



University
of Glasgow

Zimmermann, R. and Anderson, R.G. (2008) *Law journals in nineteenth-century Scotland [trans. R. Anderson]. Edinburgh Law Review*, 12 (1). pp. 9-25. ISSN 1364-9809

<http://eprints.gla.ac.uk/38350/>

Deposited on: 02 April 2012

Law Journals in Nineteenth-Century Scotland

*Reinhard Zimmermann**

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A. INTRODUCTION

Apart from a brief survey published as long ago as 1929,¹ the history of law journals in Scotland remains largely unwritten. This neglect is both surprising and, in view of the subject's importance, unfortunate. In this paper an attempt is made to trace the main developments.² In fact the history is shorter than might be

* Director, Max Planck Institute for Comparative and International Private Law, Hamburg.

1 C A Malcolm, "Scottish legal periodicals: past and present" (1929) 45 *Scottish Law Review* 155.

2 The paper is based on my "Juristische Zeitschriften und Rechtskultur in Schottland", in M Stolleis and T Simon (eds), *Juristische Zeitschriften in Europa* (2006) 565. I am grateful to the editors for permission

supposed. The intellectual energy which infused Enlightenment Scotland did not find expression in the publication of journals devoted to law. Unlike in England, where law journals can already be found in the last quarter of the eighteenth century,³ the history of legal periodicals in Scotland begins only in the second quarter of the nineteenth. And those beginnings were tentative and, for a long time, barely successful.⁴

B. THE 1830s: TWO FALSE STARTS

(1) *Law Chronicle*

Towards the beginning of the nineteenth century, two attempts, one shortly after the other, were made to establish a specialist legal journal in Scotland. Both soon failed. The first, the *Law Chronicle or Journal of Jurisprudence and Legislation*, appeared in 1829, initiated and produced by some “professional gentlemen”. The move was possibly inspired by the establishment of two specialist journals in England: *The Jurist* in 1827 and the *Law Magazine and Quarterly Review of Jurisprudence* in 1829.⁵ In the foreword to the first issue, the editors indicated that the journal was aimed not only at experts (“members of government, the legislature, and the legal profession”) but also at the educated layman (“country gentlemen, those who may be called upon to act as jurors, and to intelligent men of all classes and professions in Scotland”).⁶ A considerable proportion of this monthly journal was to be dedicated to the “consideration of the highest branches of jurisprudence”, while notice was also to be taken of “everything remarkable” in foreign legal writings and cases.⁷ This was to include critical analysis of Scottish statutes and cases, book reviews, biographical sketches of notable Scots lawyers, as well as notes of decisions of the English courts of importance to Scots law. Finally, space was to be reserved for discussion of those issues of particular relevance to the law of the Kirk.⁸ The plan was an ambitious one, too ambitious

to publish this revised version here, and to Ross Gilbert Anderson for his translation and for suggestions as to how the paper might be adapted for an English-language audience. I am further indebted to Niall Whitty and John Cairns for encouragement and advice.

3 S Vogenauer, “Law journals in nineteenth-century England” (2008) 12 EdinLR 26 at 35.

4 Only the Advocates’ Library holds all the journals detailed in this paper. I am grateful to Stephen Woolman QC, Keeper of the Library, for permission to use the Library.

5 Malcolm (n 1) suspects as much. For these English journals, see Vogenauer (n 3) at 42.

6 (1829) 1 *Law Chronicle* 2.

7 (1829) 1 *Law Chronicle* 1.

8 In particular, questions relating to poor relief for which, in terms of the Poor Law Amendment Act 1845, the Church remained responsible. Cf T M Devine, *The Scottish Nation 1700-2007* (2006) 100 ff, 286 and 365; D M Walker, *A Legal History of Scotland* vol 6 (2001) 233 ff. For the law and the Kirk, see F Lyall, *Of Presbyters and Kings: Church and State in the Law of Scotland* (1980). The modern practitioner’s book is A Heron, *The Law and Practice of the Kirk* (1995).

as it turned out. From volume two onwards, the journal would appear in two parts, the second being dedicated entirely to reports of decisions of the Court of Session.

In line with the editor's ambitious foreword, volume 1 contained an article (published, as was the convention, anonymously) on "Law and the Administration of Justice in Scotland":⁹ a complaint of the neglect suffered by Scotland as a result of the post-Union constitutional settlement under which the organs of government were now centred in far-off London. Each piecemeal attempt to remedy existing "evils and grievances" was, in the eyes of many, hopeless. Such remoteness from their political and legislative institutions had, it was argued, led to a state of apathy and indifference among the people. The image in Scotland of the English lawyer of the day was distorted by the examples of certain individuals who had distinguished themselves by their ignorance of Scots law.¹⁰ Similar complaints are found in a substantial piece on the "Rise and Progress of the Laws of Scotland".¹¹ Among the other topics covered in volume one were the House of Lords in Scottish cases, land law in Scotland and England, and the law on church patronage.¹² There were also articles of a more general import on the sources of Scots law and their interpretation and on legal education.¹³ The journal contained a number of shorter contributions on subjects such as bankruptcy, succession to heritage, the payment of rates by landholders to the church, and the sheriff courts. In addition, notices of new legislation affecting Scotland, biographies of Scottish MPs and notes of the peculiar habits of particular judges, letters to the editor, notices of legal appointments and promotions, and criticisms of the inordinate delay in the resolution of some disputes were also published.¹⁴ All in all, the *Law Chronicle* can be seen as a journal with the local outlook which was to be expected from the opening editorial. It ran to only four annual volumes.¹⁵

(2) *Edinburgh Law Journal*

As the *Law Chronicle* sank into obscurity with its fourth and final issue in 1832 there was already a second periodical, the *Edinburgh Law Journal*. Among much

9 (1829) 1 *Law Chronicle* 1 ff.

