seat again soon after, this time unsuccessfully – likely because he hadn't distributed enough bribe money to the local electors on his second contest.²⁴ This didn't stop him being investigated for the bribes he had issued. The Conservative party thus started the period in Scottish governance with internal squabbles, and ended it with electoral scandal.

Many of the institutions which governed Scotland straddled the line between formal and informal, were firmly embedded in civil society, and were created locally rather than imposed from on high. Even in the burghs, though political power was held by the predominantly Liberal middle-class elite, this was not hegemonic. Conservatives did in fact sit on Town Councils in places such as Edinburgh and Glasgow throughout the period, despite their party being marginalised at a parliamentary level. It seems unlikely that they had no influence at all over the operation of local governance because, as Lindsay Paterson has observed, 'The Scottish middle class was too mundanely practical to allow ideological disputes to stand in the way of getting things done'.²⁵

In the counties, local governance was generally less dominated by Liberals, local electors being subject to the same conditions which motivated the return of Conservative

parliamentary candidates in rural areas. Moreover, the peculiar position of the legal profession in Scottish society again operated in the party's favour. The Sheriff of each county was the chief local representative of the state, involved in practically all facets of governmental affairs within their jurisdiction (though this was only true to a lesser extent in the burghs and larger cities). The appointment of Sheriffs and Sheriffs Substitute was made by the Lord Advocate, with local elites enjoying some input in this process.²⁶ Though they were a slightly less politicised group of officials than the Lord Advocate and Solicitor-General, Sheriffs were frequently party stalwarts. Their affiliations bled into the execution of their duties, most prominently in political terms with regard to their rulings when presiding over electoral Registration Courts.

The party's in-built advantage was considerable; first, having spent a great deal of time in office before 1832 and up to 1847, Conservative Lords Advocate were able to manoeuvre sympathetic candidates into these open-ended posts; many of them served for decades. Second, with the majority of the bar (from which Sheriffs were chosen) being Conservative in inclination, this hobbled the efforts of Liberals to redress the balance during their own periods in office. Even after 1847, when the Conservatives were seldom in power at Westminster, the occasional appointment of Conservative party stalwarts was managed, such as the appointment of William Edmonstoune Aytoun as Sheriff of Orkney in 1852. Tory lawyer Archibald Alison (see Figure 6.3 below) had refused the Scottish Solicitor-Generalship in 1834 leaving the field open for Duncan McNeill, eschewing a national position in favour of becoming Sheriff of Lanarkshire.²⁷ This turned out to be a shrewd move; Peel's government was short-lived, whereas Alison was able to continue to wield influence during the long periods when his party was excluded from office, up to his death in 1867.²⁸ The influence of Sheriffs could reach into the cities, and their actions take on national

significance – Alison’s jurisdiction, for instance, included the city of Glasgow. In addition to dealing with cases affecting Scotland’s largest city, Glasgow Sheriff Court evolved into the *de facto* chief commercial court of Scotland. As such, this ostensibly local position in fact afforded Alison significant national influence. Sheriffs, moreover, were always present on the parochially-based Poor Law Boards which, from 1845, increasingly administered social welfare on a local level in Scotland.²⁹

[insert Figure 6.3 here]

Figure 6.3. ‘The Late Sir Archibald Alison, Bart.’ *Illustrated London News*, 15 June 1867, p.605. Image courtesy of James Gregory.

While the national Poor Law Board of Supervision was dominated by liberals, and many local boards by the liberally-inclined middle classes and the clergy, their influence was not all-encompassing. The success of the board system resulted in it being duplicated many times to administer other areas, and new authorities were also given to existing boards. These local and national boards were composed mainly of Sheriffs, lawyers, members of other prominent professions, and the aristocracy. Their duties were diverse, and grew as legislation accumulated. They were, among other things, responsible for the Poor Law, lunatic asylums, prisons, borstals, housing regulation and property valuation.³⁰

It is notable that the national Board of Supervision, arguably the most important, was required to contain the Sheriffs of three counties from different Scottish regions.³¹ Moreover, Scottish aristocrats were still a significant presence on such bodies, the vast majority of whom were passively conservative, or active members of the Conservative party. Indeed, the initial commission on the Scottish Poor Law had been chaired by Lord Melville, who had

retired as the Conservative manager of Scotland in 1832. Moreover, the first Supervisory Board to be appointed contained several Conservatives, and John McNeill, the Conservative Lord Advocate's brother, acted as Chairman of that body until 1868.³² Though no definitive evidence of McNeill's political beliefs is readily available, his worldview was characterised by a mix of moderate conservatism and whiggism.³³

