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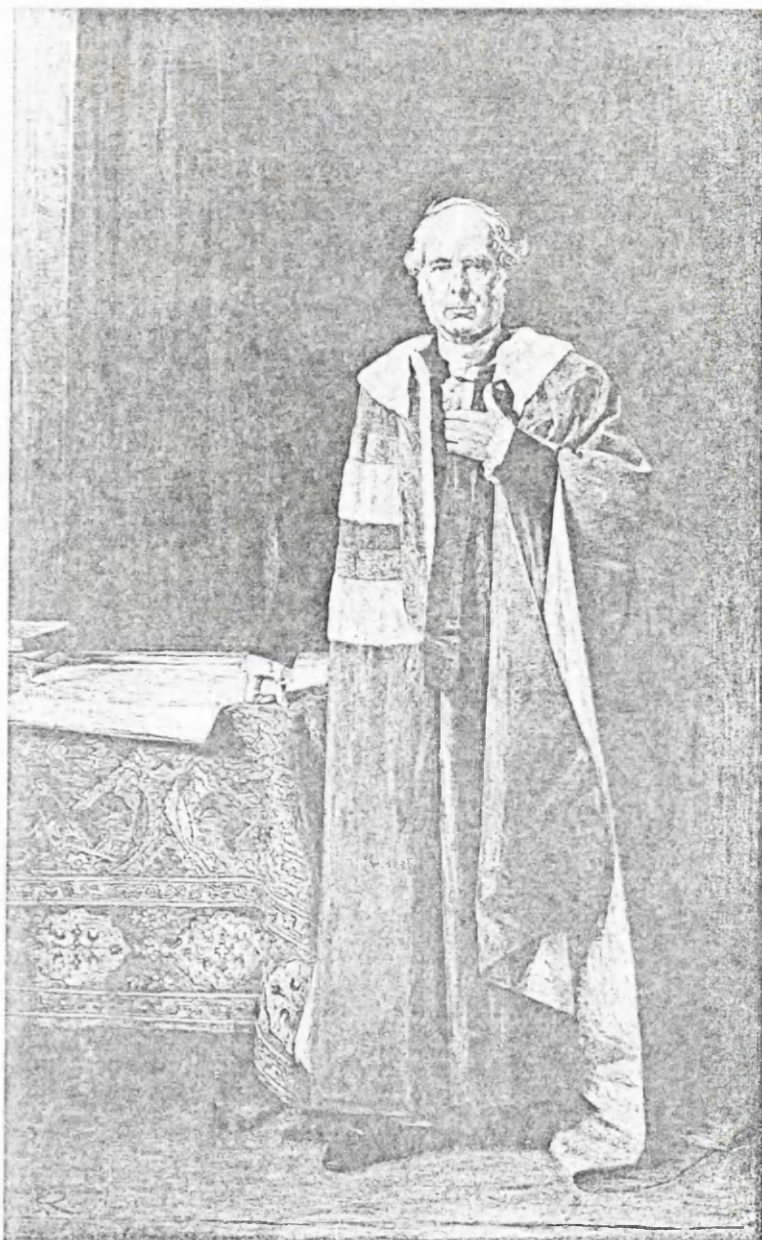
"The Life and Achievements of James, First Baron

Moncreiff"

1811 to 1895

SUBMITTED BY
WILSON HARVEY BAIN
✓

FOR THE DEGREE OF M.LITT.,
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MAY, 1977



*James 1st Baron Moncreiff of Tullibole
and 11th Baronet.*

B. 1811. D. 1895.

FROM THE ORIGINAL IN THE PARLIAMENT HOUSE, EDINBURGH.
BY SIR GEORGE REID, P.R.S.A.

Thesis
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SUMMARY

This study of the life and achievements of James, first Baron Moncreiff (1811 - 1895) was based upon critical analysis chiefly of primary sources, including Parliamentary measures and debates; manuscript papers such as letters, memorials and memoranda; contemporary newspapers, periodicals, and diaries; pamphlets and speeches. Essential information was gained from James Moncreiff's own speeches in court, Parliament, Universities and other platforms and his writings, chiefly in the Reviews. The secondary sources available included G.W.T. Omond's "Lives of the Lord Advocates" which sheds invaluable light on Moncreiff's private life as well as on his public duties.

Moncreiff's youth in Edinburgh at the time of Waterloo and "Peterloo," his days at the High School of Edinburgh with its emphasis still firmly on the Classics, and his Arts and legal studies at the University of Edinburgh all had a strong influence on a receptive mind. At twenty, "the Don", as some fellow students called him, was already a man of whom success was expected, and he later described his University days as "the gold-yielding territory" on which a sound career and happy life could be built.

After the usual early struggles to gain briefs, Moncreiff won a reputation as a good advocate, particularly knowledgeable about Church matters, and he was engaged in several important cases such as that of Marnoch, at a time when his father, the judge Lord Moncrieff, was closely involved with those who, like James, joined the Free Church after the Disruption of 1843. Always interested in politics as much as in the law, James Moncreiff became Solicitor-General and, in 1851, Lord Advocate in Russell's Ministry. For the next eighteen years, with three short periods in opposition, he served, as a staunch "Edinburgh Whig", in several Liberal Governments under Lord Aberdeen, Lord Palmerston, Lord John Russell,

and William Gladstone. A heavy burden was made more difficult when the post of Lord Advocate itself was attacked by some Members, who considered that Scottish business was shabbily treated in the House, and that a Secretary of State for Scotland, as well as legal officers, was required.

During his years in the House of Commons (1851 - 69), Moncreiff was particularly concerned to establish a fully national system of education, but his major Bills of 1854, 1855, 1856, 1862, and that of 1869 introduced by the 8th Duke of Argyll, were defeated. This occurred largely because Church of Scotland opinion opposed any weakening of the links with the parish schools and because English Members of both Houses feared the Bills would become "pilot balloons" for a similar measure in England. As a result, the Lords, influenced by such opposition, obstructed the measures, despite Scottish M.Ps. voting for them. Moncreiff did, however, succeed in opening the parish as well as burgh schools to those outside the Church of Scotland, by the Parochial and Burgh Schoolmasters' Act of 1861, and with his colleagues, Alexander Murray Dunlop, the Duke of Argyll, and John Clerk Brodie, he helped to keep the issue before the public and Parliament. Although there were important differences between his proposals and the Education Act of 1872, there is little doubt that George Young's measure was influenced in important respects by the preparatory work already done. Moncreiff was also one of the most experienced members of the Duke of Argyll's Commission, which produced such detailed statistics on Scotland's schools and the number of children attending or absent, that many claims for the efficiency of the existing system were greatly weakened.

James Moncreiff's interest in education also encompassed the more limited but important reform of

Industrial Schools, Reformatories, and endowed schools, while his constant affection for his College days encouraged him to work for the improvement of the Scottish Universities. His Universities Act of 1853 opened the door to professorships for able men from all Protestant communions, just as the 1861 Act ended restrictions in schools. He also worked as a Commissioner on the executive body of 1858 and the investigation of 1876, both of which produced significant Reports on the Scottish Universities. Honorary degrees, Presidencies, and the Rectorship of his alma mater were tangible rewards for his contributions to Scottish education.

While attempting to improve the efficiency, and expand the provision, of Scottish education was a major preoccupation for Moncreiff, he was also concerned with passing major legislation on many other matters, notably mercantile and bankruptcy law. His expertise and popularity in the Commons meant that Prime Ministers asked him to make major speeches, for example on foreign affairs at the time of the Crimean and "Arrow" wars. The other side of the political coin, however, was the succession of local difficulties in his Leith and subsequently Edinburgh constituencies, particularly over the Annuity Tax, which led to his turning away from another constituency to the Universities of Glasgow and Aberdeen.

His eminent fairness, a lucid delivery and the ability to present facts in a memorable fashion contributed to his distinguished career as an advocate and Judge, whether defending, as in the Chartist sedition trial of 1848, prosecuting on a murder charge - such as that against Madeleine Smith in 1857, or presiding over a controversial case, notably the City of Glasgow Bank

Directors' trial of 1878. A wide public also knew him as a popular lecturer, on topics ranging from the law to science and scripture, and readers of the Reviews were informed and entertained by his learned contributions on history, literature and contemporary politics.

Yet it was for his efforts on behalf of Scottish education that he was best remembered. As the "Scotsman" recalled after his death in April 1895, "In and out of Parliament he attacked the citadel of custom in education and made breaches in the walls.... he cleared the way for the assaults of his successors". Perhaps the keynote of his career as lawyer, politician, reformer, lecturer and reviewer was his belief that a properly informed and educated people was the strongest bulwark against crime, vice and warfare between the classes, and the best guarantee of an orderly, harmonious and prosperous country.

PREFACE

As Frances Hawes wrote in her study of Lord Brougham, "No biography of as versatile and active a man in the compass of a single volume can be exhaustive." While James Moncreiff was a very different personality from his mercurial friend, Brougham, the breadth of his interests and accomplishments were also such that no one volume can encompass all. Born in 1811 in the year of the Quddites, he died in 1895 when a few automobiles were appearing on the highways; engaged on the side of Catholic Emancipation in his first political controversy, he sadly broke with the Gladstone Liberals when the Grand Old Man urged Home Rule for Ireland sixty years later.

His upbringing in an Edinburgh Whig family, with eight generations of clergymen, a Perthshire baronetcy, and the closest connections with Parliament House in his ancestry, remained a powerful influence all his life. An early interest in political oratory, tolerance for his opponents, the Evangelical slant of his Presbyterian views, the love of his native city and of the Glenalmond trout streams, had their origins in his childhood, and Moncreiff was a man who consciously treasured his inheritance. He was, however, willing to learn from new experiences; fifty years at the bar or bench with forty years in Parliament combined to give him the practical experience of men and women of all classes and situations which enlightened and enlivened his words and actions. His concern over the effects of squalid wynds on the young, and the temptations to become criminal and to cause disorder which were strongest in overcrowded and diseased areas, was increased by his years as an advocate; his demand for an end to the exclusion of Free Churchmen from posts in parish

schools and Universities was intensified by his experience of ineffective provision and supervision of schools while he was Lord Advocate between 1851 and 1869. His campaigns against bribery in elections and for an extension of the franchise, both in 1830 and in 1860, were part of a consistent and coherent view of the good society. This would be an harmonious, ordered Christian nation founded on the principles of free trade, hard work and a national educational system; with the aim of producing independent men and women who would work with benevolent leaders for prosperity, without rancour between classes.

James Moncreiff was, in some respects, a typical Scotsman of his age, proud of his country's legal system, an enthusiastic admirer of John Knox and the Scottish Reformers, and suspicious of attempts by Roman Catholics to proselytise, although he supported their claims to full citizens' rights. He did not believe that Government should intervene in men's lives unless the alternative was inefficiency - therefore, he firmly supported the Whig policy of free trade but demanded public schools, funded by rates and taxes and established by Act of Parliament, to improve Scottish education before 1872. It is probable that his name would be better known had not he become Lord Justice-Clerk in 1869, and George Young, the new Lord Advocate, piloted the famous Education Act of that year to its successful conclusion. For, as A.J. Belford noted in his study of the Educational Institute of Scotland, much of "the credit was due to James Moncreiff, whose education of the country and of Parliament had made the measure possible."

As it was, the Parochial and Burgh Schoolmasters Act of 1861 was his limited but crucial educational achievement on the statute book, opening the schools for the first time to those outside the Established Church. As important, however, were his efforts, with colleagues such as Alexander Murray Dunlop and the 8th Duke of Argyll, to keep the issue of a national education system to the fore, even when public opinion lost interest in the late 1850s. For Moncreiff placed great trust in the opinion of an informed, enlightened public. His writing and particularly his speeches, for varied audiences, on history, law, foreign affairs, science and scripture, as well as his Review articles for more specialised interests on politics, literature and theology, were intended to educate his audience, to establish certain principles in which he believed, and to entertain. Lord Deas believed that "he could lecture on any subject", for he read voraciously from Pascal to Zola, and could command attention with his lively and, when appropriate, humorous approach. Above all, whether he was addressing a Scottish jury in a murder trial, speaking to the House of Commons, or lecturing to The Young Men's Christian Association, he had the priceless assets of "lucid and picturesque" expression. Few could marshal the facts of an argument more clearly and succinctly - his Parliamentary speeches were notably shorter than many of his colleagues - and his gift for a memorable phrase, such as his description of University days as "the gold-yielding territory", was much coveted.

His long career as Lord Advocate, which

helped produce over a hundred Acts, made him a dominant Scottish Member of Parliament in the 1850s and 1860s. Although his relations with opponents were usually excellent, there were enemies, notably the Edinburgh Voluntaries and Radicals, who called him "a Parliament House man", a lawyer's puppet, and forced his resignation as Member for the city. Nevertheless, the impressive list of his accomplishments both for the country and the city show that this taunt was unfounded. In 1893 J.C. Watt believed that no man "had contributed more to the legislation under which Scotland has made strides in educational and economic advancement."