10 The most notorious example came later in the century. In *Bartonshill Coal Co v Reid* (1859) Macq 266, a decision which imposed the English doctrine of common employment on Scotland, Lord Cranworth said (at 285) that: "I consider, therefore, that in England the doctrine must be regarded as well-settled; but if such be the law of England, on what ground can it be argued not to be the law of Scotland."

11 (1829) 1 *Law Chronicle* 135.

12 See, respectively, (1829) 1 *Law Chronicle* 195; (1829) 1 *Law Chronicle* 264; (1829) 1 *Law Chronicle* 49, 91 and 251.

13 (1829) 1 *Law Chronicle* 259; (1832) 4 *Law Chronicle* 1.

14 Malcolm (n 1) at 155 f.

15 Despite having a healthy list of subscribers, in 1831, at the beginning of volume 3.

else, it carried notices of new legislation and legislative reform, book reviews and general information about the justice system. Initially there were also case reports but the practice was quickly abandoned.¹⁶ The journal also contained articles on contested points of law in such areas as bankruptcy, land and succession law, and aspects of peerage law. Over and over again there were contributions on legal education and on the relationship of Scots to English law. In amongst these run-of-the mill pieces there were also to be found more rigorous papers, in particular a long and detailed piece on the “Principles of Prescription, with History of its Rise and Progress in the Law of Scotland”.¹⁷ A striking feature is a concern with legal history, legal philosophy and comparative law. This finds expression in a number of contributions: a description of legal education in Holland and Belgium,¹⁸ an account of the French *Code civil*,¹⁹ an article on the relationship between law and morals,²⁰ and a reprint of fragments from a Roman will.²¹ A number of the articles contain footnotes (some with references to the literature of the *ius commune*) and are published under the author’s name. After some years,²² however, this journal also folded; today all the issues are bound together in only two volumes.

(3) Possible reasons for failure

The question must be asked why legal journals were initially unable to establish themselves in Scotland. A number of possible reasons may be suggested.

(a) Law tracts

One reason was the tradition of publishing, whether individually or in collections, short treatments of particular questions of Scots law. The most comprehensive collection of these “law tracts” is found in the Advocates’ Library where those published from 1800 onwards are bound together in thirty volumes.²³ Of the

16 (1831) 1 *Edinburgh Law Journal* 219.

17 (1831) 1 *Edinburgh Law Journal* 244, 350, 438, 577; 2 *Edinburgh Law Journal* (undated) 11, 161.

18 2 *Edinburgh Law Journal* 1.

19 2 *Edinburgh Law Journal* 63.

20 2 *Edinburgh Law Journal* 25.

21 2 *Edinburgh Law Journal* 58 (“from the German of Professor Puggé”).

22 Malcolm (n 1) at 156 suggests the *Journal* was published intermittently until 1836.

23 Many other loose law tracts have been collected and are stored together in boxes. In addition the Advocates’ Library holds a number of law tracts from the eighteenth century, such as A Bayne, *Institutions on the Criminal Law of Scotland* (1748); A *Dissertation on the Laws of Elections for the Counties of Scotland* (1767); *Observations on Regiam Majestatem* (undated but pre-1799); J Borthwick, *An Inquiry into the Origins and Limitations of the Feudal Dignities of Scotland* (1775); G Stuart, *Observations concerning the Public Law and the Constitutional History of Scotland* (1779); J Miller, *Elements of the Law relating to Insurance* (1787); J Dalrymple, *Considerations on the Polity of Entails in a Nation* (1765).

pamphlets published in the first decades of the nineteenth century, papers dealing with reforms of civil procedure feature prominently, in particular the controversial introduction of civil jury trials. There is a multitude of pamphlets in the form of a letter, such as *Letter to the People of Scotland on the Jury Bill*,²⁴ *Letter to Henry Brougham Esq on Law Reform in Scotland*,²⁵ *A Letter to the Representatives of Scotland in Parliament, respecting the State of our Law and the Jurisdiction and Duties of the Court of Session*,²⁶ and so forth. Other subjects giving rise to papers included feudal law,²⁷ church law,²⁸ the law of succession,²⁹ peerage law,³⁰ the administration of justice in the sheriff courts,³¹ bankruptcy,³² and public health and social welfare.³³ Next to these are papers on particular problems ranging from the application of the law to minors,³⁴ comparative remarks on the law of succession in Scotland and England,³⁵ observations on the study of Roman law,³⁶ to materials for the instruction of students.³⁷ There can even be found a commentary – surprising at least to a foreign lawyer – on the law of salmon fishing.³⁸ Many of these law tracts are anonymous, although some do identify their author. Generally each runs to between 20 and 50 pages, although there are also examples falling on either side of this standard range. One pamphlet of 1863 is of particular note, owing to its author if not its content: *The Historical Study of the Law*,³⁹ by John Inglis, then Lord Justice Clerk and later, for many years, Lord President and Lord Justice General.

24 By "A Juryman" (1815) 24 pp.

25 By J Douglas (1830) 40 pp.

26 By J Borthwick (1830) 45 pp.

27 C Mackenzie, *Thoughts on the inexpediency of abolishing seisin in Scotland* (1830) 36 pp.

28 Anon, *State of the Question respecting the Seat Rents of the Churches of the City of Edinburgh* (1824).

29 "A Country Gentleman", *Remarks on Scottish Entails* (1818) 41 pp.

30 E Lockhart, *Rights of Succession to Scottish Peerages* (1830) 46 pp.

31 R Threshire, *Letter on the Sheriff Courts of Scotland* (1833) 16 pp.

32 Anon, *Remarks upon the Scots Bankrupt Bill* (1782) 47 pp.

33 J H Burton, *On the State of the Laws regarding the abatement of nuisances and the protection of the public health in Scotland, with suggestions for amendment* (1840) 26 pp.

34 Anon, *Commentary on the Rights of Minors under the saving clause in the Scottish Statute 1617, c 12, anent prescription of heritable rights, with a summary of the principal decided cases on the subject* (1828) 63 pp.