Overall, the appointment of Lord Advocates exposed a great deal of disunity within the Conservative party, and in the wider group who assisted the Lord Advocate in governing Scotland on a day-to-day basis. Further, their difficulties in relation to contesting Scottish and English seats illustrates that the conventions of the post were subject to informal constitutional change, this being spurred or stymied by partisan necessities. The Lord Advocate was torn between Edinburgh and London in more ways than one. Moreover, the Scottish Conservative party had a strong presence, and a marked effect, on Scottish governance at national and local levels, though this declined as their periods in office became more intermittent. Nevertheless, they continued to exert some influence, though in a less visible or formal fashion. Conservatives exerted influence using a number of positions and institutions, including through the offices of Lord Advocate and Solicitor-General, and as members of national supervisory boards. At a local level, members of local boards also included a significant proportion of Conservative party members or supporters. Thus, every level of Scottish society was at least partly shaped by the Conservative party, and conservatism more generally.

Westminster Conservatives and Scotland, 1832 – 1868

While much power over governance was granted by the central state to Scottish and local levels, party input on Scottish governance from Westminster was by no means non-existent.

Indeed, the highly-integrated nature of Scottish governance within the Union meant that Westminster played a conspicuous role in its management. Yet, it remains the case that seemingly static institutional structures were dependent on day-to-day political and partisan circumstances. The nature and extent of this involvement in governance was often determined by who was involved. These were most often party figures whose positions were dependant on which faction was in power. As such, Westminster's role in Scottish governance waxed and waned. The Westminster Conservative party's role in this area was significant; during the early part of the period, the partisan governance of Scotland was deeply influenced by intimate Westminster involvement in Scottish affairs.

The party in Westminster was, if anything, more concerned with Scottish matters than their Liberal opponents, despite (or perhaps because of) that faction's electoral ascendancy north of the border. After 1847, long periods in opposition, combined with lacklustre Lords Advocate, resulted in less intervention, but more innovation from Westminster party figures. Their efforts, while of mixed effectiveness, constitute evidence of continued central interest in Scottish affairs and a willingness to pioneer different approaches. Home Secretaries, despite their nominal dominion over Scotland's governance, did not take a close interest in Scottish affairs – the Liberal Lord Palmerston was perhaps the Home Secretary most famously indifferent to Scottish matters.³⁴

Sir James Graham was, however, the most prominent exception to this rule, serving as Home Secretary between 1841 and 1846. He was involved in the Scottish Conservative party's electoral business in the 1830s, particularly in western Scotland, and was elected Lord Rector of Glasgow University in succession to Peel.³⁵ Like his predecessors and successors at the Home Office, Graham had no wish to directly administer Scotland from Whitehall; he instead

asked Buccleuch to undertake some activity related to Scottish affairs, for instance, because affairs were ‘better arranged by a Cabinet minister on the spot, than by letters’.³⁶ Similarly, he complained to his Lord Advocate that ‘we could do more by two hours of conversation than by writing volumes’.³⁷ Though figures such as Buccleuch, Hope, the Lord Advocate and the Solicitor-General met in Scotland to transact Scottish business, these meetings were themselves held at Graham’s behest.³⁸ Despite this delegation to party figures on the ground, Graham was a strongly influential figure in Scottish governance, in addition to his electoral interests. As well as organising Scottish meetings in his absence, he also summoned the Scottish law officers to attend on him at his estate near Carlisle to discuss Scottish affairs.³⁹

In organising the initial Poor Law Boards, he also kept partisan considerations in mind; both Peel and Graham consulted with Rae over the political composition of the Board of Supervision, to ensure that there would not be ‘too strong an infusion of our political friends’, but at the same time seeking to appoint non-Conservatives who were ‘not offensive; constantly resident, and versed in country affairs’, such as Lord Dunfermline, who was considered ‘a Whig, but not violent in his political animosities’.⁴⁰ The appointment of those who supervised the new Scottish Poor Law apparatus, though ostensibly bipartisan, was not completely so. The party ensured that the board was as Conservative (or, failing that, as moderately whiggish) as possible.

This active involvement in Scotland’s business occasionally led to conflict between the Scottish and UK wings of the party, such as when Graham’s appointment of an acquaintance as Sheriff Clerk of Edinburghshire drew the ire of Buccleuch. Graham conceded that the unilateral appointment could be regarded as ‘a breach of the respect due to you [Buccleuch]’.⁴¹ Graham played a prominent part in governmental business north of the

border, but it was necessary for him to do so on the basis of local advice, and in consultation with native party figures.