Because so much of his effort was directed to establish a fully national system of schooling chapters 4 to 7 of the present work are concerned with those attempts, notably in 1854-1856, when public debate and interest in the matter was at its height. The sources for this and for information in other chapters about James Moncreiff's youth, his work for the Universities, his Parliamentary career, the events of local significance in Edinburgh, as well as his parallel career in the law and his writing and lecturing, are set out in the Bibliography. They include Acts of Parliament, Bills, Parliamentary debates, pamphlets, periodical articles, newspapers, obituaries and the invaluable "Lives of the Lord Advocates" by G.W.T. Omond, who knew and admired Moncreiff. Equally useful were the Boxes of Lord Advocate's Papers in the Scottish Record Office, containing letters and memoranda from 1851 - 69, but a box of James Moncreiff's papers, recently rediscovered in Tulliebole Castle, was not available during the writing of the present work.

The absence of any mention of James Moncreiff

in most works of Scottish history written in the 20th century has led to neglect of an important and influential man. It is perhaps partly explained by his failure to complete the Memoirs which he began, based on his correspondence between 1840 and 1870, and these were never published. He was never a man to publicise himself; rather, he concentrated on trying to achieve a particular goal in a practical fashion. He was involved in many "campaigns" in and out of Parliament over the years and although he campaigned enthusiastically for better education, an extended franchise, and fair treatment of those outside the Established Churches, it was with a realistic approach. "It is idle to stand upon an honest conviction which you know cannot be carried out, and refuse to aid that which you know may be carried."

This practical approach was not part of a driving personal ambition, for Moncreiff continued as Lord Advocate, enjoying the cut and parry of Commons debate, rather than accept the post of Lord Justice-Clerk at an earlier date. In 1850 Lord Cockburn described Moncreiff as "a good lawyer, a pleasing and forcible speaker" but wished "that his outward man was somewhat more commanding." Naturally his experience in the Commons demanded that he become less self-effacing, but he never wished to gain easy popularity by "playing to the gallery". When this essentially modest man, who was as much at home in a New Town drawing room or a University General Council meeting as in the Court of Session or the Commons Front Bench, considered what had encouraged him to work for a better society, his words have the ring of truth:

"If there mingled with a true love for my countrymen..... the ambition to have one's name sometimes remembered in connection with the improvement

and advancement of her sons....If that be a crime,
I plead guilty. Beyond all question, it has been
the spur that has carried me through many laborious
years."

NOTES

- (1) The spelling "Moncrieff" is occasionally encountered in references in the 1850s, but both G. Seton "The House of Moncrieff" and F. & W. Moncreiffe "The Moncreiffs and Moncrieffs", authoritative family histories, insist on "Moncreiff" and this was the form used by James Moncreiff himself. The present work accordingly uses "Moncreiff".
- (2) In references, the important source, G.W.T. Omond "Lives of the Lord Advocates" volume 2 will be termed "Omond" and the Boxes of Lord Advocate's Papers in the Scottish Record Office termed "L.A.P. Box 15 or 16." (These have now been reclassified, May 1977, as Boxes 47/1 and 47/2.)

CHRONOLOGICAL TABLE

- 29th Nov. 1811: Birth of James Moncreiff.
- 1819 - 25: At the High School at Edinburgh.
- 1825 - 32: Student at the University of Edinburgh.
- 1832: Attends meetings in favour of Grey's Reform Bill.
- 1833: Called to the bar; his first published article in the "Presbyterian Review."
- 1834: Marries Elizabeth Bell.
- 1837 Counsel with Andrew Rutherford in the - 41: Non-Intrusion disputes.
- 1843: With his father and brother Henry joins the Free Church at the Disruption.
- 1844: First contribution to inaugural number of "North British Review".
- 1848: Defends Chartists on sedition charges.
- 1849: First article in "Edinburgh Review".
- 1850: Solicitor-General
- 1851: His father, Lord Moncreiff, dies; he becomes Lord Advocate and Member for Leith; supports Viscount Melgund's Education Bill.
- 1852: Introduces his first major Bill - to end University tests, but is out of office; introduces a Parliamentary representation Bill.
- 1853: Lord Advocate in Lord Aberdeen's coalition government; University tests abolished; first popular lecture in office; short tour of Europe.
- 1854: Introduces Bill to extend education of the people of Scotland but second reading postponed in the Commons. Act of registration of births, marriages and deaths.
- 1855: Similar Education Bill introduced but withdrawn in Lords.

- 1856: Two Education Bills withdrawn after amendments in the Lords; Bankruptcy Act: Mercantile Law code established; major speech on the fall of Kars; counsel for defence in "Scotsman" libel case.
- 1857: Receives freedom of Edinburgh; Education Act to stabilise parish schoolmasters' salaries; prepared Universities Bill; prosecuting counsel in the trial of Madeleine Smith.
- 1858: Lord Palmerston resigns - Moncreiff in opposition till 1859; John Inglis's Universities Act and his University Commission, with Moncreiff as member; honorary L.L.D. (Edinburgh); Dean of the Faculty of Advocates.
- 1859: Member of Parliament for Edinburgh; Lieutenant-Colonel of Volunteer Corps formed by the Faculty.
- 1860: Edinburgh Annuity Tax abolished.
- 1861: Parochial and Burgh Schoolmasters' (Scotland) Act.
- 1862: Major Education Bill introduced but withdrawn in the Commons; Yelverton case begins; Elected President of Associated Societies of University of Edinburgh.
- 1864: Duke of Argyll's Commission begins work with Moncreiff a member; defends the Lord Advocates' office in the Commons.
- 1866: Lord Derby Prime Minister: Moncreiff out of office.
- 1867: Second Reform Act; Moncreiff presses for the parallel measure in Scotland to be introduced; Final Argyll Commission Report published; dispute with Bishop Colenso of Natal.

- 1868: Resigns as Member for Edinburgh; successful candidate for Universities of Glasgow and Aberdeen; Lord Advocate once more.
- 1869: Argyll Education Bill, supported by Moncreiff, lapses; Moncreiff becomes Lord Justice-Clerk; publishes novel; Rector of University of Edinburgh; made Privy Councillor.
- 1871: Created baronet in his own right.
- 1873: Made 1st Baron Moncreiff of Tulliebole.
- 1874: Maiden speech in House of Lords.
- 1875: President of the Cockburn Association.
- 1876: Member of University Commission.
- 1878 - 80: Chairman of Endowments Commissions; ~~L.f.d.~~ (Glasgow) *degree*.
- 1881: Lady Moncreiff dies.
- 1882: Last speech in House of Lords.
- 1883: Succeeds Sir Henry Moncreiff as baronet.
- 1888: Retires as Lord Justice-Clerk.
- 1891: Final contribution to the "Edinburgh Review".
- 1892: Essay on "Lord Jeffrey and Craigcrook".
- 27th April 1895: Death of James Moncreiff.

CHAPTER ONE

Youth and Student days.

"The gold-yielding territory on our way
to (a) career" (James Moncreiff)

1811 was the year of the comet in Edinburgh. "The nights were clear and bright; we often contemplated the comet from Princes Street".¹ Thomas Hogg also noted that it was a year of "the still more famous vintage" but in the Moncreiff household in Northumberland Street it was a vintage year for another reason. Their second son James was born on 29th November to Sir James Wellwood Moncreiff, advocate of the City of Edinburgh, and his wife Anne, daughter of the naval Captain George Robertson. There was no doubt of his family's political standpoint. The infant Moncreiff's antecedents were impeccably Whig.

In 1866 he wrote "I have learned my liberalism in the school of the old Whigs - to which I profess to belong - the old Edinburgh Whigs".² Lord Cockburn, who knew the family well, recalled that when Sir James Wellwood Moncreiff "was rejected in 1805 for the office of Procurator of the Church, one of the reasons given was that he was 'a bird of a foul nest' - meaning that he was a son of the Whig Sir Henry Moncreiff". Of James, he wrote "This one's nest is still fouler, for to the filth of the grandfather is added the steady abominations of the father".³ Such comments indicate the strong distaste which Pitt's supporters felt towards the Whigs such as Cockburn and the Moncreiffs throughout the French Wars. The Pittites tarred them with the Jacobin brush, although Edinburgh Whigs were usually enthusiastic for reform rather than revolution. As James Moncreiff wrote in his middle years, "It is the glory of the Whig party that far from destroying any of the great institutions of the country

there is not one which has not derived fresh vigour from the process of Reform...the strength of the Liberal party lies in its moderation rather than its violence...we are what we have ever been - Whigs but not Radicals".⁴ The atmosphere of Whig politics and policies was as familiar to him from his youth as the skyline of Edinburgh Castle, Calton Hill and Arthur's Seat.

The houses in which James lived with his four brothers and three sisters, first in Northumberland Street, north of Queen Street, and then in Moray Place, a more fashionable part of the New Town, were the scene of constant meetings of lawyers, clergymen, writers and others - usually of the Whig persuasion. An impression of such evenings in the capital was presented in the reminiscences of a "Highland lady" writing in 1814. "Our visiting began with dinners from the heads of the Bar, the Judges, some of the Professors, nearly all Whigs, for the two political parties mixed very little in those days. The hour was six, the company numbered sixteen, plate, fine wines, middling cookery, bad attendance and beautiful rooms. One or two young people generally enlivened them. (The dinners ended) before the Christmas vacation. In January began the routs and balls".⁵

SCHOOLDAYS

Young members of the Moncreiff family had their own games and reading to fill their days, but soon it was time for James to follow his oldest brother Henry to the High School. He entered Mr. Carson's class in October 1819, one of a class of 178 boys. Even in an era of large classes in schools, this was a sizeable group and bore testimony to the high regard in which the capital's High School was held, though many parents complained that their sons had to travel too far from homes in the New Town to the Infirmary Street schoolyards.

To lads the walk was a joy. James Moncreiff "remembered the Princes Street Gardens - how they used to make their way across that morass in the mornings to High School, to the considerable danger of limb and life, which of course made it the schoolboys' object of attraction".⁶ He seems to have been, according to his 19th century biographer, G.W.T. Omond, "a bright, clever boy, who worked and played with equal spirit".⁷ He progressed in 1820 to Mr. MacKay's class and in 1824 to the class of Aglionby Carson, who was now Rector. Latin, which he studied throughout his High School years, Greek, and Geography were the main subjects which he studied: the school's lists of pupils and fees show that his father was paying a guinea per subject by his final year, 1825. Forty years on, three dozen of Mr. MacKay's 1820 - 23 class were proud to be photographed for a special album. Among them were James Moncreiff and John Inglis, by then Dean of the Faculty of Advocates and Moncreiff's friend and rival in many a trial.

In retrospect, Moncreiff had few doubts about the value of his schooling. "The High School of Edinburgh was the school in Scotland...and at the cost of a few pounds a year the sons of peers and those of peasants were trained together. There Scott, and Brougham, and Horner, and Jeffrey, received the elements of their instruction, and had the means of carrying scholarships to some degree of critical eminence".⁸ He noted that schoolmasters "are apt to be ardent lovers of liberty" and this may suggest that he found masters such as Carson and MacKay inspiring teachers. Another pupil of the Rector, George Borrow, described him in "L'Avengro" (page 54) as "that model of a good Scotchman, the shrewd, intelligent but warm-hearted and kind dominie, the respectable Carson". Borrow recalled the school, an



The School at High School Yards, 1777-1929



ALEXANDER
ADAM, LL.D.
1768-1809

JAMES
FILLANS, M.A.
1810-1820



AGLIONBY-ROSS
CARSON, LL.D.
1820-1845

THREE RECTORS
OF THE HIGH SCHOOL
OF EDINBURGH

[Face p. 85]

"oblong structure of tawny stone - the eight hundred urchins... at eight every morn we were all gathered together in the long hall from which, after the litanies had been read, the five classes trotted off in long files up the five spiral staircases of stone, and well do I remember how we of the third sat hushed and still, watched by the eye of the dux until the master walked into the room". Moncreiff became head boy of the school and was an excellent runner and athlete "in the limited card then allowed a school". He appears to have taken a broad interest in all aspects of the school's activity at a time when the Principal of Columbia College, New York, wrote: "The reputation of this seminary outstrips almost every other in the island. I am satisfied that it is precisely the school I have been longing for".⁹

One regret about his schooldays was voiced by Moncreiff when he became Lord Justice-Clerk. "I have felt the want of knowledge in German in my legal investigations the greatest possible drawback".¹⁰ Modern languages were not yet part of the High School curriculum. Yet he did not regret learning the classics, which he regarded as the pillars of his education, (as well as) "the liberalizing and enlarging effect of thorough education, in producing intellectual breadth; a thorough training in the classics, and a competent knowledge of modern languages, are the keys of jurisprudence".¹¹ He criticised Robert Lowe for denouncing classical learning as worthless when "hardly a retort which falls from his lips does not bespeak familiarity with the great ones of antiquity. The study is not vain if pursued aright. The classics are

the heralds of noble thoughts, inciting to noble deeds. One generous element inspires all the higher classical authors - the love of liberty, the pride of freedom, the hatred of oppression".¹²

THE UNIVERSITY

That love of liberty and of classical learning remained with James Moncreiff when, after "carrying off the principal honours" of the High School,¹³ he matriculated at the University of Edinburgh in 1825. He was fourteen, not an unusually early age for boys to enter the University in/early nineteenth century. There he helped to found the Classical Society - "the first Debating Society to which I belonged" in the Summer of 1827. "We met in a classroom of the old High School. We were to discuss nothing but classical subjects...in Latin. Our Latin debates had the merit of brevity for the speeches were undeniably dull. The next session found us discussing classical subjects in our mother tongue. The third found us plunged overhead in the wrath of politics on the great question of Catholic Emancipation".¹⁴ From March 1830, he gained "more mature experience in the Speculative Society, a well established association chiefly of Whigs and Radicals which Lord Cockburn described as "an institution which has trained more young men to public speaking, talent, and liberal thought, than all the other private institutions in Scotland".¹⁵ Lord Brougham, Francis Jeffrey, Francis Horner and Sir Harry Moncreiff-Wellwood, James's grandfather, were among "powerful persons who took an active part" in such "mimic warfare". At 20, James

Moncreiff was soon known as the most effective speaker in the Speculative - "Don of the Spec", the young man most likely to succeed in the law or in politics. In later years he recalled that the Speculative, founded in 1763 and a rival of the Tory Forensic Society, "for many years... remained a training ground for the rising spirits of the Whig party such as Lord Lansdowne and Lord John Russell, and magnates of the law and the Church were members".¹⁶ Rhetoric often continued until the small hours, after being started by an essay. Moncreiff penned more than most of his fellows, choosing to pick such as "The Political Power of the People", which proved a major issue in his later career, just as it was in the days of the Great Reform Bill.