35 J Taylor, *A View of the Law of Scotland in intestate Succession, as compared with that of England, with suggestions for its amendment* (1837) 47 pp.

36 J Browne, *Remarks on the Study of the Civil Law, occasioned by Mr Brougham's late Attack on the Scottish Bar* (1828) 79 pp.

37 G Lyon, *A Summary of the Law of Scotland, by way of question and answer, in the order of Mr Erskine* (1821) 137 pp; D Cheape, *An Introductory Lecture on the Civil Law, delivered in the University of Edinburgh* (1827) 44 pp.

38 Anon, *Observations regarding the Salmon Fishery of Scotland* (1824) 60 pp.

39 43 pp.

(b) Reviews

In the second place, Scots lawyers might herald the publication of legal books with a review in one of the periodicals directed at a more general audience. The most important was the *Edinburgh Review*, which was reincarnated from its short-lived forerunner⁴⁰ in 1802.⁴¹ Its initial issues carried long articles on Miller's *Historical View of the English Government*;⁴² Bentham's *Traité sur les principes de législation civile et pénale*;⁴³ Parnell's *History of the Penal Laws against the Irish Catholics*;⁴⁴ Scipion Bexon's *Application de la théorie de la législation pénale, ou Code de la sûreté publique et particulière, fondé sur les règles de la morale universelle*;⁴⁵ *A Letter on the Genius and Disposition of the French Government, including a View of the Taxation of the French Empire (by an American recently returned from Europe)*;⁴⁶ *The Speeches of the Hon Thomas Erskine (now Lord Erskine), when at the Bar, on subjects connected with the Liberty of the Press, and against Constructive Treason*;⁴⁷ and Sir Samuel Romilly's *Observations on the Criminal Law of England, as it relates to Capital Punishments, and on the Mode in which it is administered*.⁴⁸ The contents are not surprising in view of the fact that of the four founders of the *Edinburgh Review*, three were lawyers (including Henry Brougham, later Baron Brougham and Vaux, a future Lord Chancellor and protagonist of law reform).⁴⁹ In the *Review*'s quarterly lists of new books,

40 The original *Edinburgh Review* appeared only twice, in 1755 and 1756. See generally J Clive, *Scotch Reviewers: The Edinburgh Review, 1802-1815* (1957) 19.

41 On the *Edinburgh Review* and its importance to contemporary intellectual life, see Clive, *Scotch Reviewers* (n 40); J Shattock, *Politics and Reviewers: The "Edinburgh" and the "Quarterly" in the early Victorian Age* (1989); H W Drescher, *Themen und Formen des periodischen Essays im späten 18. Jahrhundert* (1971); C Groffy, *Die Edinburgh Review 1802-1825: Forum der Spätaufklärung* (1981). The influence of the *Edinburgh Review* is highlighted in a hostile article, "The *Edinburgh Review* on Scottish Law" (1858) 2 *Journal of Jurisprudence* 553, where the *Review* of the 1850s is described (at 553) as "one of the dullest periodicals now published in Europe with one of the largest circulations". The article goes to comment that "nothing can more illustrate the virtue of a name than the influence still possessed by the *Edinburgh Review*, in its present day of utter uselessness and decline." Circulation figures for the initial years are found in Clive, *Scotch Reviewers* 133. Within 12 years (from 1802 to 1814) the sales figures for each issue had climbed from 750 to 13,000: a phenomenal achievement, especially when compared with, for example, the sales figures for the *London Times* which, in 1816, had a daily circulation of 8,000.

42 (1803) 3 *Edinburgh Review* 154-181 (No V).

43 (1804) 4 *Edinburgh Review* 1-26 (No VII).

44 (1808-09) 13 *Edinburgh Review* 69-77 (No XXV).

45 (1809-10) 15 *Edinburgh Review* 83-109 (No XXIX).

46 (1810) 16 *Edinburgh Review* 1-30 (No XXXI).

47 (1810) 16 *Edinburgh Review* 102-128 (No XXXI).

48 (1811-12) 19 *Edinburgh Review* 382-416 (No XXXVIII).

49 On Brougham, see A H Manchester, in A W B Simpson, *A Biographical Dictionary of the Common Law* (1984) 79 ff with further references. Brougham's speech on the need for reform of the law to the House of Commons in 1828 is characterised by Sir William Holdsworth as "the most learned and thorough

“Law” was one of the headings under which new publications were listed. The prominent place for law in the *Edinburgh Review* demonstrates the close-knit community of law and literature in Edinburgh of the early nineteenth century. The educated lawyer, particularly the educated advocate, took his place among the ranks of the *litterati* of the later Enlightenment.⁵⁰

The *Edinburgh Review* was Whiggish in political outlook, and in 1824 the *Westminster Review* was established in London in order to provide an outlet for Tories. At least in the early years each issue contained one or two reviews on legal topics, whether of a Scottish publication or of a theme that was also of consequence to Scots law.⁵¹ Finally there were in Scotland, as in England, many general periodicals and newspapers which carried discussion of legal topics and reported decided cases,⁵² a trend which continues today.

(c) *Demographic and cultural factors*

The third point is basic but nonetheless important: size. Today around five million people fall within the jurisdiction of the Scottish courts. In the 1750s, however, Scotland’s population totalled about 1.25 million, climbing to 1.6 million by

criticism of the many defects of the common law that had ever been made since the Commonwealth period”: see *A History of English* vol 13 (eds A L Goodhart and H G Hanbury, 1952) 306. Brougham spoke for more than six hours “and held his audience to the very end of his speech”: Manchester at 81. Cf A Herman, *The Scottish Enlightenment: The Scots’ Invention of the Modern World* (2002) 270 ff. For some rather less distinguished consequences of Brougham’s irrepressible capacity for work, see R E Megarry, *A Second Miscellany-at-Law* (1973) 11-13, quoting, *inter alios*, Baron Alderson’s invocation of Emerson: “What a wonderful versatile mind has Brougham! He knows politics, Greek, history, science; if only he knew a little of law, he would know a little of everything.” The three other founders of the *Review* were Francis Jeffrey, Francis Horner and Sydney Smith. For information about these individuals and on the founding of the *Review*, see Clive, *Scotch Reviewers* (n 40) 17 ff and Herman, *Scottish Enlightenment* 262 ff. Of the 7 contributions referred to in nn 42-48 above, 6 are by Jeffrey, Smith or Brougham. The seventh is by James Mill (the father of the philosopher John Stuart Mill). The *Edinburgh Review* did not attribute authorship but this may now be traced in W E Houghton (ed), *Wellesley Index to Victorian Periodicals 1824-1900* (1966).