Prominent Conservative figure Lord Aberdeen also had a significant input on Scottish legislative and governmental affairs.⁴² Even before his brief period acting as head of the Scottish party during Buccleuch's extended trip to the continent in 1838, he had also agreed to 'attend to Scotch Bills which have been brought from the House of Commons'.⁴³ Aberdeen was concerned about this area, concurring with Hope's sentiments that 'we ought to take some means to secure Scotch business in the House of Lords, its due share of attention'.⁴⁴ His input on Scottish issues, most notably the proposed reforms related to the Church of Scotland, was substantial – William Gladstone thought that 'the opinion which will have by far the greatest weight in determining the course of the Conservative leaders and party upon this matter, will be Lord Aberdeen's: after him I think Graham's, Clerk's, and Rae's'.⁴⁵ This descending list rather neatly sums up the hierarchy of party influence, though only for the Church Question, and only at that precise moment in time.⁴⁶ More broadly, the prevailing pattern was one of mixed competencies and competing spheres. This was underlined by Hope's influence over Aberdeen despite his controversial standing with the party and wider nation; he and Aberdeen exchanged hundreds of letters on the Church Question.⁴⁷

Before 1847, the extent of central party involvement was further complicated by the position of Peel himself. He was a frequent visitor to Scotland, and had a fairly deep knowledge of the country, going so far as to tell Aberdeen that 'there is no one, hold Scotchmen, who feels a stronger attachment to that country than I do'.⁴⁸ Indeed, having been Home Secretary for a great deal of the 1820s, he was well-informed on the often-confusing structure of Scottish politics.⁴⁹ It was likely this interest and background which led him to involve himself deeply

in complex and highly local party issues such as the dissemination of Scottish patronage in the counties. Even minor figures such as Scottish constituency agents appealed directly to him for favour when moving south.⁵⁰

Going in the other direction, Buccleuch was also a major conduit through which applications for patronage themselves reached Peel.⁵¹ More general intelligence from Scotland, on the other hand, reached Peel from a wide variety of sources, including contacts acquired during the famous banquet held in his honour when he was elected as Lord Rector of Glasgow University. He corresponded, for instance, with the Lord Provost of Glasgow and Conservative Chief Agent for Glasgow Robert Lamond, chiefly on how various Scottish and British issues were affecting popular opinion and electoral prospects in the city.⁵²

More broadly, the party's treatment of Scotland during the Peel years contradicts the widely held perception, exacerbated by the handling of the Church crisis, that it neglected Scottish business – three significant Scottish bills were shepherded through parliament in 1845 alone, and Peel's government of 1841–6 contained four Scottish ministers.⁵³ The role of Westminster figures in the Scottish party during the Peel era was significant, embracing both the governmental and electoral. This role, however, was very far from autocratic; senior party members were more than willing to take advice from all levels of the Scottish party, and to devolve responsibility where appropriate.

Given their long periods out of office after 1847, and the gradual decay of the Scottish Conservative party in electoral terms, it might be expected that links between senior Westminster figures and Scottish governance would be diminished. Though this is true to some extent, the Earl of Derby, leader of the Protectionist and later Conservative party after

the Corn Law split, in fact dispensed Scottish patronage himself while heading Conservative governments, in those relatively rare instances when he was in a position to do so.⁵⁴

In contrast to Peel's more technocratic and aristocratic bent, Derby was careful to cultivate intellectual and literary Scottish Conservatives, having gone out of his way to procure a cadetship for the nephew of James Blackwood, of the publishing family behind *Blackwood's Edinburgh Magazine*.⁵⁵ His decisions in this regard were very astute given the limited means at his disposal, and were evidence of a fairly good knowledge of the situation north of the border – or, at least, a willingness to listen to the more perceptive Scots Tory voices. For instance, Lord Eglinton, the leading Scottish Tory after Buccleuch's withdrawal from politics, beseeched Derby not to 'lose sight of Alison and Aytoun, who have done so much service'.⁵⁶ Eglinton himself was a skilled manager of patronage, having been notably successful in dispensing it in another national context while serving as Lord-Lieutenant for Ireland.⁵⁷ William Aytoun, the Conservative poet, was duly appointed Sheriff of Orkney and Shetland.⁵⁸ Archibald Alison, the best-selling Conservative historian and influential Sheriff of Lanarkshire, was made a baronet. The knowledge and skill of Derby was particularly evident here, as Alison, though a highly capable lawyer and very deserving of favour, held extremely authoritarian views. By giving him an honour instead of a judgeship, Derby had 'made one man extremely happy ... at the same time left it open to yourself perhaps to appoint a more efficient judge'.⁵⁹ This all indicates that Derby was very well aware of Scottish political currents, and moreover, was able to navigate the murky waters with skill.