Debates were not his only concern, however, and diligent study was required to win both the Gold Medal of the Senior Humanity class, donated with ten guineas by the Writers to the Signet, and the Moral Philosophy class medal, in 1828. The second award led to a touching ceremony in Moncreiff's final years. In the 1890s, the granddaughter of John Wilson, Professor of Moral Philosophy, found among his belongings a medal with the date 1828. Wilson, better known as the author "Christopher North", should have presented it to James Moncreiff; instead, the late Professor's granddaughter called on him "and, to his infinite delight, placed the medal round his neck".¹⁷ Despite occasional absent-mindedness, Wilson was a strong influence upon the young man. "The two sessions I spent with him were a long procession through a garden of flowers".¹⁸

"The Bailie" believed that "Moncreiff's

"academic tone was taken" from Wilson and from Thomas Chalmers - "two men who were suited to inspire enthusiasm in the youthful breast".¹⁹ Wilson certainly inspired one of the most vivid cameos painted by Moncreiff's eloquence. He described him "as a thinker, a writer, and an orator, pre-eminent, with the lazy indolence of a lion not wishing to be disturbed. He used to walk rapidly into the Hall, grope uneasily among a heap of crumpled papers, go on for a quarter of an hour, evidently with the wrong one, and then, the papers being flung aside, would plunge into the middle of his subject. Although the topic remained little less exhausted than when he began, we eagerly resumed our studies to master it".²⁰ Memories of the Humanity class were equally clear four decades later. Students of Latin in the 1820s were often ill prepared to undertake a searching course at University, especially if they had come direct from parish school. Matters had improved somewhat since 1793 when, according to Cockburn's sardonic pen, the Humanity class was "a constant source of unchecked idleness and disrespectful mirth".²¹ Even so, in the 1820s, "Professor Pillans had to reduce his really fine taste to the teaching of grown men the element of Latinity".²² Moncreiff knew what he owed to Pillans. "He imparted what to me was valuable - a sense of the sublime and beautiful in composition"; Moncreiff's own style of speaking and writing was above all eloquent through its lucidity.²³

On the other hand, Thomas Chalmers, Professor of Divinity, may have shown the young student the influence

which powerful preaching and oratory could have. He attended Professor Chalmers's sermon in the High Church on cruelty to animals, in order to garner some hints for Latin verses on a fox-chase. If that was his main reason for attending the sermon, clearly he was intent on putting his leisure time to the best use. "It did much for my poem, not much perhaps against cruelty to animals, for a more vivid picture of a fox chase I never heard. I was amazed, bewildered, entranced. As one excited and magnificent paragraph terminated, there came the long-drawn sigh throughout the vast multitude, the reaction of intense attention".²⁴ Something of these sermons and lectures may have gone into the articles which Moncreiff wrote as Editor of the University Magazine, rather a serious periodical. "Who the editor was", chaffed a rival production, "was a mystery, but murder will out - it was wee Jamie, Demosthenes parvulus, the future Dean, the Don of the Spec, the most precocious bantam that ever taught his grandmother to suck eggs".²⁵ Through the friendly insults, one may sense that a great deal was expected of the young Moncreiff.

At University many friendships were forged and, although Moncreiff did not rebel against his Whig antecedents, "of the many friends I still retain many were those with whom I lived in a state of chronic warfare on Catholic disabilities or Reform in Parliament",²⁶ in the late 1820s and early 1830s. Among distinguished members in the Speculative Society were Archibald Tait, later Archbishop of Canterbury, and Campbell Swinton, a staunch Tory who served with Moncreiff on the Royal Commission which investigated the Scottish Universities

in 1876. He also knew other students who were from less comfortable homes and spoke of them in the 1860s in terms which showed both his characteristic sympathy with the underdog and his respect for "manly" struggles against difficulties. "Many a tale can our Scotch Universities tell of fierce, protracted battles with poverty endured and won in the cause of learning. A dark lodging, which hardly lets in the dim December sun, noisy neighbours with squalling children - the exertion of will necessary to conquer these drawbacks must stamp in the mind the knowledge so painfully gained".²⁷ Such a struggle could add "manliness to the character, and vigour to the intellect" by encouraging earnestness and effort, two of Moncreiff's watchwords. He regarded the years at University as perhaps the most valuable experience a man could gain. "The period of real education is short; that isthmus between compulsory study and compulsory labour is the gold-yielding territory in our way to a career!"²⁸

A constant theme of his speeches and writing was that educational opportunity in schools and Universities, for both learners and teachers, should be open to all who had the ability and enthusiasm to use it well. The influence of the First Book of Discipline is clear: that every "lad o' pairts" who was willing and able must make use of his talents for the good of the Commonwealth as well as for his own advancement. Of his school, he believed that "the system which brought together on one form the scions of nobility and the sons of artisans had its influence for good". Of the

Scottish Universities, he claimed "It is in this distinctive feature that I think the excellence is mainly to be found. It is national and not exclusive - not intended for any caste or class, but formed on a plan which contemplates the instruction of all classes".²⁹ Those remarks were made on his installation as Rector of his alma mater, and naturally he was in a mood to praise the University; yet he was never a mere flatterer. Clearly he was moved when thanking the students who had elevated him to the position held by Gladstone and Carlyle, to think of what he and others had gained from University life.

"All I have ever accomplished has been the fruit of my experience as an alumnus of your University...College days are a miniature of life itself. The first dawn of independent thought sends a flutter through the heart... Before contact with the world has blunted his dogmatism and finer sensibility, a man may really be wiser at twenty than at forty, although, perhaps" - a wry smile, possibly - "it is not absolutely necessary that he should look as if he thought so".³⁰ In this retrospective glance at his University days, clearly the sentimental pull of nostalgia was strong. Yet it is probable that Moncreiff felt he owed the University a real debt of gratitude which he attempted to repay as Rector; in the part which he played in ending the restrictive tests; and in his work on the Royal Commissions of 1858 and 1876 which attempted to improve the University's efficiency. A thorough grounding in the classics, the chance to write with discipline, skill and fluency,

opportunities to discuss on a wide range of subjects with his fellows, planning speeches for and against all the political standpoints of the day - all were to be useful to Moncreiff in his legal, political, and literary career. Such was "the fruit of experience as an alumnus of your University".

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CHAPTER TWO

An Edinburgh Lawyer.

*"He is able professionally ; an excellent speaker ;
and of a capital breed"*

(Lord Cockburn)

As a student, James Moncreiff always believed that events outside the quadrangle should not be ignored, and it is probable that he attended some of the trials in which his father or other advocates acted. The most famous of that time was the prosecution of the notorious William Burke in 1826. Sir James Moncreiff, then the Dean of the Faculty of Advocates, and later described by G.W.T. Omond as "the best lawyer in Scotland", defended¹ Burke on the charge of murdering three persons with William Hare (who turned King's evidence to save himself) in order to provide bodies for Dr. Knox's dissecting chamber.

Seldom can a defending counsel have had a more thankless task. The Dean "made a speech of extraordinary ability," in which he refused to defend the character of Burke. "I have", he told the jury "too much respect for your understanding and my own profession to do so".² His argument was that, so far as the independent evidence stood, the murder might have been committed by Hare "that cold-blooded, acknowledged villain" and that Burke could not be safely condemned on evidence which was inconclusive, if the informer's evidence was rejected. This speech was delivered towards the close of the trial and the jury, exhausted by a sitting of 22 hours, took only 50 minutes to find

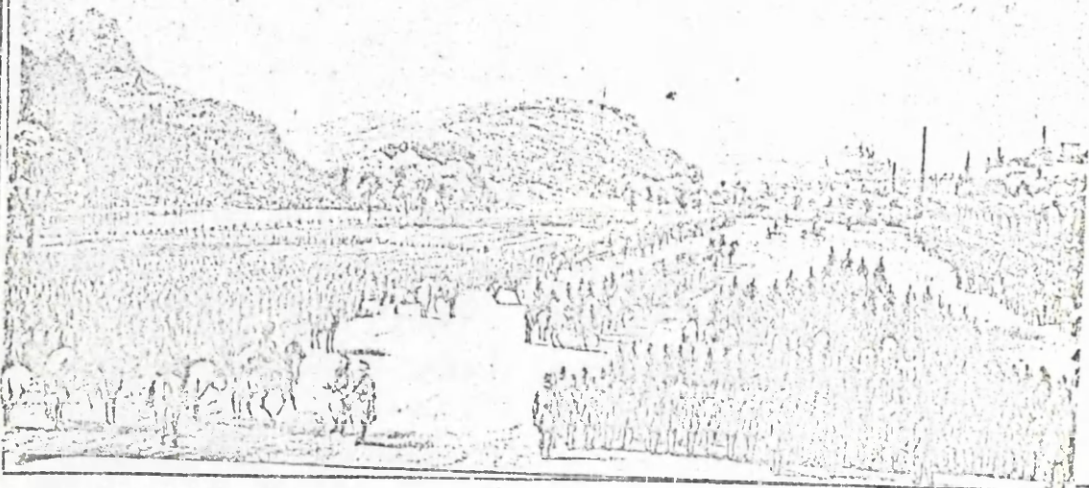
Burke guilty.² One boy of six years was taken to the trial by his father, a Writer to the Signet. The evidence of Sir J.H.A. Macdonald, Lord Justice-Clerk in succession to James Moncreiff (the younger) in 1888 is largely hearsay as a result but may suggest the qualities of the Dean, who was "the lawyer" pure and simple, and not much versed in practical matters. "I have heard it said of him that he did not know that the lighting gas came to the burners through pipes from a distance. Lord Cockburn was constrained to say that he shared 'a great inferiority of general knowledge'". It was reported that when the Dean became a judge as Lord Moncreiff, he tried an engine driver after a fatal accident at a level crossing. The fireman noted that his driver "whistled loud enough to be heard more than half a mile off". Lord Moncreiff laid down his pen and, after looking sternly at the witness, said "Cockburn, did you hear that—the man's perjured!" When Cockburn suggested that this meant a whistling machine, he remarked "I never heard of such a thing. Ye're most abominably rash to say such a thing".²

THE LURE OF POLITICS

If the young James Moncreiff was a more practical man than his father, he nevertheless learned a great deal about politics and writing about public affairs from his father. He was present at the great meeting in Edinburgh on the Catholic Disabilities Repeal in 1829, when the Dean opened the speeches and Thomas Chalmers, Francis Jeffrey and others of the Whig persuasion spoke. "I remember the breathless admiration with which I heard the liquid periods and the deafening burst of cheering".³ His own



Sir Henry Moncreff Wellwood, the 8th
BARONET and grandfather of JAMES MONCREIFF



VOLUNTEER REVIEW, 1860

"apprenticeship" in learning to speak for "the cause of Reform began on the platform in the Queen's Park in 1832" (on that occasion for Parliamentary Reform). "The banners' inscription was the Bill, the whole Bill and nothing but the Bill".⁴ Of religion and philosophy, he had gathered much in his adolescent years from his grandfather, Rev. Henry Moncreiff-Wellwood, Minister of St. Cuthbert's, Edinburgh. The old man, who died when James was 16, used his grandson as a walking-stick as they strolled in the New Town. Moncreiff described him as "the philosopher" whose "life seemed charity itself" and in a poem written in the 1830s, remembered "that last delightful morn...we sat within a natural bower and spoke of a thousand pleasant things, and of the love of God to man".⁵