50 Cf Clive, *Scotch Reviewers* (n 40) 26: “In embarking upon this literary project they followed that tradition of the intimate connection between literature and the law so characteristic of Scottish cultural history in the eighteenth century.” The words of one man who epitomised this relationship, Sir Walter Scott, are often quoted: “A lawyer without history or literature is a mechanic, a mere working mason; if he possesses some knowledge of these, he may venture to call himself an architect” (*Guy Mannering* (1815) 292).

51 The following examples are indicative: “Examination of the objections stated against the bill passed by the House of Lords for better regulating the forms and process in the courts of law in Scotland” (1825) 4 *Westminster Review* 60; “Game laws” (1826) 5 *Westminster Review* 1; “Bentham, Brougham and law reform” (1829) 11 *Westminster Review* 447.

52 The newspapers and periodicals of the late eighteenth and early nineteenth century that most regularly contain relevant materials were: *The Caledonian Mercury*, *The Edinburgh Evening Courant* and *The Scotsman* of the newspapers; and of periodicals, *The Scots Magazine*, *The Edinburgh Annual Register*, *Blackwood’s Edinburgh Magazine* and, from 1832, *Chambers’ Edinburgh Journal*. Further details are in D M Walker, *A Legal History of Scotland* vol 6 (2001) 63.

1801 and, much more steeply, to 2.6 million in 1841.⁵³ Numbers would have been larger but for emigration on a massive scale. Between 1830 and 1914, almost two million Scots left their native shores, most for good, while another 600,000 headed south.⁵⁴ The numbers working in the legal profession were correspondingly low. In the 1850s there were only fifteen judges of the Court of Session, and around 120 practising advocates and 1500 law agents or solicitors.⁵⁵ The Scottish legal profession of the 1830s did not offer a sufficient market for a specialised legal journal to establish itself.

(d) *Dominance of the spoken word*

One final point stands out. In the Edinburgh of the Enlightenment and the early nineteenth century, intellectual debate took place largely in the numerous clubs and debating societies (e.g. the Tuesday Club, Poker Club, Oyster Club, Mirror Club and Select Society)⁵⁶ and at private dinner parties. These were lively and sociable meetings, lubricated by liberal quantities of alcohol. But the intellectual debate that ensued took the form of oral disputation and discussion rather than the presentation of formal written papers.⁵⁷ Leading by example, Kames “liked to mix food and drink, including prodigious quantities of claret, with serious discussion of philosophical and legal issues. Kames’ love of good company set the style and tone of Edinburgh’s intellectual life for nearly half a century.”⁵⁸ His guests included John Miller, Adam Smith, James Boswell and David Hume, who⁵⁹

grew up associating good food and drink with intellectual discussion at Lord Kames’ dinner table ... [T]he closes and wynds of Edinburgh flowed with alcohol. Drinking, according to one contemporary, “engrossed the leisure hours of all professional men ...” Half the bench of the Court of Session, he reckoned, were well-oiled before they met in the morning.⁶⁰

53 Devine, *Scottish Nation* (n 8) 111. Cf also the statistics in Walker, *History* vol 6 (n 52) 63.

54 Devine, *Scottish Nation* (n 8) 263.

55 See (1857) 1 *Journal of Jurisprudence* 138. Further details for advocates and solicitors are found in Walker, *History* vol 6 (n 52) 279 and 290.

56 Herman, *Scottish Enlightenment* (n 49) 184.

57 “It was a discussing age,” wrote Lord Cockburn, reminiscing of the Edinburgh of his youth. “I doubt if from the year 1811, when I married, I have closed above one day in the month of my town life, at home and alone. It is always some scene of domestic conviviality, either in my own house or in a friend’s”: H Cockburn, *Memorials of His Time* (1856) 27, 41.

58 Herman, *Scottish Enlightenment* (n 49) 89.

59 Herman, *Scottish Enlightenment* (n 49) 183.

60 For the problem of alcohol consumption in the early Victorian era, see Devine, *Scottish Nation* (n 8) 350 ff (where the Scottish drinking culture is discussed: “heavy drinking also had cultural and social roots”).

C. THE 1850s: LAYING THE FOUNDATIONS

(1) (Dundee) *Law Chronicle* and *Scottish Law Journal/Scottish Law Magazine*

The 1850s saw another attempt to set up a legal journal, this time in Dundee. Yet again, however, the attempt was destined to fail. The journal adopted a familiar name, the *Law Chronicle*. Its life, however, was short: first published in 1856, the last issue was to appear in 1860. As the inaugural volume's sub-heading made clear, a major editorial aim was to report decisions of the inferior courts ("... containing Reports of Cases decided in Sheriff Courts between April 1856 and April 1857").⁶¹