He was also careful to reach out to Peelites in Scotland. Though his 1852 ministry did not attract many Peelites, Inverness-shire MP Henry Baillie did agree to become joint Secretary of the Board of Control.⁶⁰ His relative generosity may have hastened the reconciliation of

many Scottish Peelites (at least within the Faculty of Advocates) with the Conservative party, as by the time Lord Aberdeen had left office in 1855 they had seen little reward for their loyalty to the peer.

By the later 1860s though, Derby's Scottish contacts had largely dried up through death, electoral defeat, and other forms of attrition. In his 1858–9 ministry, Derby had made Henry Lennox a Junior (Scottish) Lord of the Treasury. Lennox was the younger brother of the then-future sixth Duke of Richmond and Gordon, and sat for Chichester, where his family had significant electoral influence. There had in fact been rumbles of discontent in the Scottish party that such a figure with a loosened connection to Scotland was taking partial charge of Scottish business.⁶¹ After the resignation of Lennox, the role was held by Peter Blackburn, and then by Sir Graham Graham-Montgomery in the next Derby ministry – though both sat for Scottish seats, they were effective nonentities. Indeed, it is notable that not a single Scottish Conservative MP served in a full cabinet post during the entire period between 1832 and 1868, though many peers did do so.

It was perhaps the electorally precarious nature of his Lord Advocates which prompted Derby to offer Buccleuch's son, Henry Douglas-Scott-Montagu, then resident in Hampshire and MP for his father's pocket-county of Selkirkshire, the position of *de facto* Minister for Scotland in the Commons. Montagu, however, thought himself 'unequal to take charge of and conduct Scotch business in the House', chiefly because he 'has lived but very little in Scotland, and never had the opportunity of taking any part in the ordinary county and country business'.⁶² By the very end of the period, well-connected Conservatives who actually resided within Scotland were thin on the ground; this had the effect of loosening institutional and personal ties between Scotland and the party leadership in London. The autonomy of Scottish party

figures in carrying out day-to-day governance in the legal profession and interconnected Supervisory and local Boards thus increased essentially by default.

Scottish Administrative Devolution and the Conservatives, 1832 – 1859

Throughout the period, there were complaints from many quarters about the inconvenience of having Lord Advocates sitting for English seats, or who were unable to get into parliament altogether. Many used these issues to press for the creation of a Secretary of State for Scotland.⁶³ The various legal and political duties performed by the Lord Advocate in both Edinburgh and London made the position increasingly unworkable. The post's roles, if correctly carried out, involved helping to manage Scottish MPs in parliament, shepherding Scottish legislation through the House, governing Scotland from Edinburgh when parliament was not in session (and often when it was), and carrying out the myriad and onerous duties of Scotland premier law officer. It was primarily for these reasons that the Conservative party, somewhat counter-intuitively, became the primary advocates of territorial constitutional reform, in the shape of administrative devolution.

Even before 1832, Lord Melville, when *de facto* Scottish party manager, had unsuccessfully lobbied Peel for the creation of a Scottish Secretary and Scottish Office in the 1820s. He had suggested that the post be roughly similar to that of Chief Secretary for Ireland, sitting in the Commons, except that it would be politically expedient to ensure that the office-holder was a Scot (this was not true of the Irish Secretary – Melville, and Peel himself, had held this post).⁶⁴ At this time though, the unreformed electoral system meant that the Tory party had a stranglehold on the vast majority of Scottish Commons seats. By the 1850s, when successive Conservative Lord Advocates had proven themselves increasingly unsatisfactory, the central party under Derby was more open than Peel had been to innovative proposals which would

have substantially altered Scotland's place in the Union. This was long before the creation of the Scottish Secretaryship in 1885. They were thus more open to reform than were the Liberals at this time, though this may be partly because the Liberals had a very competent and dedicated Lord Advocate in James Moncreiff, who served four lengthy terms between 1851 and 1869. He was an effective lawyer, legislator, administrator, and Commons speaker, and ably carried out the onerous duties of the office for twenty years. By contrast, his Liberal predecessor, Andrew Rutherford, had been unable to handle the strain of such duties.⁶⁵