As well as editing the University Magazine in 1831-2, he wrote articles for the "Presbyterian Review", which supported the Established Church against dissenters and was an organ of the Free Kirk after 1843 until it closed in 1846. James and his elder brother Henry spent the Summer of 1832 at Tulliebole, the Kinross castle which accompanied their father's inheritance of the Moncreiff baronetcy five years before. There they wrote "Presbyterian" articles with the advice and revisions of the baronet, who was soon to be in the midst of the controversies within the Church. The family had played its part in pressing for the Great Reform Act, and canvassing in the subsequent election was in full swing; "but in the peaceful Valley of the Devon the young men were quietly

studious".⁶ Henry, who had entered the Church, criticized the debates on Non-intrusion of ministers whom a patron, but not the congregation, supported. James, as he was to do on several future occasions, was commenting on the Reformation. Opening the volume to see his first published contribution to a Review must have been an exciting moment for him. "I was in my younger days a diligent student of the earlier numbers of the 'Edinburgh Review'. I found them a repertory of vivacity, of vigour, and of intelligence".⁷ Yet both young men specifically asked the editor of the "Presbyterian", in some proof sheets, not to mention their names as the authors. Anonymity was common in such Reviews and James Moncreiff's name was never added to any article which he contributed to the "Edinburgh Review", "North British Review" or "Fraser's Magazine". Omond believed that such specific caution on James's part may have been a precaution "against injuring his prospects at the bar by letting it be known that he occupied himself with literature as well as law".⁸ That view is supported by his diffidence about allowing a volume of poetry to be published; the lines, written in the 1830s when "he was making his way in the legal world" did not appear until 1846, since as he stated in the preface, "professional claims interfered to make such pursuits unlawful". The double meaning of the last word would be understood by his friends.⁹

A YOUNG LAWYER

For he followed his father's career, leaving the "training-school for professional life"

with his legal examination in March 1833. His thesis in Latin, about 1,000 words, formed part of this test, which changed little between his father's entry to the bar in 1799 and Sir John MacDonald's initiation half a century later. MacDonald noted that "examinations were real and strict" (James Moncreiff was questioned by John Hope, Dean of the Faculty) but the "disputation" or thesis was less so.¹⁰ Moncreiff's disputation was entitled "de eo per quem factum erit quominus quis in judicio sistat" and ended with several statements such as "periculum rei venditae, et nondum traditae, est emptoris". Usually - what MacDonald called "the supreme fake" - three friends were given Latin statements which they read out to impugn the initiate who then argued against them. Finally came the ballot of the Faculty, "The ballot-box having only about half a dozen balls, as nobody attended but the Dean and the impugning....friends".¹¹

Like the "narrator" of his novel, Eustace Pemberton, who "had actually received instructions from a real attorney on three occasions in two years and a half"¹² Moncreiff did not burst, comet-like, upon the forensic world. In later times the "Baillie" recalled that "he was not immediately overwhelmed with briefs or loaded with fees".¹³ In that journal's view, this was because "he was a Whig, the son of a Whig", but such prejudice faded somewhat after 1832. Indeed, his father had been promoted to the Bench in June 1829, although most Judges were then Tories, and the Tory Solicitor-General refused to oppose the older Moncreiff for the post of Dean of Faculty, nor blocked the ascent of Francis Jeffrey, another Edinburgh Whig, to that position. James's youth and inexperience were

probably more important drawbacks to immediate success, when many other advocates were eager for work. In some ways, his experience may have been like that of Lord Kames a century before. "Family connections, too, may have had a double-edged effect - agents were "influenced by the established prejudice that nature cannot allow two successive generations of good lawyers in one family" and were "hesitant in briefing him".¹⁵ However, he had his maiden opportunities on the northern circuit.

"To the neophyte, all is new"¹⁶ and Moncreiff never forgot his first case at Inverness Circuit Court in 1833. "I remember the old dingy courthouse with its worn stone steps... the utter bewilderment I had as an unfledged member of the bar was overmastered by a kind of senseless enthusiasm for the wild Highlander in the dock" (accused of purloining five pounds from a letter he carried to the mainland). "He did not seem half so excited as I was. It turned out, after, that he did not comprehend one word. One thing he did appreciate, when his jailer told him he might go. He executed three skips on the floor, flung his plaid over his shoulder, and was clear of the town on his way to Benbecula before the clerk had "recorded the verdict".¹⁷ The judge congratulated Moncreiff on "eloquence and ability", perhaps in this case more than mere politeness.

His marriage in September 1834 made it even more essential for the young man to acquire a good practice. His wife must have been familiar with the stresses of a legal life, for as Isabella Bell she was the only daughter of an Advocate and Procurator for the Church. For some time the couple lived with Mr. Bell

in St. Andrews Square, an arrangement which enabled Isabella to care for her father and probably suited Moncreiff's limited purse. Only when his financial circumstances improved in the 1840s - "about 1840 his practice perceptibly began to grow"¹⁸ - did the household move to 3 Moray Place near Lord Moncreiff's town home, and subsequently to 15 Great Stuart Street. By 1850 there were five sons and two daughters, (see Appendix)) of whom Henry-James and Frederick achieved eminence in the law, and Marianne became the wife of a Lord Advocate. Family affection and loyalty was a strong characteristic of the Moncreiffs, and James, as the father of a typically large Victorian family, wrote of marriage "as an institution which is the parent of civil society - the golden hinge on which the doors of the social system revolve - that indissoluble chain which binds the human family together, and unites them to heaven".¹⁹ Isabella was soon brought within Lord Moncreiff's family as well, and Cockburn notes that she accompanied Lord Moncreiff and the Cockburns in 1839 "at Aberdeen and our previous mirth has not diminished". At Arbroath "we revisited the rocks and the ruins.....This has been a merry and delightful ~~event~~ ^{Circuit}".²⁰ The young woman seems to have been accepted readily by the Moncreiff household.

EARLY CASES

Many of James's early briefs arose from the Non-intrusion issue in which his father was ultimately involved. Lord Moncreiff's resolution to the General Assembly in 1834, described by Cockburn as "the popular Veto on patronage" meant that a "minister would be disbarred from a kirk if a majority of male heads of

families, communicant members of the congregation, rejected him, whatever his patron wanted".²¹ According to an opponent, John Hamilton, however, Lord Moncreiff was strenuously opposed to the abolition of patronage: what he and the great mass of his supporters wanted was to check its practical evils. He considered that the principle of veto of Non-intrusion was reasonable, but, as his eldest son remembered, he "opposed popular election as a method for appointing ministers"²² - it was for the patron to propose an incumbent, for the congregation to accept or reject him. The Veto resolution of 1834 was passed by the General Assembly but in the following year Lord Moncreiff strongly resisted the attempt of "a wild party"²³ to enforce the Act in all cases, which would have meant virtually the end of patronage. Cockburn predicted "the Veto Act will be strongly resisted in the civil courts and otherwise by patrons and presentees".²¹ Resistance, there was, and though it occurred in few cases, they had wide repercussions. "Between 1834 and 1839 out of 150 presentations to vacant parishes only ten were vetoed, and of these only four led to legal action!"²⁴

In all four James Moncreiff was briefed as the junior, led by Andrew Rutherford, formerly Lord Advocate, and "also appeared frequently as counsel at the bar of the General Assembly". The cases involved Churches at Lethendy, Marnoch, Auchterarder and Culsalmond. "Two attained unhappy notoriety" - Marnoch and Lethendy. Of those the much more serious was the Marnoch case". The long drawn out nature of the disputes meant that advocates such as Rutherford and

Moncreiff were involved in the cases for weeks on end. The Marnoch case illustrates the complexity of such matters. After most heads of families in the local kirk had rejected the patron's choice as minister, John Edwards, Strathbogie presbytery resolved that "The Court of Session having authority in matters relating to the induction of ministers, the presbytery do delay all procedure until the matter be legally determined".²⁴ The Court declared that the presbytery must take Edwards on trial and admit him if qualified; the presbytery did so and, although the Commission of Assembly suspended the seven ministers who agreed to this, five eventually ordained and inducted Edwards as minister before a hostile crowd. For this "insubordination" the General Assembly of 1841 deposed them and described the Court of Session's involvement as "an unwarranted encroachment". Lord Moncreiff, one of the judges deciding the Auchterarder case, took a minority view on the Bench, warning that the Court should not interfere. Cockburn thought that his written opinion was the best presentation of his side of the argument. His son James was not only writing briefs for the presbyteries who rejected patrons' nominees, but by 1839 was a familiar figure at public meetings on such controversies. After the House of Lords pronounced on the first Auchterarder case, James Moncreiff spoke at a meeting in support of a measure to prevent the intrusion of unacceptable ministers.²⁵ Ecclesiastical freedom was "a cause to which every valued association, whether public or personal, devotes me, and which will be the very last which, whether in cloud or in sunshine, I shall ever be tempted to desert". This loyalty did indeed remain with him, in season or out, and in 1870, as Lord Justice-

Clerk, he declared "The jurisdiction of the Church Courts as recognised judicatories of this realm rests on a similar statutory foundation to that under which we administer justice within these walls".²⁶ In his lecture on "Church and State from the Reformation" in 1877, he supported "an entirely independent spiritual jurisdiction" to the Church, in which the State should not intervene.²⁷ This echoed a resolution of the General Assembly in 1838,²⁸ which quoted the Westminster Confession: "The Lord Jesus Christ as King and Head of the Church hath appointed a government in the hands of Church officers distinct from the civil magistrate".²⁹

The principles which he advocated in Law/court, Assembly, and on public platform were those which he took the opportunity to state in periodicals. He particularly abhorred those landowners who refused to allow the Free Church sites for its buildings - such as the Duke of Buccleuch, who relented in 1844 when the congregation were reduced to worshipping on the highway. "Landlords... supposed that a spell of difficulty would soon end the Free Church, but the natural result was intensified loyalty and bitterness".³⁰

MEMBER OF THE FREE CHURCH

The "Ten Years' Conflict" continued from the Veto Act controversy until the final break of the Disruption in 1843. James Moncreiff remembered the event with sadness. "I mourned over (the) disruption of the Established Church of Scotland, for I thought the Government at that time threw away the best, most popular, and cheapest institution in Europe. I have ceased to belong to an Established Church".³¹ It was widely believed that Government Ministers, whether under

Lord Melbourne or, from 1841, Sir Robert Peel, could not understand the magnitude of those disputes in Scotsmen's eyes. A remark such as that of Lord Cockburn about the Auchterarder case - "Scotland won't hear the last of this...for the next century"³² - appeared to be incomprehensible to many members of Parliament who could not grasp the intricacies of Scottish theology, nor Scottish attitudes to patronage, and to the independence of Church from State. It was difficult, especially writing only a few years after the event, for James Moncreiff to be objective about the Disruption. In 1846 he described the Free Church ministers as "the very flower of the Church" and claimed that "The Free Church carried with them, with hardly an exception, every name which could have lent strength to her deliberations or added reputation to her body".³³ In 1849, he was rather more cautious. The dissenters' "views may have been well or ill-founded but the movement was picturesque in its manliness and self devotion; in a country not proverbial for riches and very proverbial for providence, they have provided almost every parish with a residence for the pastor" (as well as 700 schools).³⁴

As one of those who seceded soon after the Disruption in 1843, James Moncreiff with his father and brother were noted as "Disruption Wethies". The influence which his Free Church affiliation had upon his political actions may be detected in his determination to open University posts and parish and burgh schools to Presbyterian teachers of ability, whether of Free Church, United Presbyterian or Established Church connections. Such determination, shown in the Bills which he continued to introduce in his capacity as

Lord Advocate between 1851 and 1861, was occasionally interpreted by opponents as a narrow Free Church plan to cut the links between Universities or schools and the Church of Scotland. Cumming Bruce, for example, considered his Education Bill in 1854 as a Free Church stratagem to gain equal status with the rival body. In fact, the Free Church had reservations about several aspects of the Bill, and Moncreiff, refuted such accusations, claiming that the religious tests were never meant to bar Presbyterians, nor was there "hostility, in the proper sense, between the Free Church and the Establishment",³⁵ in that their fundamental theological beliefs were so close.