The *Law Chronicle* was superseded by the *Scottish Law Journal*. This represented the first attempt to stimulate a legal periodical literature in the west of Scotland, the mercantile and industrial centre of the country. The first issue appeared in 1858/59. Again, the tail-end of the journal's title ("... and Sheriff Court Record") betrayed its editorial direction. It published significant decisions from the sheriff court and, in the remaining and separately paginated section, considered questions of law, often those concerning the sheriff courts (e.g. non-resident sheriffs, admiralty jurisdiction of sheriffs, fees for business in the sheriff courts etc). Beside the local and parochial, however, were also reports of English cases, and articles on new legislation and recent decisions (although these were rarely more than a few columns in length), book reviews and letters to the editor. From 1862 the journal appeared under the title of *Scottish Law Magazine and Sheriff Court Reports* and the editors envisaged it as the "organ and representative" of the sheriff courts, with their case reports being limited to decisions of these courts. The other part of the journal now contained longer, signed articles on such subjects as the reception of Scots law in England,⁶² the administration of criminal law⁶³ and legal education in Scotland.⁶⁴

(2) *Journal of Jurisprudence*

The *Scottish Law Magazine* merged with the *Journal of Jurisprudence* in 1867. The latter, published in Edinburgh from 1857, was the first successful Scottish

61 On the *Law Chronicle* and its editor, a practising lawyer in Dundee, see Malcolm (n 1) at 156.

62 Sir Archibald Alison, "On the instances in which the law of England has been borrowed from that of Scotland" (1862) 1 *Scottish Law Magazine* (New Series) 5. This article is the published version of a paper originally read before the Glasgow Juridical Society. Alison, Sheriff of Lanarkshire from 1834 until his death in 1867, was Honorary President of the Society.

63 H Barclay, "Observations on the administration of criminal law in Scotland" (1862) 1 *Scottish Law Magazine* (New Series) 17-20, 21-24.

64 Anon, "Legal education" (1862) 1 *Scottish Law Magazine* (New Series) 25-28.

legal journal, running for some 34 years. Its aim was to be *the* publication for the entire Scottish legal system. The editorial mission statement was comprehensive, covering reports of cases (including, where relevant to Scots law, reports of English decisions), notes on new legislation, practitioners' notices, book reviews and letters to the editor, as well as short articles and commentaries. The difficulties in such an undertaking were recognised from the outset: the publication of a journal concerned almost exclusively with the technicalities of the law was to be borne by "professional men during the hurried intervals of business of more pressing importance."⁶⁵

Why, one might ask, could the burden not be taken up by professors of law? The answer, in part, was given by the *Journal of Jurisprudence* itself, in an article published in 1866.⁶⁶ At that time, according to the article, only Edinburgh could claim to have a properly functioning law school: Glasgow, in contrast, had merely two chairs in law,⁶⁷ Aberdeen one and St Andrews (where law had long since ceased to be taught) none at all.⁶⁸ Even in Edinburgh there were only four established chairs in law (Public Law and the Law of Nature and Nations, Civil Law, Scots Law, and Conveyancing) together with the chair for Universal History and Greek and Roman Antiquities.⁶⁹ A further reason, not mentioned in the article, was that many professors were also practising members of the Faculty of Advocates. The example set by the professor was mirrored in a student body that was also very much part-time, attendance at classes being squeezed in at the end of a working day in a writer's office.⁷⁰ On the other hand, a number of professors in post in the second half of the nineteenth century had studied in Germany, where they were exposed to academic legal study of the highest international standards.⁷¹

65 (1857) 1 *Journal of Jurisprudence* iii.

66 "Law studies (Scotland)" (1866) 10 *Journal of Jurisprudence* 281.

67 See generally D M Walker, *A History of the School of Law: The University of Glasgow* (1990).

68 A general overview of research and teaching at the Scottish universities in the nineteenth century is found in D M Walker, *History* vol 6 (n 52) 265. For the position at the beginning of the 1890s, see "Law classes" (1890) 6 *Scottish Law Review* 253; and for the teaching of law at St Mungo's College, before it was integrated into Glasgow University, see (1889) 5 *Scottish Law Review* 171.

69 For incumbents, see J W Cairns and H L MacQueen, *Learning and the Law: A Short History of the Edinburgh Law School* (privately published, 2000). For the origins of the chair of Public Law and the Law of Nature and Nations, see J W Cairns, "The origins of the Edinburgh Law School: the Union of 1707 and the Regius Chair" (2007) 11 *EdinLR* 300.

70 See Walker, *University of Glasgow* (n 67) 43; Walker, *History* vol 6 (n 52) 171.

71 J W Cairns, "Historical Introduction", in K Reid and R Zimmermann (eds), *A History of Private Law in Scotland* (2000) vol 1, 45 at 161-171; J W Cairns, "The influence of the German historical school in early nineteenth century Edinburgh" (1994) 20 *Syracuse Journal of International Law and Commerce* 181; A Rodger, "Scottish advocates in the nineteenth century: the German connection" (1994) 110 *LQR* 563.

Whatever the limitations of its contributors, the *Journal of Jurisprudence* contained, from its first volume until its last, articles on comparative law⁷² as well as such papers as “The philosophy of law maxims” (covering, for instance, possession, *dolus*, *culpa* and *mora*), “Biographical sketches of the College of Justice”, and “History of the French Bar”. The inadequacy of the native system of legal education was emphasised,⁷³ as were the great disadvantages suffered by Scots lawyers when applying for judicial vacancies throughout the British Empire, even when the colonial legal system was one based on the Civil Law.⁷⁴ Compared to the relatively glamorous judicial posts that their English counterparts could hope to fill – a seat on the bench in such exotic locations as Trinidad and Tobago or the Gold Coast – the opportunities for Scots lawyers were extremely limited. The moderately successful Scots lawyer might at best look forward to the call to administer justice from the shrieval bench in the windswept wilds of the Uists or Barra.

The amalgamation of the *Scottish Law Magazine* and the *Journal of Jurisprudence* was a result of the size of the Scottish legal profession and the correspondingly small market.⁷⁵ In reality the *Scottish Law Magazine*, and in particular the *Magazine*’s role as reporter of sheriff court decisions, was integrated into the wider editorial brief of the *Journal of Jurisprudence*; but it held on to its own name in the title of the amalgamated journal.⁷⁶ The published articles, increasingly, were attributed to their authors, and they covered not only questions of Scots law and its reform, but frequently also historical,⁷⁷ theoretical,⁷⁸ and foreign and comparative⁷⁹ legal issues. Biographies of well-known judges and lawyers appeared beside such contributions as “Gossip of an old French lawyer”⁸⁰

72 As examples, see “American cases” (1857) 1 *Journal of Jurisprudence* 473-476 or “A French criminal trial” (1857) 1 *Journal of Jurisprudence* 509-513.