In the 1850s, Derby showed his willingness to reorient Scotland's administrative position within the Union in the field of overlapping legal structures. He did so by solving the problem of Scotland's exclusion from the House of Lords judicial appeals process. At Select Committee hearings in 1856, opinions given by the Scottish judiciary were split, though Duncan McNeill favoured appointing a Scottish lawyer to the tribunal as a life peer. Nothing was done until 1866, when McNeill wrote a lengthy letter to Derby suggesting that he retire from the Scottish bench, in order to take up a seat in the Lords. Crucially, he suggested that he could be 'useful not only in the matter of Scotch appeals but also in reference to other Scotch business'.⁶⁶ Though McNeill was too old in the event to be of much use in either legal or party business, Derby did appoint him to a peerage in 1867. This constituted a clever, if only partially successful composite attempt to resolve a longstanding legal anomaly, alleviate the shortage of senior Scottish party figures at Westminster, and reorient Scottish governance away from the Lord Advocate.

By far the most concrete evidence of a willingness to embrace reform, however, is from the late 1850s. During the Conservative party's short-lived 1858–59 administration, Derby had seriously considered constituting the Lord High Commissioner to the General Assembly of

the Church of Scotland as ‘a rival Official Agent, the minister for Scotland in the House of Lords, [and] a member of the Cabinet’.⁶⁷ Intended in large measure to supersede the role played by the Lord Advocate, the plan was, however, unfeasible. Apart from anything else, many Scots were no longer members of the Established Church, and would not have accepted the combination of a semi-religious office with political mastery of the country. The original idea had been presented to Derby by Eglinton – who had previously been one of the prime movers behind the NAVSR.⁶⁸ In addition to being head of the Scottish party, he had also twice served as Irish Lord Lieutenant. It’s notable that Eglinton wanted the position to be held by a wealthy peer who would go about it with a great deal of pomp and ceremony. While Melville’s earlier proposal had been based on the Irish Secretaryship which he himself had held, Eglinton explicitly advocated the institution of a role much closer in resemblance to that of the Irish Lord Lieutenant – an office which he had occupied for much of the 1850s. Conveniently, this would also have solved the thorny problem of an electoral base – while the party had few Scottish MPs, the vast majority of the Scottish peerage was Tory.

The 1858–59 ministry was, however, short-lived, and by the time Derby was back in office, Eglinton had passed away. With parliamentary reform dominating the agenda, territorial reform for Scotland was not a priority.⁶⁹ It is notable, however, that Disraeli’s *Press* had expressed its approval of Eglinton and the NAVSR’s advocacy for a Scottish Secretary.⁷⁰ Moreover, while Lord Rosebery and the Liberal party deserve the majority of the immediate credit for the eventually-successful campaign for a Scottish Secretary in 1885, its supporters were not exclusively Liberal.⁷¹ Indeed, the measure itself was passed under the auspices of a caretaker Conservative ministry, and some Liberals had been distinctly opposed to administrative devolution in the 1850s.⁷² Though administrative devolution did not come to pass for another thirty years, its longer-term origins owe much to the Conservative party.

Conclusion

Scottish governance involved a confusing and constantly evolving jumble of institutions and figures across local, Scottish, and British levels.⁷³ Even the post of Lord Advocate, arguably the single most stable element in this mix, was subject to change, which was inextricably connected to partisan considerations. Beneath this, overlapping legal, civic, and voluntary institutions were inextricably connected to the ebb and flow of party politics.

In the elite sphere, far from neglecting Scotland, prominent Westminster Conservatives were closely involved in Scottish politics. Figures including Graham and Peel were well-versed in Scottish particularities, often more so than their Liberal counterparts. Further, the assumption that central party interest in Scotland declined after 1847 is flawed, as Derby and others showed a strong interest in Scotland. The deteriorating state of the party within Scotland itself encouraged them to innovate, in exploring new avenues of communication and administrative reform. In this area, they can be credited with keeping the idea of administrative devolution alive during an extended period in the middle of the century, a period which boasted very few advocates of territorial constitutional change for Scotland. Scotland's position in the mid-Victorian Union was superficially stable, but beneath the surface its role was constantly contested, negotiated, and redefined. This state of flux had a marked and significant effect on the Conservative party, on Scottish society, and on the evolution of the Union itself.

Notes

¹ NRS, MS Buccleuch, GD224/582/2/14. Printed letter from 'East Lothian Elector', c. 1834–35.