He made no secret of the fact that he was a member of the Free Church, but claimed that his aim was to widen opportunities to men of talent, and increase the efficiency of Scottish education in a truly national system. Indeed, there is little evidence of narrow sectarian bias in his action. His religious tolerance may be illustrated by his attitude to the Oxford Bill in 1854,. Lord John Russell was prepared to introduce a separate measure easing the disabilities of Nonconformists, but believed that to relax the tests which allowed only Anglicans to enter the University, in this particular measure, would lead to its defeat. Twelve Ministers, however, sent a round-robin to the Earl of Aberdeen, then Prime Minister, for submission to the Cabinet. "Professing to be the advocate of religious freedom and equality, we feel that we shall be seriously compromising our political principles and our position as public men by withholding our assent from the proposed enactment. We also feel that we shall be departing from the

professions of opinions by which we have secured the confidence of constituences! They were allowed to abstain, and an amendment admitting dissentors to matriculation was carried. It might be claimed that the seceders in Scotland were in a similar position to that of Nonconformists in England, but the Lord Advocate need not have put his position as a Minister at risk if he were only interested in Free Church interests, rather than religious equality in general.³⁶

Whatever some others thought about his Free Church and Whig affiliations, "about 1840 his practice perceptibly began to grow, and till 1851 he enjoyed a large business".³⁷ The biographer of his great rival and friend, John Inglis, agreed that "between 1840 and 1851 he had a very large practice". This declined as one would expect when he became Lord Advocate, but when temporarily out of office, "in 1858 for instance, he was in very large employment".³⁸ One of the major briefs which he received in the 1840s was to defend a number of Scottish Chartists.

In later life, the period of the "Hungry Forties" and Chartist demonstrations was recalled by Moncreiff, "We all remember with pain the dark time, the darkest hour before the dawn, with commercial distress at home, scanty work and bad wages for the men. I willingly complied with the Chartists tried for sedition in 1848 who asked me to become their counsel. (Ever since) I have had a very warm heart to the working men." The Forties taught him, he claimed in 1866, that class hostility was a great danger. "I lamented the line of demarkation which appeared almost impassable between a large class (of working men) and the other

classes. I am glad to say that line has been greatly effaced, ~~time~~. We have had prosperous and happy times but from that time I have thought it was a great mistake not to embrace many of these men within the pale of the Constitution".³⁹

Moncreiff had defended, with Alexander Logan, three Chartist leaders in November 1848.

MONCREIFF'S LIFE AND FRIENDS IN EDINBURGH

Lord Cockburn described James Moncreiff at this period of his career, when he was firmly established as a successful advocate and was about to embark upon a political career "with a keener avidity even than that with which he followed law".⁴⁰ Although Cockburn did deliver eulogies, they were rare. This sketch of Moncreiff at the age of 40 bestows high praise without becoming effusive. The man who had been one of his father's greatest friends on circuit painted as accurate a portrait as a venerable and candid mentor can achieve. "James... prolongs the hereditary talent of the family and without being what is called learned, he is more liberally read than either of his two sires. (Lord Moncreiff and Sir Henry Moncreiff-Wellwood). He is as likely to reach the highest honours of his profession purely by deserving them as anyone now in it. A good lawyer, a pleasing and forcible speaker, a most agreeable writer, judicious, honourable and friendly, there is nothing left for his friends to wish, unless perhaps it be that his outward man, which seems scarcely to belong to the strong mind and the strong voice...was somewhat more commanding".⁴¹

Between 1833 and 1851 his second home was Parliament House, of which Sir John MacDonald "jotted" a

clear description. It was "a rather bleak and colourless place;(except at the upper end) where a figure of "Justice" looked out from the great window, there was nothing to relieve the dullness of bare walls and diamond-paned casements, except four statues. Bad taste, and a disregard of the venerable, had cut out in the wall two courts of mean appearance...In the Second Division Court Room...that confused space, the celebrated trial of Burke ...took place".⁴² "It was the sound that struck me most, resembling on an exaggerated scale the noise of a busy hive. The floor was crowded with advocates in wigs and others in tall hats, walking back and forward the whole length of the great hall, some in serious converse, and some in talk of very much the reverse character. So great was the noise that when anyone wished to find a particular person, he had the services of a crier".⁴³

Such was the legal hurly-burly so familiar to James Moncreiff and to his father, who had defended the infamous resurrectionists. The Moncreiffs also had close ties with another profession, ten generations in succession serving the Church as ministers. Although the family baronetcy and with it Tilliebole Castle came to Moncreiff's father in 1827, the heart of their activities was firmly in the capital. In the 1830s and 1840s the family would meet when all had time to spare, usually at 47 Moray Place, then Lord Moncreiff's town house. "As visitors and guests there came to 47.... many celebrities: Jeffrey, Macaulay, Dr. Chalmers, Dr. Guthrie, Senators of the Court of Session, Sheriffs, Lord Advocates, Solicitors General, Leaders of the Church, the Disruption celebrities, University Professors, men of letters, notable scientists".⁴⁴ Theirs were "the gifted minds" which had

impressed the young lawyer. To a man who had always taken a broad view of his studies and career, never ignoring the world of letters, politics and theology outside University and Court, meeting such distinguished men regularly must have been stimulating. Dinner at SIX, tea and coffee at nine, some cold refreshment later on, indicate that the inner man was well catered for "but people did not, in these parties, meet to eat but to talk and listen. You would see a group... listening to the brilliant talk of Mr. Jeffrey... reverential-looking students lending their ears to the imaginative discussions" of professors. Macaulay described a similar house in the same Place as "magnificent... looking at the Forth on one side, and to a green garden on the other... equal to the houses in Grosvenor Square".⁴⁵ In such a fine setting, the discussion was of religion, politics, letters and legal matters where such talk did not break confidences. An even more delightful spot which Moncreiff knew well was Craigcrook Castle, "Mr. and Mrs. Jeffrey's beautiful old place on Corstorphine Hill" which Thomas Carlyle called "one of the prettiest places in the world". Gerald Massey wrote:

"The path runs down and peeps out in the lane
That loiters on by fields of wheat and bean
Till the white-gleaming road winds city-ward".⁴⁶

In his last years, Moncreiff was moved to write of the Castle where he had spent many golden hours. Twice a week in winter, Whig and Tory alike, came to the parties there. "It was part of my good fortune that I was always welcome".⁴⁷ "They were warm and friendly occasions and reading over the memoirs of those remarkable men, one cannot help being struck by the tone of affection which prevailed among them",⁴⁸ men such as Lord Brougham, Francis Horner, Sydney Smith. By the early 1840s such men were in late

life, while younger men, including the philosopher Sir William Hamilton, Thomas Carlyle, D.F. Gregory the scientist, James Lorimer, notable in law, came to join them.

The anonymous writer in "The Scottish Law Review" claimed that "nurtured in (such) coteries (he) must have been saturated as well with political knowledge as with reforming ardour".⁴⁹ Not all topics discussed were political. "On one occasion we sat, a party of 8 or 10, till the shadows lengthened while Lord Mackenzie and Jeffrey discussed the dramatists of the Elizabethan era". Of these notables, apart from his own family, perhaps Lord Cockburn was the most delightful as well as influential companion, although he was forty years older. "What I owed personally to his constant friendship I cannot express".⁵⁰ Unlike his friends, Cockburn (- like James Moncreiff -) took an interest in athletic pursuits. For example, "he skated beautifully... like the monarch of the ice." And in an anecdote characteristic of Cockburn, "one bright frosty Saturday, when Lochend was frozen to its core, I was pleading a case before Lord Robertson. Cockburn asked 'You might let Moncreiff off for today. He and I have a meeting of trustees - Loch's trustees - to attend at Lochend'".⁵¹

Such were the circles and the places which Moncreiff knew so well from childhood. They illustrate two points about Moncreiff which were essential parts of the man throughout his long and varied career. Firstly, he was an Edinburgh Whig, heir of Cockburn, Jeffrey, Brougham and of his father and grandfather and of the political legacy of Charles James Fox. Secondly, he was a member of the Free Church, in no narrow

sectarian spirit - he deplored the differences which ended in secession - but believing in the traditional virtues such as thrift, work, self-reliance, and in the independence of Church ~~from~~ State. His background and affiliations encouraged him to take the view that educational facilities must be available to all those who could make full use of them. The alternative to education was crime and vice for the classes who existed in the mean wynds he saw in the capital and other cities. He always emphasised that among the country's greatest assets was the independent, respectable man, whatever his class. Such a man, striving to better his family's lot and have a stake in the country's prosperity with some property, should be encouraged to cast a vote and come "within the pale of the Constitution". The children of such parents must be offered the best education suitable for their talents-within a genuinely national system of schools and Universities.

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CHAPTER THREE

Lord Advocate Moncreiff

"A position where one may be of use in
one's generation." (James Moncreiff, 1864)

Having asserted a distinct position at the bar, Moncreiff was in 1850 made Solicitor-General. In 1851 he gained an even more valuable palm, the position of Lord Advocate, chief law officer in Scotland. By a quirk of fate, two of his guides and benefactors in life were indirectly his "benefactors" also by their passing. Lord Jeffrey's death in 1850 led to a vacancy on the Bench, filled by the previous Solicitor-General, Thomas Maitland; Lord Moncreiff died in March the following year and Lord Advocate Rutherford took the Bench, "clearing the way" for the younger Moncreiff. His personal advancement was no recompense for the double bereavement which he suffered. In the last October of Jeffrey's life, James asked the great man for permission to name his youngest son Francis after him. "Nothing", he replied to Moncreiff "that has lately happened to me, standing as I now do on the very verge of life, has cheered and soothed me so much as this proof of affectionate remembrance". Naming his son after Jeffrey was the gesture of a disciple.¹

Jeffrey's old companion, Lord Moncreiff, was not his old self for some months before his death in 1851. The affable Judge whom Cockburn sketched so vividly now walked slowly to the Parliament House "buried in his own thoughts, and sitting on the bench with a frosty look ... (seemed) as if he did not wish to hold much intercourse/

intercourse with his fellows".² Of him, Cockburn wrote that "during the years (he) was on the civil and criminal benches, he performed all his duties admirably, with law-learning and law-reasoning, industry, honesty, have been privy to all his private and official feelings and views; after 40 years' unbroken friendship it is a pleasure to record my love of the man, and my admiration of his character".³ "He brings his soul into every public question he espouses".⁴ "In his principles, politics, religion, and career, as well as in the affection of a family life James Moncreiff owed his father more than he could express. "He was, quite simply, the best man I have ever known".⁵

THE NEW MEMBER

Within nine days of his father's death, he became Lord Advocate, on 8th April 1851. Since, in practice, it was by then established that the chief law officer should be a member of Parliament, he had to woo the voters of Leith Burghs, vacated by Rutherford after a dozen years as their M.P. In his address to the electors, he alluded to his background. "In the recent calamity which has befallen my family, some of you may consider the name I bear as a guarantee of my attachment to liberal principles and regard for the people of Scotland".⁶

He stood for free trade and some extension in the representation of the people, a pledge which he soon justified by his Parliamentary Representation (Scotland) Bill of 1852. Nevertheless, he declared that one great obstacle to a wider franchise was not the electors' lack of intelligence but the want of a proper moral standard among them and the candidates.

"An end must be put to the influence, bribery, and treating now so prevalent, before the franchise can be so widely extended as I should like to see it".⁷ Not all the electors of Leith were impressed. Some hecklers were tired of always having as member the Lord Advocate; one speaker called it "most insulting that Leith should be the pocket borough of the Parliament House". Another cry was "no mere nominee of the Whig Government",⁷ while the fact that both Solicitor-General(John Cowan) and Lord Advocate were Free Churchmen caused some grumbling. However, the motion that Moncreiff was not a fit and proper person to represent Leith was swiftly quashed by the electors, except for a dozen Radicals. As had become customary, the Lord Advocate was returned without a contest. It had been a not uneventful few days, however, with speeches and journeys to Newhaven, Portobello and Leith. Future elections were to prove a good deal more controversial and taxing for him.

His statement of thanks to the electors struck a patriotic note. "I trust when I go to London I shall never forget my native land, or forget that I am a Scotchman. Gentlemen, I love my country; I feel my heart beats more warmly as I tread its mountain sides.. along its clear and crystal streams. Gentlemen, for that country it is indeed an honour for any man to work".⁸ And work he did. In his eighteen years in the Commons, over one hundred Acts were passed under his guidance and he introduced many other Bills which did not become law. Probably he was the last Lord Advocate who "wielded genuine power as a statesman, with unfettered control of Scotch affairs...He was Scotch Minister and the multifarious concerns of this kingdom engaged his first

attention".⁹

But, although he was the most important member from the North, he had to win the attention of the House in order to be fully effective. Lord Hailsham has written that the Commons "never gives an easy reception to those who have an outside reputation",¹⁰ and a maiden speech, always a nerve-wracking experience even to an accomplished barrister, was not necessarily given a quiet reception. Wisely, Moncreiff kept it brief, made his position absolutely clear and kept to the point. It was barely two weeks after taking his seat that he rose to speak as the new Lord Advocate, on May 15, 1851,¹¹ during a debate on the Ecclesiastical Titles Assumption Bill. Lord John Russell, perhaps sensing that his liberal Ministry was running down in enthusiasm after five years, had reacted strongly against the Pope's attempt to re-establish a Roman Catholic hierarchy with titles of dioceses in England. In doing so, the Prime Minister could rely on the one constant majority in country and Westminster - the Protestant majority. On this occasion, Moncreiff, supporting Russell's Bill to block the Papal Bill, was a typical member not only of his Church but of his nation. He would never persecute Roman Catholics, he would soon try to organise the best state education for their children, but he never doubted the error of their faith and would never encourage its proselytisation. All this was apparent in his first speech, and it is slightly ironic that such views should be expressed in the new chamber largely designed by Pugin, a convert to "Rome".