73 (1857) 1 *Journal of Jurisprudence* 138.

74 “Review of the month” (1857) 1 *Journal of Jurisprudence* 12; “Colonial appointments” (1857) 1 *Journal of Jurisprudence* 76. See also Mr Justice Macpherson, “Scots Law in the Colonies” 1995 JR 191.

75 (1867) 11 *Journal of Jurisprudence* 549.

76 Almost until the very end: the first issue of the last volume, in 1891, appeared under the *Journal of Jurisprudence and Scottish Law Magazine* title.

77 J A Hjaltalin, “Rights of women among the old Scandinavians” (1872) 16 *Journal of Jurisprudence* 505; G P McNeil, “The Scottish school of jurisprudence” (1883) 27 *Journal of Jurisprudence* 336 and 393.

78 J H Stirling, “Lectures on the philosophy of law” (1872) 16 *Journal of Jurisprudence* 1, 57, 113 and 169; “Speech as a mode of business” (1891) 35 *Journal of Jurisprudence* 24.

79 “Civil procedure in France” (1882) 26 *Journal of Jurisprudence* 595, (1883) 27 *Journal of Jurisprudence* 75; T G Wright, “The differences between the laws of England and Scotland as to the contract of sale” (1872) 16 *Journal of Jurisprudence* 402, 449 and 584.

80 (1883) 27 *Journal of Jurisprudence* 301.

and, here and there, obituaries of foreign jurists.⁸¹ Some issues of the journal were more cosmopolitan still. For example, volume 32, published in 1888, opened with an article from Bluntschli on “The development of right and the right of development”.

The remainder of the *Journal* comprised reports of appointments, news from practice, obituaries, book notices, and a section dedicated to case reports. In the course of time, decisions of the Court of Session became less prominent, perhaps because they were reported regularly and fully in *Session Cases* and the *Scottish Jurist*, as well as being noted in the daily press; moreover, from 1865 the *Scottish Law Reporter*⁸² published decisions of the Court on a weekly basis. Sheriff court reports too became less frequent, no doubt as a result of the publication of the *Sheriff Court Reports*, from 1885, as part of the *Scottish Law Review*.⁸³ The remaining reports were of English cases or, occasionally, of decisions from America and the colonies.

(3) *Poor Law Magazine*

The first issue of the consolidated *Journal of Jurisprudence and Scottish Law Magazine* in 1867 expressed the pessimistic thought that⁸⁴

[T]here is not, in a profession probably numbering less than 2,000 members . . . either writing or reading power sufficient to support two publications of this kind.

Nonetheless in 1858 there had appeared a second, albeit specialist, legal journal, the *Poor Law Magazine*, edited by practising advocates.⁸⁵ This covered those questions of social welfare which arose prior to the introduction of a comprehensive social security system at the beginning of the twentieth century: support of illegitimate children, deserted wives, provision for widows, organisation of work houses, operation of benevolent funds, matters giving rise to public health issues, and the like.⁸⁶ No other area of law, said the editor of

81 See, for instance, (1872) 16 *Journal of Jurisprudence* 209 (Adolf Trendelenburg). James Lorimer, Regius Professor of Public Law and the Law of Nature and Nations at Edinburgh University, had studied under Trendelenburg; R Flint, “Professor Lorimer” (1890) 2 JR 116.

82 On these reports, and on the *Scottish Jurist*, see K Reid, “A note on law reporting”, in K Reid and R Zimmermann (eds), *A History of Private Law in Scotland* (2000) vol 1, lviii.

83 For which, see 23 below.

84 (1867) 11 *Journal of Jurisprudence* 549.

85 From 1867 *The Poor Law Magazine and Journal of Public Health*; from 1873 *The Poor Law Magazine and Parochial Journal*; and from 1891 *The Poor Law Magazine and Local Government Journal*.

86 By virtue of the Poor Law Amendment Act 1845 the responsibility for poor relief was transferred from the Kirk to community boards elected by rate paying voters. The Act was a direct result of the Disruption of 1843: prior to the 1845 Act, Kirk Sessions were the sole distributors of poor relief and they were seldom minded to relieve those who had seceded from the Established Church. The boards

the first issue, was of such general importance as the poor law. Nor was the legislation of relevance only to the poor. For the rich too, who year after year contributed considerable means to poor relief, it was equally important that these means were efficiently administered and justly distributed.⁸⁷ The *Poor Law Magazine* was directed at those who were responsible for the administration and distribution of poor law funds. As well as the usual legal notices and short articles on particular legal questions, it included reports of relevant decisions of the Court of Session, many of which would otherwise have escaped the attention of the *Magazine's* audience for the simple reason that the standard collections of Court of Session decisions were expensive and out of the reach of those administering poor relief. The *Magazine* also reported decisions of the sheriff court and other tribunals, many of which might not otherwise have been reported.⁸⁸ The *Poor Law Magazine* was not produced for financial gain,⁸⁹ but by the second year of its existence it had attracted some 619 subscribers and its financial footing was secured.⁹⁰ Manifestly it was a practitioner's publication, containing, for example, long lists of boards and their workhouses. The last issue of the *Poor Law Magazine* appeared in 1930, having run for some 72 years.