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- ² The most comprehensive existing work on Scottish politics more generally is I.G.C. Hutchison, *A Political History of Scotland 1832–1924: Parties, Elections, Issues* (Edinburgh: John Donald, 1986). Other monographs which touch on Scotland’s governance in relation to partisan considerations include, most prominently, M. Fry, *Patronage and Principle: A Political History of Modern Scotland* (Aberdeen: Aberdeen University Press, 1987); M. Dyer, *Men of Property and Intelligence: The Scottish Electoral System prior to 1884* (Aberdeen: Scottish Cultural Press, 1996).
- ³ With the exception of partial treatments in more general works, the mid-Victorian Scottish Conservative party remains an understudied area. The only extant scholarly works focus on specific facets of the party in restricted periods. See G. F. Millar, ‘The Conservative Split in the Scottish Counties, 1846–1857’, *Scottish Historical Review* 80:1 (2001), pp.221–250; J.I. Brash, *Papers on Scottish Electoral Politics, 1832–1854* (Edinburgh: T. and A. Constable, 1974); J.I. Brash, ‘The Conservatives in the Haddington District of Burghs, 1832–52’, *Transactions of the East Lothian Antiquarian and Field Naturalists’ Society*, 11 (n.s. 1968), pp.37–70.
- ⁴ No single work which examines Scotland’s governance and administration in-depth during this period exists, but different facets, including county government, the working of the reformed Scottish Poor Law, and the character of Lord Advocates, have been explored. See A. Whetstone, *Scottish County Government in the Eighteenth and Nineteenth Centuries* (Edinburgh: John Donald, 1981); I. Levitt, *Government and Social Conditions in Scotland, 1845–1919* (Edinburgh: Blackwood, Pillans & Wilson, 1988); G.W.T. Omond, *The Lord Advocates of Scotland. Second series, 1834–1880* (London: Andrew Melrose, 1914).
- ⁵ Useful works on the UK party in this period include N. Gash, ‘The Organization of the Conservative Party, 1832–1846, Part II: The Electoral Organization’, *Parliamentary*

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- History* 2 (1983), pp.131–52; ‘The Organization of the Conservative Party, 1832–1846, Part I: The Parliamentary Organization’, *Parliamentary History* 1 (1982), pp.137–59; *Politics in the Age of Peel: A Study in the Technique of Parliamentary Representation, 1830–1850* (London: Longmans, Green, 1953); R. Blake, *The Conservative Party from Peel to Major* (London: Heinemann, 1997).
- ⁶ For the development of this in a broader context, see J. Mitchell, *Governing Scotland: The Invention of Administrative Devolution* (London: Palgrave Macmillan, 2003).
- ⁷ L. Paterson, *The Autonomy of Modern Scotland* (Edinburgh: Edinburgh University Press, 1994), p.47.
- ⁸ Liverpool Record Office [henceforth LRO], MS Derby, 920 DER (14)/13/7/10. Lord Mansfield to Earl of Derby, 10 April 1859.
- ⁹ LRO, MS Derby, 920 DER (14)/164/17b/10. [?] Smith to Duke of Buccleuch, [April 1859].
- ¹⁰ M. Fry, ‘Rae, Sir William, third baronet (1769–1842)’, in *Oxford Dictionary of National Biography*, < <http://www.oxforddnb.com/view/article/23005> > [accessed 23 Feb. 2017].
- ¹¹ National Records of Scotland [henceforth NRS], MS Lothian, GD40/9/326/3. Colonel Macdonald to Lord Lothian, 4 January 1835.
- ¹² NRS, MS Buccleuch, GD224/1031/5/7–9. Buccleuch to Sir Robert Peel, 12 January 1835.
- ¹³ Robert Dundas, 2nd Viscount Melville, had originally taken over as de facto Scottish manager from his father, Henry Dundas, and retired from politics in 1832. See Michael Fry, *The Dundas Despotism* (Edinburgh: John Donald, 1992).
- ¹⁴ NRS, MS Drummond of Hawthornden, GD230/580/18. Buccleuch to Sir Francis Drummond, 1 June 1835.