Moncreiff's credentials were thus set forth - loyalty to the Whigs, "who had founded their political reputation on having fought the battle of

tolerance in its darkest times", to the Queen (Vatican interference would encroach on her supremacy over the Church of England on earth), and to the Protestant faith (The old spirit in Scotland had become far more tolerant, but he was satisfied it had become not the less Protestant".)¹² Although his speech was well received, the measure was ill-advised since Russell lost the support of Irish Members and several Peelites including Lord Aberdeen and Gladstone, and helped make # / possible Lord Palmerston's ambush of the Ministry, which resigned early in 1852.

Though a maiden speech was clearly a severe test of nerve and ability, according to Omond "no first speech could have been made in more favourable circumstances. He had been known for years to the Prime Minister and others on the front bench; and almost every member present was aware of what family the new Lord Advocate came".¹³ He had that intangible asset, a House of Commons manner, and kept the ear of his audience throughout two decades there. Never was it said of Moncreiff, as of an opponent, that the Minister was "very imperfectly heard". His obituary in the "Scottish Law Review" recalled that from his early debates in the Classical, Dialectic and Speculative, "he had taken care to mould his style of speaking on the best model. The method was from training; but the fervour and poetry were from inner fires. Many of the gems that lit up his harangues were flashes of the moment".¹⁴ He was able to combine spontaneous humour and memorable illustration with careful preparation of his speeches, and to mingle rich language and quotation from wise reading with an essential clarity and precision

of thought. It was no surprise that "shaking from head and wing his dews of splendour, he frequently stirred his audiences to tumultuous applause".¹⁵ One criticism of his maiden speech did appear; "that a leader ... of a dissenting Church should plead humanity as the first duty of dissenters, is an instance of how difficult it is for us to see ourselves as others see us".¹⁶ "The Scotsman" compared the Free Church's position in Scotland with that of the Roman Catholics in Britain - both were "dissenting bodies".

Of more permanent importance, however, than the Titles controversy were Moncreiff's speeches and efforts on the subject of education. His next speech to the Commons was made during the second reading of Viscount Melgind's Schools Bill, and included themes which were to echo across twenty years as Moncreiff and his colleagues strove to place the education of the Scottish people on a sounder base. (Their attempts will be considered in Chapter Four).

Among those colleagues were Mr. Alexander Murray Dunlop, Member for Greenock, and Mr. John Clark Brodie, Writer to the Signet. With their support he attempted to pilot many reforms through Parliament and he worked hard for his Government and constituents. Yet on a number of occasions the position of the Lord Advocate came under heavy fire. Such attacks were almost always carefully distinguished from personal criticisms of the incumbent. Sir James Fergusson was typical of members who considered that the system was at fault because "the duties which come within the practice of the Lord Advocate are so diverse...Scotch

business is generally postponed ~~and~~ morning sittings become the Order of the Day, or it comes on at one or two o'clock in the morning".¹⁷ He went out of his way, however, to praise Moncreiff's work and "the manner in which (he) has from time to time met the objections to ... measures which he has introduced, and the favourable opportunities he has given for their discussion ... I do not believe that there ever was a Lord Advocate who sacrificed so much of his time ... to his public duties, but he discharges the duty of Secretary of State and of Privy Council".¹⁷

THE WORK OF LORD ADVOCATE MONCREIFF

There is no doubt that Moncreiff's "robust constitution and buoyant spirit",¹⁸ in which a light, good humour was an essential element, enabled him to undertake a strenuous Parliamentary career. As Lord Advocate ^{for most of the period, 1851-69} ~~from 1851-8 and 1868-9~~ he went to London in mid-February and resided there until late July or early August, barring a brief Eastertide recess. During those months he was constantly travelling between Scotland and England. Such a dual capacity as both Scotch Minister and Member of Parliament, ~~involving~~ involving daily movement, was only possible once the railway age had dawned. Under such a regimen Andrew Rutherford's health broke down and John Inglis never fully reconciled himself to the position, viewing "his elevation to it, as most Lord Advocates do, with mingled feelings". For one thing, since both Inglis and Moncreiff had large incomes from their practices by the 1850s, "removal to London would involve no insignificant pecuniary sacrifice". But Moncreiff was able to accept rather better than his friend a move from "the clear air, the picturesque

situation of Edinburgh to the vastness, the fog, and the worry of London". To set against the loss of most of his practice, except for the rare Scottish appeals, the Lord Advocate could set only his power over patronage, the expectation of "the first vacancy on the bench", and the opportunity to introduce beneficial measures. According to Inglis's biographer, the only Scotsman in the House of the energy and elasticity of mind essential for a reformer were Dunlop and Moncreiff "whose genius lent lustre even to that great Assembly".¹⁹

Yet, although his private wealth suffered with a family and three houses to support as well as "a vast amount of miscellaneous expenditure", James Moncreiff defended the existing administration of Scottish affairs in a vigorous, detached and uncharacteristically lengthy speech on June 3, 1864. It is probably the fullest case for the defence which could be mustered for the Lord Advocate's powers, and while it may not entirely sway a modern juror who believes that too much depended on the ability and strength of the particular man, Moncreiff was clearly confident that he and his predecessors had done their work well and Scotland had benefited.

HIS DEFENCE OF THE EXISTING POSITION

Even if it was only twenty years after his speech that the post of Lord Advocate was changed to a purely legal officer, with the Secretary for Scotland taking over general administrative duties for his country, Moncreiff's speech is worthy of attention. It was a model of clarity and is a relatively rare example of the politician who must defend not only himself but the office which he holds. It also indicates something of the relish which Moncreiff felt for the House of

Commons. "It is almost certain that if (he) had been independent of his profession he would have devoted himself entirely to political life".²⁰ The "Scottish Law Review" believed that it was this aspect of his career - his work in the House of Commons - for which "Moncreiff will hereafter be chiefly regarded".²¹ Because of the information given by Moncreiff in this speech about his work, and because it is characteristic of his House of Commons style, it is proposed to quote at some length from this major statement.

He began his rebuttal of Sir James Fergusson's arguments by itemizing²² "the elements of the objections to the existing state of things. First, it is said that the Lord Advocate is a lawyer, and cannot therefore be in the House of Commons when he has a practice in Edinburgh. The second assertion is that the Lord Advocate, having other vocations, has not the time for introducing measures of that magnitude which he ought to attempt. Thirdly, we are told that the manner in which Bills are prepared, proposed, and considered in the House is not satisfactory. The fourth is that the political functions of the Lord Advocate are such as ought not to be exercised by a practising lawyer". After this elegant overture, in which he uses a slightly different form of words for each item, while never conceding a point, Moncreiff proceeded to defend the administration of Scottish affairs and his own record as Lord Advocate.

Certainly the Lord Advocate was a practising lawyer, "but during the Session of Parliament he has substantially to throw his professional business to the winds". Here Moncreiff casts valuable light upon his own arrangements for the year as lawyer and statesman.

EDINBURGH SCENES AT THE TRIAL OF MADELEINE SHITH IN 1857



"My usual course has been this. I have come up to London in the second or third week in February and remained until the 20th March. Sometimes I may have borrowed a day or two after that date when the Court of Session rises for the jury trials; but never, so far as I am aware, to the detriment of public business. I have always been in my place after Easter, and have remained till at least the 20th July; and then, when the Scotch Members are generally more intent on preparations for the 12th August than on legislative action, I have sometimes gone down to Scotland immediately". He noted, however, two exceptions to this timetable - when he acted for the Crown in the trial of Madeleine Smith and when he attended the trial of the "Pampero", the vessel built on the Clyde for the Confederacy during the American Civil War.

The second accusation, of a lack of important measures, the Lord Advocate buried under an avalanche of the measures which he had introduced. He admitted that "over-legislation is not desirable, and occasionally we have been in danger of that evil". Yet he was proud of such measures as the "important work" of abolishing the "tests imposed on Professors in the lay chairs of the Universities of Scotland" in 1853. "It laid the foundation for the great measure of University reform passed in 1858...In 1855 no measures of any great consequence were passed. Does my Hon. Friend remember the Education Bill of 1855? Was it lost because the Lord Advocate did not introduce it on time? It was introduced on the 23rd March and was read a third (time) on the 12th of July ... after long and searching criticism; and all I can say is that if the same liberal spirit had pervaded in another place, we should have been relieved of

a great many of the difficulties which now impede the course of education in Scotland ... In 1861 there was a measure of considerable importance for we again put an end to a long and weary controversy, and succeeded in abolishing the tests taken by parochial schoolmasters. In that measure we laid a foundation on which a great work may yet be raised ... a large and comprehensive national system of education". Other proposals, the Registration Act, the Valuation Act, Bankruptcy Act, measures for establishing County Police and regulating Lunacy - were mentioned as examples of the range of achievements which could be gained with a persistent Lord Advocate. In his time "over a hundred Bills have been passed in to law". "We have not shirked or slurred over our work". The evidence of these measures could hardly be gainsaid. "Then it is said that the Bills are imperfect...The proper way of judging laws was to look to their effect. Do they benefit the class on whose behalf they have been passed? Do they remedy the evils at which they have been aimed? I contend that the measures we have carried will stand that test". But Moncreiff agreed that there were problems in drafting Bills and "one cannot sit down and write an Act like an essay. It is subject to all sorts of alterations during its passage. If the machinery furnished by the House of Commons for framing laws is not scientifically precise that is the price we have to pay for constitutional Government. To illustrate the system ... I introduced the (1855) Education Bill about the middle of March, but I was asked to defer the second reading in order that the country might have an opportunity of expressing an opinion with regard to its provisions". The Bill was further delayed to allow the

Views of the Commissioners of Supply and of the General Assembly of the Church of Scotland to be known. "The measure at length comes in for a second reading in the second week in June. We go into Committee and the paper is crowded with Amendments. I know that a Standing Order has been passed, in another place, not to take the second reading of any Bill after the 30th June. Consequently ... I am obliged to accept Amendments without having a fair opportunity of considering them... or lose the Bill".

"The last objection is that the Lord Advocate, being a practising lawyer, has too many functions to perform". He agreed that in England his functions were carried out by various officials "but Scotland is not such a very large country". She required a separate official because of her different legal system. "I am satisfied that the criminal system of Scotland works admirably both for the discovery of crime and the protection of innocence". The advantage of the ^{post} ~~system~~ of Lord Advocate was that he could quickly collect information from his advocate-deputes and procurator-fiscals. "A Secretary of State for Scotland in London would have to apply to the Lord Advocate for information at every turn. The Lord Advocate would exercise the same power, only with diminished practice".

Moncreiff allowed himself a stirring coda in which he praised the office which offered no "golden temptation" of profit or peerage (although some had achieved the latter). "Its great recommendation was that it holds out the most honourable object of ambition - the opportunity of using power for its only true and legitimate end, the advantage of the nation. It offers the highest and purest reward of patriotism - the

consciousness that one is placed in a position where, by diligence, one may be of use in one's day and generation".

The Lord Advocate's speech illustrated both the legislative results of the previous thirteen years' work and also the methods by which (Parliament and other interests) he consulted on the substance of Bills. This statement, and his precise, shrewd questioning some months later during the Argyll Commission, may represent Moncreiff at the peak of his political form. He considered opponents' criticism with care and answered them in detail, applying his evidence with such effect that the motion was immediately withdrawn by Sir James Fergusson for lack of support. Nevertheless, while an energetic and strong man might carry out the manifold duties of the post with success, these were a great burden for most incumbents. As Parliamentary business expanded and Scottish legislation accordingly increased, a new arrangement became essential. In 1885 a Secretary of State for Scotland was appointed, leaving the Lord Advocate with legal matters to attend to. Nevertheless "The Scottish Law Review" believed that Moncreiff's name "will be revered as one of Scotland's greatest Lord Advocates".

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CHAPTER FOUR

The Education Bills of 1854-55: attempts to establish a National System.

"How great an agent must a system of education
become which is national ...in reality"
(James Moncreiff, 1851).