D. AFTER 1880

(1) *Juridical Review*

The last decades of the century witnessed considerable changes in the world of legal journals. The *Journal of Jurisprudence* appeared for the last time in 1891,⁹¹ and was in large measure replaced by a publication that remains the oldest surviving legal journal in Scotland, the *Juridical Review*.⁹² Four years

were also responsible for invalidity welfare. Other legislative milestones include: the Burghs and Police (Scotland) Act 1833, the General Police and Improvement Act 1862, and the Public Health (Scotland) Act 1867. See Walker, *History* vol 6 (n 52) 202. The Public Health Act 1848 did not extend to Scotland. For the sanitary conditions in Scottish cities of the time see Devine, *Scottish Nation* (n 8) 333. On the state of Scottish local government in the nineteenth century, see Walker, *History* vol 6, 190 ff.

87 (1858-59) 1 *Poor Law Magazine* 1.

88 (1858-59) 1 *Poor Law Magazine* 3.

89 (1858-59) 1 *Poor Law Magazine* 4.

90 (1861) 3 *Poor Law Magazine* 25.

91 For which see W G, "The *Journal of Jurisprudence* and legal journalism in Scotland" (1892) 8 *Scottish Law Review* 36: "Perhaps if the *Journal of Jurisprudence* had aimed in its later years at a higher standard of literary and scientific work, it might have interested the profession and prolonged its life in spite of its feeble shrinking from more exciting topics. Such an effort is being made with some success by one of the rivals that has latterly come forward to take its place [i.e. the *Juridical Review*]."

92 The *Law Quarterly Review* (the longest-running legal journal to have appeared under the same title in the UK) was founded in 1884. It is likely that it was the model for the *Juridical Review*; in any event the *Law Quarterly Review* and its editor, Sir Frederick Pollock, are mentioned in the Prefatory Note to the *Juridical Review's* inaugural issue: (1889) 1 JR 2.

previously, the *Scottish Law Review* had been founded; and *Scots Law Times* began publication in 1893. The programme for the *Juridical Review* (which was to appear quarterly) was set out in a prefatory note to the first issue.⁹³ Naturally, particular attention was to be given to Scots law, “both in its principles and practice”. Scots law, ran the preface, owed much of its development to foreign laws (French, Dutch, German, American and, in particular, Roman and English law) and it could thus repay part of this debt by giving practical examples of how these ideas had been taken up and developed in Scots law. The *Juridical Review* was to be both an academic and a practical journal. Particular weight was to be accorded to political as well as to the comparative and historical perspectives on law. Indeed, this claim found expression in the journal’s very title as “A Journal of Legal and Political Science”. But this sub-heading was dropped in 1905, it no doubt having proved impossible to combine law and politics in a single publication.

The cosmopolitan spirit to which the editors had alluded in their prefatory note was not, however, compromised. The first issue of the new journal included papers on codification in the USA,⁹⁴ the judicial system in Germany,⁹⁵ the Italian jurist Pasquale Stanislao Mancini,⁹⁶ legal education in Italy,⁹⁷ the US Supreme Court’s decision in the *Oregon Railway* case,⁹⁸ local government in France,⁹⁹ the administration of justice on the Gold Coast,¹⁰⁰ imprisonment for debt in the United States,¹⁰¹ and County Government in Ireland.¹⁰² The *Juridical Review* also contained headings in each issue for current topics, book reviews, and notes of recent decisions. The entries which appeared under the first two of these document an attempt to create an international and comparative perspective for Scots law. So under the heading “Current Topics” are found obituaries of the Austrian professors von Holtzendorff and Leopold Neumann,¹⁰³ a notice on public health legislation in Italy,¹⁰⁴ and a report of a conference of the *Société de législation comparée* in July 1889 in Paris.¹⁰⁵ Among the books reviewed were

93 (1889) 1 JR 1.

94 D D Field, “Codification in the United States” (1889) 1 JR 18.

95 J J Cook, “The judicial system of Germany” (1889) 1 JR 70, 184-192 and 298-306.

96 D Lioy, “Pasquale Stanislao Mancini” (1889) 1 JR 113.

97 J Kirkpatrick, “How law is taught in Italy” (1889) 1 JR 137.

98 E Robertson, “The Oregon railway decision” (1889) 1 JR 130.

99 M M Ilwraith, “Local government in France” (1889) 1 JR 163.

100 H Macleod, “The administration of justice on the Gold Coast” (1889) 1 JR 272.

101 J C Thomson, “Imprisonment for debt in the United States” (1889) 1 JR 357.

102 J T C Humphreys, “County government in Ireland” (1889) 1 JR 369.

103 (1889) 1 JR 193.

104 (1889) 1 JR 308.

105 (1889) 1 JR 384.

Levin Goldschmidt's *Rechtsstudium und Prüfungsordnung*, Ernst Nys' *Notes pour servir à l'histoire littéraire et dogmatique du droit international en Angleterre*, James Bryce's *The American Commonwealth*, Augustus Pulszky's *The Theory of Law and Civil Society*, Henry Maine's *The Whewell Lectures: International Law*, Joaquín Fernández Prada's *Fundamentos del derecho internacional privado*, Charles J Cooke's *The Public Law of Finland*, and Thomas Barclay's *The Law of France relating to Industrial Property*.¹⁰⁶

The influence on the *Juridical Review* of German legal science is apparent not just from the secondary title of "Journal of Legal and Political Science" but also from the prominent place accorded in the inaugural 1889 issue to James Lorimer's paper on "The sphere and function of an academical faculty of law", based on a lecture originally delivered as long before as 1864.¹⁰⁷ In this paper Lorimer places great importance on the *scientific* character of law and legal education – with express reference to natural science and the faith placed in nature as a "living organism" – and emphasises the importance of history in the legal education curriculum. Lorimer himself had studied in Geneva, Berlin and Bonn,¹⁰⁸ while the editor of the *Juridical Review*'s first five volumes,¹⁰⁹ Henry Goudy, had studied in Königsberg as well as in Edinburgh. Goudy, at that time Professor of Civil Law at Edinburgh, was appointed to the Regius Chair of Civil Law at Oxford in 1894.¹¹⁰ It is noteworthy, however, that the above-mentioned articles touching on comparative law provide only an introductory or general overview of their subjects, as perhaps befits a journal which, in its early years, did not even countenance footnotes. There was, in short, a considerable gap between the *Juridical Review*'s grand aspirations and its actual content.