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- ¹⁵ NRS, MS Buccleuch, GD224/1031/5/7–9. Buccleuch to Peel, 12 January 1835; MS Buccleuch, GD224/1031/4/18–19. Drummond to Buccleuch, 30 December 1834.
- ¹⁶ British Library [henceforth BL], MS Peel, 40517, fos 14–16. Buccleuch to Peel, 14 October 1842.
- ¹⁷ Omond, *The Lord Advocates of Scotland*, pp. 219–222.
- ¹⁸ Paterson, *The Autonomy of Modern Scotland*, p. 50.
- ¹⁹ National Library of Scotland [henceforth NLS], MS Makgill, GD82/472/5. Archibald Campbell Swinton to George Makgill, 25 Feb. 1867.
- ²⁰ BL, MS Aberdeen, 43205, fos 134–135. Sir William Rae to Sir John Hope, 11 July 1841.
- ²¹ Omond, *The Lord Advocates of Scotland*, p. 209.
- ²² Somerset Heritage Centre, MS Hylton, DD\HY/24/16/179. Duke of Montrose to Jolliffe, 11 April 1859.
- ²³ F.W.S. Craig, *British Parliamentary Election Results, 1832–1885* (London: Macmillan, 1977), p. 61.
- ²⁴ Bagehot had recently completed his seminal work, *The English Constitution*, which posited a distinction between ‘dignified’ and ‘efficient’ parts of the constitution. Given Bagehot’s respectable vote-share, it seems very likely that he also engaged in widespread bribery and other corrupt practices; such activities sit uneasily with his forthright denunciation of corrupt practices in his writings. See W. Bagehot, *The English Constitution* (Oxford: Oxford University Press, 1945), pp. 130–131.
- ²⁵ Paterson, *The Autonomy of Modern Scotland*, p. 71, 54, 57.
- ²⁶ Paterson, *The Autonomy of Modern Scotland*, p. 54.
- ²⁷ BL, MS Peel, 40339, fo. 322. Peel to Rae, 19 December 1834; BL, MS Peel, 40339, fos 332–333. Henry Home Drummond to Rae, 21 December 1834.

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- 28 For the underlying (and evolving) ideology which informed the exertion of this influence, see M. Michie, *An Enlightenment Tory in Victorian Scotland: The Career of Sir Archibald Alison* (East Linton: Tuckwell Press, 1997).
- 29 Paterson, *The Autonomy of Modern Scotland*, p. 54.
- 30 Paterson, *The Autonomy of Modern Scotland*, pp. 47–55.
- 31 G. Morton, *Unionist Nationalism: Governing Urban Scotland, 1830–1860* (East Linton: Tuckwell Press, 1999), p. 31.
- 32 Omond, *The Lord Advocates of Scotland*, pp. 140, 144.
- 33 Levitt, *Government and Social Conditions in Scotland*, pp. xl–xli.
- 34 I.G.C. Hutchison, ‘Anglo-Scottish Political Relations in the Nineteenth Century, c.1815–1914’, in *Anglo-Scottish Relations from 1603 to 1900*, ed. by T.C. Smout (Oxford: Oxford University Press, 2005), p. 259.
- 35 M. Escott, ‘Graham, James Robert George (1792–1861), of Netherby, Cumb.’, in *History of Parliament, Commons 1820–1832*, <<http://www.historyofparliamentonline.org/volume/1820-1832/member/graham-james-1792-1861>> [accessed 23 February 2017].
- 36 BL, MS Graham, 79727, fos 179–181. Sir James Graham to Buccleuch, 28 September 1842.
- 37 BL, MS Graham, 79666, fos 63–64. Graham to Duncan McNeill, 30 September 1842.
- 38 See, for instance, NRS, MS Buccleuch, GD224/1031/54/1–2. Graham to Buccleuch, 29 December 1842.
- 39 BL, MS Graham, 79727, ff. 179–181. Graham to Buccleuch, 28 September 1842.
- 40 BL, MS Graham, 79666, fos 72–74. Graham to Rae, 29 December 1842.
- 41 NRS, MS Buccleuch, GD224/1031/54/5–6. Graham to Buccleuch, 31 December 1842.