In his 70s Moncreiff recalled that D'Guthrie's appeals for an improved educational system "had very early gone home to my convictions and this was one of the few political questions which impressed itself on my emotions as well as to my convictions".¹ This retrospective view is borne out by his assiduous demands for educational improvement throughout his Parliamentary career. His second speech as a Member of the House of Commons was made during the debate on Viscount Melgund's second Schools Bill on 4 June 1851. The Greenock Member had also introduced a previous measure in 1850, but saw it defeated by a mere half dozen votes on its Commons second reading. Supporters of a Bill to extend the education of Scottish children in a coherent national system of schools were hopeful that the second attempt in 1851 would succeed and on June 22, 1850 the "Scotsman" called the recent narrow defeat a "virtual victory". Moncreiff quickly made it plain that he was one of those supporters. "There was a great necessity for enlarged means of education in Scotland. While for years the deficiency ... had been admitted, they had been going on from one year to another without anything being done to provide against it".² His first Parliamentary speech on education includes themes which echoed across the next two decades as he and his colleagues strove to organise the provision of education

for the Scottish people into a fully national system, with at least elementary schooling for all children and higher levels, up to University, for those of proved talent.

"It was", he believed, "far more desirable to have a general national system than to have a defective ...system supplemented".² It was not enough to add patches to the worn-out coat; a new, stronger garment was required - "a national system of education that shall be really and truly sufficient for the wants of the community". Tinkering with the existing situation by "giving Government aid and grants to other denominations" while basically leaving "the parish schools just as they now stood" would not do - "they would still have to provide for an enormous mass of educational destitution in the country, which the parochial schools could not reach".

Nor would he accept the argument that past achievements of the parochial system necessarily meant parish schools must never be altered. "It seemed to him an instance of that use, or abuse, of history which consisted in drawing on the energies of our ancestors for excuse for our own indolence". Instead he drew quite a different lesson from the past. The parochial system "was a very great and large system, worthy of those Reformers by whom it was originally planned. It showed how great an agent, reaching beyond the limits of the generation, must a system of education become which is national, not merely in theory, but in reality, and which is adapted to the wants, and founded in the affections, of the people".

Moncreiff took this opportunity to speak about an issue which was later to cause him considerable

problems when piloting his own Education Bills - the question of tests and religious instruction in schools. From its introduction in 1690 to the Disruption of 1843, the requirement that parish schoolmasters must subscribe on oath to a religious test, supporting the Westminster Confession, had caused little acrimony, since it included any man prepared to swear to Presbyterian beliefs. The division within the Church of Scotland, however, meant that Free Church members could no longer teach in parish schools since they could not subscribe to the test as communicant members of the Established Church. As a Free Churchman, James Moncreiff was especially incensed by exclusion of able and honest Presbyterians from the parish schools simply because they had left the Church of Scotland; the knowledge that hundreds of teachers were jolted out of work had affected him and others of his views so deeply that a million pounds were raised in the 1840s to erect seven hundred Free Church schools where they might continue their work.³ "The effect of the tests was simply to exclude many who differed in nothing from the Established Church, except in not belonging to it. It would be infinitely better to abolish these tests, which were but the wretched remnants of a bygone age".² He was quick to emphasise that this was no narrow partisan attack on the Established Church: "he had no wish to see her decline, but the reverse - there was a great deal of good done both by established and unestablished Churches". Nor did he wish to weaken religious education. "There could not be a more miserable safeguard for the religious instruction of the people than this system (of tests)". Opponents, however, occasionally accused him during the next two decades

ofacting only in the interests of his own Church. Cumming Bruce regarded his measure of 1854 as "a Free Church stratagem" to gain equal status with the rival body. Since their own educational work had reduced their funds considerably, "they looked to the right honourable and learned Lord (Advocate) to take them under his care".⁴ There is no evidence however that Moncreiff undertook his long and often frustrating attempts to improve Scottish education purely or largely to further Free Church ambitions; he never attacked the right of the Church of Scotland to be an Established body and the Free Church, while generally supporting his education measures, had many criticisms to make of them, especially on arrangements for religious instruction. If he wished the exclusive tests in schools and Universities to end, he regarded this as a matter of justice and an aid to efficient teaching, which would benefit the whole community.

Finally and characteristically, he considered "the consequence if the present state of things continued". As a lawyer, he knew the possible results of an upbringing in mean streets and dark wynds. Education, it was his stance, was the major weapon against crime, vice, disorder like that of 1848 in many countries. "Should another period arrive, when the minds of men should be agitated as they had recently been in Europe, and find the lower classes of this country in a state of ignorance, it was impossible to say what might be the consequences. Was it possible that such a state of things could be allowed to go on, without the most injurious and dangerous consequences to the community?" His conclusion was clear. "In quiet and peaceful times let the House do its duty by educating the people".²

Although the Scottish members voted for the 1851 Bill by a majority of two (the same majority in 1850 was three) Viscount Melgind's measure was effectively killed when its second reading was postponed for six months, the overall majority against it being 13 votes (six in 1850). The Lord Advocate, admitting "The Bill was (not) a perfect and complete system of education...., thought it contained the outline and groundwork of what might become a good national measure". That "good national measure" was to be one of James Moncreiff's major objectives during his eighteen years in the House of Commons.

THE OPPORTUNITY FOR A BILL IN 1854.

The next opportunity for such a measure emerged in February 1854, after a period when Moncreiff was out of office (during most of 1852) and then concerned with important commercial evidence and land legislation as well as the major Universities of Scotland Act (20 August 1853) abolishing religious tests for all University teachers except those in chairs of Divinity. Once this measure was achieved (it will be discussed fully in chapter six) Moncreiff hoped that the similar tests would be abolished in parish schools. "He did not desire to mix up the two matters",⁵ since some Members, such as Forbes Mackenzie would not oppose the University measure but could have voted down a combined Bill ending tests in both schools and Universities, but if events, particularly in the University of Edinburgh in 1852-3, favoured the Lord Advocate's move to remove the University tests, he was less fortunate with his school measure. (Nevertheless he recalled in the 1880s that the Bill was intended to open the way for the reform of the Universities and a revision of the whole educational system in Scotland, and

while this and the corresponding test applicable to schoolmasters remained, any effective legislation in either was impossible)!⁶

There was good reason to believe that some measure to improve elementary education in Scotland would be successful in 1854. The Church of Scotland Education Committee had expressed "utmost anxiety about the thousands of children in our midst who are growing up in a state of ignorance and crime" while the Church's funds were now "completely exhausted".⁷ The Free Church, after a good deal of debate, supported the Lord Advocate's Bills in principle. A new body, The National Education Association, founded in 1850, demanded broad educational reform. Comprising a wide spectrum of influential opinion, including 38 clergymen, 7 professors, 4 Lord Provests, teachers, lawyers and doctors as Directors, the Association established committees in a dozen major towns and held regular meetings in public. In 1854, 872 petitions were sent to Parliament on the matter of education reform: 85,689 signatures were favourable in general, against only 42,381 who were opposed. Most Town Councils favoured reform. 1853 was also believed to be a crucial period because new salary arrangements of parish schoolmasters, last adjusted in 1828, had to be agreed by Parliament every twenty five years under the 1803 Act. "Reformers were determined to use the occasion to open up the whole question of Scotland's educational policies". As Viscount Melgund noted in a speech to the N.E.A.,⁸ "this year is likely to prove a crisis in the educational legislation of this country". Moncreiff, indeed, believed that parish teachers' status could not be improved, with or without higher salaries, unless schools were open to the ablest

men without religious tests. On the other hand, many in the Church of Scotland who insisted that the Church's supervision over parish schools must not be weakened were adamant that salary adjustments should be discussed separately from the broader question of educational Reform. And the Church of Scotland, supported by many gentry and aristocrats, were better organised in 1853 than in the 1840s to press their opinions. In mid-1844 the General Assembly of the Established Church drew up a "Protest, Declaration and Testimony on the Subject of National Education" stating that her control of parish schools must remain intact. Synods set up committees in the early 1850s in order to monitor educational legislation and petition against any relaxing of school or University tests. The convener of the Church's Education Committee, John Cook, helped it become ready for political action with four sub-committees respectively putting views to Members of Parliament, Scottish or not, friendly or hostile; to canvass opinion in the Counties; to write to newspapers and journals; and to arrange finance. Minutes of the Parliamentary sub-committee show that its members met English and Irish Bishops to gain their support.⁹ One major and characteristic statement was the "Declaration by Justices of the Peace, Commissioners of Supply, and Heiiters", which bore the names of 35 Scottish peers and 1,800 members of the gentry. Clearly this was primarily aimed at opinion in the House of Lords, although it was probably hoped that such a roll call would influence any doubtful members of the Commons, especially M.P.s in County seats. It declared "the subscribers' strong opinion to be that, except for the purpose of

meeting defects in its workings and increasing its efficiency, the present system of parochial schools ought not to be interfered with and that their connection with the Church of Scotland ought to be maintained".¹⁰

THE TWO BILLS OF 1854 AND 1855.

James Moncreiff was well aware that the opposition^{to my Bill} which ended the exclusive tests and extended the national education system on a new basis would be formidable. His Bill, introduced on 23rd February 1854, "although not so systematic as we could have wished ... was the most which we had any chance of carrying, but what was the main matter - it could have secured the education of the people".¹¹ When this was defeated in the second reading in the Commons, Moncreiff and his colleagues, probably including Dunlop and John Clerk Brodie, prepared another attempt. "A Bill substantially the same was introduced again the the next year - 1855 - and passed the Commons, but was thrown out in the Lords".¹²

These two Bills, and several later measures, represent a broad attempt to fit Scotland's schooling to the demands of the 19th century industrial society whose population had grown too quickly for its schools to cope, a country whose religious life in mid-century was passing through a division which raised powerful emotions and resentments. As the Lord Advocate pleaded, "unless prompt measures are taken, any upheaving of our social system may sweep our boasted institutions to destruction".¹³

For the present, however, organisation of Scotland's schools was not altered, with the exception

of the limited measure of 1861, until in 1872 "the old superstitions and delusions" according to Moncreiff "were swept into the limbo of oblivion"... "Provision was made for the management and expense of the education of the people and the realisation of our most sanguine aspirations".¹⁴ Between 1850 and 1872 there were comprehensive attempts to restructure the school system in 1850, 1851 (introduced by Viscount Melgund), 1854, 1855, 1856, 1862, 1869 (introduced in the Commons by Moncreiff) and in 1871 and 1872 (George Young's Bills) of which the last was eventually successful in becoming law.

The Bills of 1854 and 1855 bear different titles. The earlier was "A Bill to make further provision for the Education of the People of Scotland", the wording also used in 1862, while those of 1856 and 1889 were modestly described as Parochial Schools (Scotland) Bills. Earlier Acts had similar titles to the attempts of 1854 and 1862: For example, the 1696 Act was "for making ... further regulation for the better Government of the Parish Schools in Scotland" and that of 1803 had an identical title. The modest titles of most of James Moncreiff's Education Bills suggest similar measures to those of 1696 or 1803 - larger in scope, but not different in overall design. Yet that is not the case. Those Bills of the 1850s and 60s were also different kind from their ancient predecessors: they were an attempt to found a national system of education for all Scottish children, with schools open to masters of all (Protestant) persuasions under the supervision of a Board of Education. Voluntary efforts in education would no longer be regarded as sufficient on their own. That was more than merely "making further

provision". Only the title of the 1855 measure, "A Bill to provide for the Education of the people of Scotland", which might be taken to imply that no national system had been provided before, recognised that this was a new kind of Bill.

Apart from their titles, the 1855 measure differs from its companion of 1854 only in attempts to mollify the opposition of its strongest enemies. In clause 13, for example, the second Bill gave the Ministers and Heritors power to attend the inspector's examination of the candidate for a parish school post. They "may suggest such questions as they think fit". Despite this concession to the Ministers and Heritors and this general attempt to tone down any "insulting (of) the Church of Scotland",¹⁵ Moncreiff felt that the overall aims of his measure must be clearly stated. He would not compromise over any basic objectives; except possibly in his last Bill (the Duke of Argyll's attempt in 1869), when his career in the Commons was almost at an end and he was particularly anxious to see the major Education Act for which he had struggled.

THE EXISTING POSITION

The preamble of both Bills in 1854 and 1855 includes references to the three major Education Acts of the previous 160 years - those of 1696, 1803 and 1838. Not only did they define the current legal position in the middle of the 19th century but they indicated that no one Act had gone far enough to assuage Scotland's need for schools and teachers. The presence of the Act "to facilitate the foundation of additional schools" in 1838 suggested that there was still a patchwork quality about educational legislation. James Moncreiff tried to draw schooling into one efficient national system which would

match facilities to requirements once and for all. Boldness was needed, in the view of those who framed the Bills, to discard the patchwork quilt and weave a seamless cloth of greater quality and durability.