(2) *Scottish Law Review* and *Scots Law Times*

The primary purpose of the *Scottish Law Review* was to report cases from the sheriff court,¹¹¹ but a shorter and separately paginated part of the journal carried information relevant to day-to-day practice: notes and commentary on decided cases, new legislation and other legal developments. A relatively large amount of space was accorded to text collected under the headings "Notes from London"

106 (1889) 1 JR 93, 96, 204, 211, 218, 314, 321, 408.

107 (1889) 1 JR 4.

108 (1890) 2 JR 113; MacQueen & Cairns, *Edinburgh Law School* (n 69) 17.

109 The names of all the *Juridical Review*'s editors are set out in W A Wilson and J P Grant, "Editorial note" 1988 JR 135. The early issues do not name the editor. Of the editors, perhaps the most distinguished was Hugh P Macmillan, later Baron Macmillan of Aberfeldy and a Lord of Appeal in Ordinary.

110 1893 SLT (News) 113. And see too A Rodger, "Savigny in the Strand" (1993) 28 *Irish Jurist* 1.

111 As indicated by the journal's full title: *Scottish Law Review and Sheriff Court Reports*.

and “Notes on English Cases”. Articles of academic merit are rare, and more rarely still is the author of an article identified.¹¹² The fifty-first and final volume of the *Scottish Law Review* appeared in 1963, and responsibility for sheriff court reporting was taken over by *Scots Law Times*. Founded in 1893, *Scots Law Times* is published weekly during court term and is practically indispensable. From the outset it has been primarily a series of law reports, covering the decisions of all Scottish courts at all levels of the court hierarchy. It also publishes short articles, book reviews, obituaries and notices for practitioners. For some time it also published grand photographic portraits with short biographical sketches of agents, advocates and sheriffs, from the Highlands and Islands to the Borders.¹¹³ Since 1905 the reports have been separately paginated from the news section, and from about the middle of the twentieth century the news section began to publish articles of a more academic nature.¹¹⁴

(3) The twentieth century

In the twentieth century periodical literature expanded with the arrival of journals for two professional societies: the *Scottish Law Gazette* from 1933 as the journal of the Scottish Law Agents Society, and the *Journal of the Law Society of Scotland* from 1956.¹¹⁵ The specialist *Conveyancing Review* was begun in Glasgow in 1957 but lasted only until 1963 when it was incorporated into the *Journal of the Law Society*. Articles of a more academic bent continue to be published in the *Juridical Review* (which, in 1956, became the “Law Journal of the Scottish Universities”)¹¹⁶ and, since 1996, in the *Edinburgh Law Review*. The latter was founded in order to provide an international forum for the discussion of law “in

112 Some examples are: A O M Mackenzie, “The administration of justice in Scotland before 1532” (1920) 36 *Scottish Law Review* 1; W D Esslemont, “Some aspects of trade combinations” (1928) 44 *Scottish Law Review* 1 (an inaugural lecture); St C M, “Positive and negative prescription” (1935) 51 *Scottish Law Review* 319; L Loewensohn, “Jus quaesitum tertio: a comparative and critical survey” (1940) 56 *Scottish Law Review* 77 and 104. Loewensohn was an immigrant from Austria who, from 1939 onwards, was a regular contributor to the *Scottish Law Review*, his first article being translated from the original German (“The Anschluß and the Austrian Bar” (1939) 55 *Scottish Law Review* 7). Loewensohn’s articles are distinguished by their academic quality. His last contribution was “The Scottish legal tradition and legal progress” (1949) 65 *Scottish Law Review* 233. I have been unable to trace any biographical details.

113 See E Clive, “A hundred years of the SLT” 1993 SLT (News) 171.

114 Some examples are: J J Gow, “Warranties and conditions” 1960 SLT (News) 109; A F Rodger, “Spuilzie in the modern world” 1970 SLT (News) 33; K G C Reid, “Ownership on delivery” 1982 SLT (News) 149; G L Gretton, “Death and debt” 1984 SLT (News) 299.

115 All qualified solicitors in Scotland are regulated by and members of the Law Society of Scotland. In conjunction with the Institute of Chartered Accounts in Scotland, the Law Society also produces *Impediments: Quarterly Scottish Insolvency Review* (from 1991).

116 “Editorial note” 1956 JR 1. The editorial committee is made up of one representative of each of the Scottish universities.

all its aspects”, in particular the comparative, historical and philosophical.¹¹⁷ The *Scottish Law and Practice Quarterly*, aimed both at academics and practitioners, began in 1995 but foundered in 2002: with less than 100 subscribers, it had ceased to be viable. The recent episode of this journal is a stern reminder of the harsh reality of market forces for a small legal system.

E. CONCLUSION

Law journals came too late for the so-called “Golden Age” of Scots law at the time of the Enlightenment. After false starts in the 1830s, it took until the 1850s for a legal journal to establish itself in Scotland. A third surge in activity occurred in the closing years of the nineteenth century. As editorial responsibility was borne entirely by practitioners, the early journals were directed at a limited audience. An important function throughout the nineteenth century and, to a more limited extent, into modern times, was to report court decisions, and especially sheriff court decisions which were not otherwise comprehensively reported. In style and content the Scottish legal journals largely corresponded to contemporary English journals.¹¹⁸ The first academically orientated journal, the *Juridical Review*, appeared in 1889, a development influenced by nineteenth-century German legal science. But it was to be another hundred years before periodical literature endeavoured to take Scots law beyond Scotland, to broaden horizons, and to engage Scots law in international and comparative discussion.

117 H L MacQueen, “Editorial” (1996) 1 EdinLR 1.

118 As to which see Vogenauer (n 3).