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- ⁴² For Aberdeen's career more generally, see M. Chamberlain, *Lord Aberdeen: A Political Biography* (New York: Longman, 1983).
- ⁴³ BL, MS Aberdeen, 43327, fos 99–101. Lord Aberdeen to Hope, 29 December 1838;
BL, MS Aberdeen, 43327, fos 68–69. Aberdeen to Hope, 19 May 1836.
- ⁴⁴ BL, MS Aberdeen, 43327, fos 79–81. Aberdeen to Hope, 10 February 1838.
- ⁴⁵ Flintshire Record Office, MS Glynne-Gladstone, GG/225, fos 239–241. William Gladstone to John Gladstone, 9 December 1839.
- ⁴⁶ For the complex interaction between politics and Scottish religious affairs, see G.I.T. Machin, *Politics and the Churches in Great Britain, 1832–1868* (Oxford: Clarendon Press, 1977).
- ⁴⁷ G.I.T. Machin, 'The Disruption and British Politics, 1834–43', *Scottish Historical Review* 51 (1972), pp20–51 [p. 21].
- ⁴⁸ BL, MS Aberdeen, 43065, fos 391–394. Peel to Aberdeen, 11 November 1849.
- ⁴⁹ Hutchison, 'Anglo-Scottish Political Relations', p. 262.
- ⁵⁰ BL, MS Peel, 40541, fo. 59. James Blackwood to Peel, 4 March 1844.
- ⁵¹ See, for instance, BL, MS Peel, 40525, fo. 1–2. Buccleuch to Peel, 15 February 1843.
- ⁵² See, for instance, BL, MS Peel, 40485, fo. 79. Sir James Campbell to Peel, 7 July 1841;
BL, MS Peel, 40493, fos 396–397. Robert Lamond to Peel, 2 November 1841; BL, MS Peel, 40318, fos 263–265. Lamond to Peel, 21 June 1841.
- ⁵³ Hutchison, 'Anglo-Scottish Political Relations', pp. 259–260.
- ⁵⁴ For Derby's career as party leader in a broader context, see Angus Hawkins, *The Forgotten Prime Minister: The 14th Earl of Derby: Ascent, 1799–1851* (Oxford: Oxford University Press, 2007).
- ⁵⁵ NLS, MS Blackwoods, 30011, fo. 259. Derby to John Blackwood, 30 October 1858.
For the relationship between Scotland, the party, and Blackwood's, see J. Shattock,

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- ‘The Sense of Place and Blackwood’s (Edinburgh) Magazine’, *Victorian Periodicals Review* 49 (2016), pp.431–42.
- ⁵⁶ LRO, MS Derby, 920 DER (14)/148/2/49. Lord Eglinton to Derby, 26 April 1852.
- ⁵⁷ Hawkins, *Achievement*, p. 15.
- ⁵⁸ T. Martin, *Memoir of William Edmonstoune Aytoun* (Edinburgh: William Blackwood & Sons, 1867), p.135.
- ⁵⁹ LRO, MS Derby, 920 DER (14)/148/2/53. Eglinton to Derby, 13 May 1852.
- ⁶⁰ J.D. Jones, and R.B. Erickson, *The Peelites, 1846–1857* (Columbus: Ohio State University Press, 1972), p. 132.
- ⁶¹ A. Hawkins, *Parliament, Party and the Art of Politics in Britain, 1855–1859* (Stanford: Stanford University Press, 1987), pp. 114.
- ⁶² LRO, MS Derby, 920 DER (14)/164/17b/15. Buccleuch to Derby, 9 July 1866.
- ⁶³ See, for instance, *Hansard*, HC Debates, 22 March 1867, vol. 186, cc 397–399.
- ⁶⁴ For broader-context comparisons of the Irish and Scottish unions in this period, see A. Jackson, *The Two Unions: Ireland, Scotland, and the Survival of the United Kingdom, 1707–2007* (Oxford: Oxford University Press, 2012).
- ⁶⁵ Omond, *The Lord Advocates of Scotland*, pp. 160, 231.
- ⁶⁶ LRO, MS Derby, 920 DER (14)/60/2/15. McNeill to Derby, 5 October 1866.
- ⁶⁷ LRO, MS Derby, 920 DER (14)/164/17b/2. Buccleuch to Derby, 12 March 1858.
- ⁶⁸ There is a still-flourishing body of work on the NAVSR. The most recent valuable work on this is A. Tyrrell, ‘The Earl of Eglinton, Scottish Conservatism, and the National Association for the Vindication of Scottish Rights’, *Historical Journal* 53 (2010), pp.87–107.

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- ⁶⁹ For parliamentary reform interest in Scotland, see M. Chase, ‘The Popular Movement for Parliamentary Reform in Provincial Britain during the 1860s’, *Parliamentary History* 36 (2017), pp.14–30.
- ⁷⁰ *Press*, 24 December 1853, quoted in Tyrrell, p. 106.
- ⁷¹ An Edinburgh mass meeting on the issue in 1884, for instance, boasted the Liberal Rosebery and Conservative Marquis of Lothian as speakers. See E. Cameron, *Impaled Upon a Thistle: Scotland since 1880* (Edinburgh: Edinburgh University Press, 2010), pp. 61–62.
- ⁷² Edward Bouverie and Arthur Kinnaird, for instance, were Liberal MPs for Kilmarnock Burghs and Perth, and opposed the creation of a Scottish Secretary. See *Hansard*, HC Debates 15 June 1858, vol. 150, cc. 2125–2127; 12 July 1869, vol. 197, c. 1734.
- ⁷³ Paterson, *The Autonomy of Modern Scotland*, p.49.

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