In 1854 the preamble made no bones about criticizing existing educational provision in Scotland. "The Means of Education fall far short of what is required by the circumstances and increased population of that country". Since this statement did not apportion blame, it might have caused little controversy by itself. But the next section was bound to cause fierce argument. "The present system of superintendence and management of the parochial schools has been found greatly defective and ought to be altered and amended".¹⁶ That was the statement which above all led opponents of the Bill to cry that "our parish schools ... have been vilified by a Lord Advocate as debased beyond imagination".¹⁷ The Elders' Union ... remarked in their Report for 1854 "This (preamble) we feel is unfounded".¹⁸ As one M.P., James Johnstone, wrote to Moncreiff, "Scotland was sensitive to insult' - (you) insulted the Church of Scotland and its management of parish schools".¹⁹ The reaction was perhaps understandable from the body which had supported schools ever since 1569, and the Lord Advocate removed the words "has been found greatly defective" from the 1855 Bill to dampen some of the disapproval. Nevertheless, facts supported Moncreiff's opinion of the poor quality of many Presbyteries' superintendence over parish schools. "The Argyll Commission's First Report in 1864 showed that, in districts whose practice had not yet been altered by the Burgh and Parish Schoolmasters' Act of 1861, the Presbytery did hold an annual examination of parish schools,

but this was often an occasion for display rather than a trial of efficiency and sometimes a master, often appointed 'ad vitam aut culpam' leant indolently on the security of his office or devoted his energies to supplementary work as registrar or session clerk".²⁰ Only in the years just before 1854 had the Church been aroused to fresh energies in this matter. Even Mr. Stirling, an M.P. who opposed the Lord Advocate's Bills, admitted "Some years ago the Church of Scotland had been so much occupied with its political and polemical differences that many of the best men in it had neglected their important educational duties".²¹ The Earl of Dalkeith, a member of the Church of England who also opposed the Bills "did not mean that the parochial system was not capable of amendments; it might be much improved", although he wished to retain the existing structure.²²

Speakers such as those who met in the Merchants' Hall, Glasgow in May 1855, declaimed against the "fallacy" of the Bills' preamble - because, they believed, education of Scottish people was considered to be up to the highest standard in Europe.²³ Lord Elcho, however, parried this argument by claiming that while "the Presbytery had the power of examining the teachers, of administering the tests, and of annually visiting the schools ... they could not prescribe the books or the nature of the instruction."²⁴ Their powers of removal of teachers were a dead letter, in fact, for in the Report of the Education Committee of the General Assembly it was stated - "where the teacher is old, disabled, or incompetent endeavours have been made, without success, to procure his retirement."²⁵

THE PROPOSED BOARD OF EDUCATION

The first six clauses and clause 8 of the two Bills dealt directly with the establishment of the Board of Education and its powers. Its immediate inspiration was the earlier bills introduced by Viscount Melbourne, as Moncreiff agreed on introducing his measures in February 1854. "The General Board was adopted very nearly from the Bill introduced by Lord Melbourne".²⁶ However, the idea of a Board as a means of administration, for example in education, was not new. John Campbell Colquhoun was not enamoured of such centralised bodies which "blighted the Continental" system of education. But there were British precedents for such a Board. Other Boards had considerable powers delegated by Parliament, reserving for itself the right to question a Government Minister on matters relating to the Board's actions; for instance, there were those established by the Poor Law Amendment Act and the Public Health Act in 1834 and 1848 respectively. As part of the Irish system, a Board of Commissioners of National Education was introduced in 1831 and in 1839 Lord Melbourne's government set up the Special Committee of Council on Education, to superintend the distribution of sums voted by Parliament for promoting education in Britain. J. Murphy has described that body as the State's "first embryonic board of education",²⁸ but there were important differences between the Committee's composition and the proposals in 1854 for the Board of Education, a body to supervise only Scottish Education. "The Committee were members of the government (although with) a permanent non-political secretary ... as chief administrator."²⁹ The Board was to include not only government members but a large representation of bodies outside Parliament (such as the Universities), a

proportion which eventually changed from 5 out of 13 members to 13 out of 17 after amendments in July 1855. Previous examples had influenced the proposed choice of a Board as the particular form of the central body. Yet its composition was determined by the special circumstances of Scottish schools at the time.

Between May 1854 and March 1855, Moncreiff had accepted that some changes might aid the measure's chances of success. He introduced Town Council representatives to the Board - "The Lord Provost of the cities of Edinburgh and Glasgow and ... of the Towns of Perth and Aberdeen". This brought a measure of local representation of ratepayers from four major centres of population; a move which accords with his insistence on ~~popular~~ control as "the best form of security" for religious instruction and education in general. The amendment which the Commons passed on 2 July 1855 altering "Lord Provosts" to "Four Persons, ^{one} ...₃₀ elected by each of the (four) Town Councils" did not alter the principle of Town Council representation, and the Lord Provost might well be their Council's choice. On the other hand, a separate amendment forced upon the Lord Advocate's Bill by the Lower House in July 1855 was not to his taste. "Four Persons" were to be added to the Board, "one of whom shall be elected by the Commissioners of Supply and each of the Counties of Inverness, Aberdeen, Renfrew and Ayr." Not only was this likely to weight the Board more to highly cautious local County opinion, resisting change, but the amendment actually removed from the Board both the Lord Advocate and the Solicitor-General for Scotland, as well as two of Her Majesty's nominees. Opponents of the Board's original composition had clearly reduced Government influence ^{with} ~~against~~ it. Only 4 out of

17, instead of 8 out of 13, could now be chosen from royal or Government nominees.

The amendments of 2nd July 1855 tended to reduce the power of Board Members. Firstly, they "shall hold office for three years". Although they were capable of re-election "of Appointment" by the bodies whom they represented, this was the first mention of a set period for service. Those who pushed through the alteration hoped that incompetents or "dangerous" men would not be re-elected, and that individuals would be less likely to become over-powerful. It also suggested that the bodies such as Universities would have more influence over the Board's conduct than if members were on the Board for an indefinite period. The substitution of Five for Three members as a quorum suggests a means of blocking the actions of a caucus and since there were now proposed to be four members from each of four groups, notably the Government's choice, a quorum would ensure that one "outsider" to that group would be present. Another limit to the powers of small groups within the Board was an amendment in clause 5 which forbade committees of the Board "to act for any longer period than three weeks at one time". English (Derby) Conservatives, in particular, would ensure that there was no "Turkish oligarchy". J.C. Colquhoun wrote to the Hon. A. Kinnaird, M.P., that the Board was "the great issue which makes it the worst measure proposed within my experience to Parliament".³¹ He was concerned less about the composition of the Board than its powers.

"It is this arbitrary power of Government wielded ... wildly (and) unrestrained which mars the continental system of education, and blasts all its requirements, It is the ukase of a Czar".³² As

Oliver MacDonagh has noted, it was common to study "foreign practices"³³ in studying administrative change. This Colquhoun did in a "Memorandum" in discussing the Board. "It is in full operation in Holland, France, Prussia and Germany ... its results manifested in 1848 and 1855 Bills seems mild. The Board of Education "shall exercise a General Superintendence of all the Parochial and Public Schools of Scotland", removing that duty from the Established Church's Presbytery. "The question", according to Moncreiff, "is whether the superintendence by the Presbytery be or be not efficient. Over a full century, (it) was in most cases little better than a name. Indeed a body, meeting at long intervals and scattered over many distant parishes, sometimes cannot accomplish the necessary supervision". He accepted that because of "competition" with the Free Church since the Disruption in 1843³⁴, there has been increased vigilance (by Presbyteries) of late years and the parish schools are probably more efficient than for many years. But times of lethargy may come again and the results will be as before".³⁵ Lord John Russell in this debate supported his colleague's view that superintendence by the Presbytery has been "nominal ... till of late years".³⁶

Under the 1803 Act, the parish schoolmaster has to obey Presbytery regulations but the Presbytery representatives' check on this varied considerably. "At Holyrood (Dumfries) a Committee arrived every year, while at Borthwick (Midlothian) the minister visited all schools... once a month".³⁷ According to A.C. Sellar and C.F. Maxwell, in the Argyll Report, "schools that we should consider good are in the language of the Presbytery very excellent; and those that we should consider very bad are in their accounts indifferent. The real stimulus for

fidel teachers, socialist doctrines,
centious schools, and a turbulent
multitude. By comparison, clause 4 of
the 1854 -]

teachers was the inspector's visit".³⁸ It was not for the annual ceremonial Church court that teachers posted a pupil to "keep cave" when an inspection was nigh.³⁹

Clause 4 also delegated to the Board the power "to make and establish such Rules and Regulations as they may deem necessary for carrying this Act into effect". Under the wing of this "delegated legislation" would come inspection, examination of schoolmasters, and supervision of the new School Committees. The Board was to choose inspectors and after their visits to Parish and Public schools, they would report on their educational condition. (Clauses 8 - 9), Clause 21 would report on any defects and whether "additional schools are required within the limits of any Burgh; the Board, if they approve of the said Report, shall resolve that a Public school shall be founded, and shall intimate the same to the Committee of Council". This made it clear that while the overall grant would be distributed by the Committee of Council, the Board would decide how that money was spent on specific school building.

PUBLIC SCHOOLS AND THE POSITION OF SCHOOLMASTERS.

The "public schools" were an essential part of the new scheme. The Board, acting on inspectors' reports, could order a town's Chief Magistrate or County Sheriff to summon a public meeting of heritors and ratepayers (who would share the cost of the new school's upkeep). But the public schools, theoretically forerunners of the "board schools" of 1872, were to be erected only where there were deficiencies, and they could co-exist with parish schools. Heritors could decide too whether a parochial school should become a public school - indeed the heritors' powers were hardly changed in parish

schools, and to a lesser extent in public schools - whereas by the 1872 Act heritors lost special powers to the ratepayers as a group. Such a system as that of 1854-5 was more likely to see schools were established where they were needed than the haphazard situation since 1843 when duplication of Free Church and parish schools was not uncommon. "In West Kilbride; with a small population and a small attendance at school, there are a parish school and a Free Church school and a Female School of Industry, all aided. Not one could exist without aid and one good school could do the work of all three".⁴⁰ This charming Ayrshire village, its main street winding past three fine Presbyterian Churches, was well supplied. Yet such lack of overall organisation could perhaps only be dealt with by a central body which took account of the inspectors' local knowledge.

Within their "Educational District", inspectors were to be given a new, additional task - "to examine, upon all Branches of Knowledge and Efficiency, all candidates for the office of schoolmaster ... according to such Rules as the Board shall direct". (Clause 9) "No person shall be inducted as schoolmaster ... until he shall have passed such Examination and have produced to the School Committee a certificate by the Board ... attesting to his fitness". This would apply to all teachers in public schools and had only one precedent as regards state examination of teachers. That was, however, a voluntary examination for the Certificate of Merit and only 18 took the examination by 1851. In parish schools the master had to produce "to the Minister and Heritors a Certificate by the Board approving his appointment; proceeding upon a Report of such inspector attesting to his Fitness", (Clause 13).

Removing the examination of schoolmasters and

superintendence in general from the Presbyteries was one of the most important and controversial matters in the Bills. The Lord Advocate claimed, on introducing the 1855 measure, "Rejection (of the 1854 Bill) was on this ground and this alone - that they did not contrive the exclusive superintendence of the Established Church in Scotland and the exclusive privilege of that denomination to teach in the schools".⁴¹ In the Commons, Mr. F. Scott was angry that "examination of masters did not include religion. "The Lord Advocate's plan had been tested in the Universities at France, Holland and Prussia - in Holland masters had to teach the history of Jews, Greek, Romans but were forbidden to refer to the Deity".⁴² The Elders' Union wanted such inspectors "to be approved by the Church of Scotland as is the case at present".⁴³ Even a Free Church member complained that the Bill "practically organises public schoolmasters into a great secular corporation".⁴⁴

The Lord Advocate did view replacement of the Presbytery superintendence as "less important" than removing the religious test for parish schoolmasters. Yet he denied that "by thus removing limitations on the power of election and vesting the management of these schools in the heritors and ministers, subject to the General Board, instead of in the Presbytery we ...(are) weakening the guarantees for Religious Instruction... nor (was this) conceived in a spirit of hostility to the Church herself".⁴⁵ Typically ready to make reasonable concessions in the 1855 Bill, he showed that he was prepared to give heritors and ministers every opportunity to see the inspectors' examination was properly carried out.

But on one central matter James Moncreiff would not give way - the religious tests for school masters must be abolished.

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JAMES MONCREIFF - A CARICATURE

CHAPTER FIVE

Reaction to James Moncreiff's Education Bills,

"A perfect barricade of ... questions was reared between the people and their education". (James Moncreiff 1886).

"While recognising the claims of teachers to a much more liberal remuneration, the Synod strongly deprecate any additional endowment being given to the Parish Schools, so long as they are continued in their present exclusive and sectarian position".¹ Parochial schools "serve as a pattern and stimulus to other schools... the dissolution of this connection would (have) disastrous consequences, disturbing the harmony of every Parish and abolishing the security for ... its religious and Christian character".²

These two statements from representatives of the Free Church and the Church of Scotland respectively illustrate why the shortest clause in the Bills was also the most controversial. Clause 15 stated "It shall not be necessary for a Parochial Schoolmaster to subscribe any Test, Confession of ~~controversial~~ Faith, or Formula". The Act of 1690 demanded that "no schoolmaster shall be admitted to (teach) or allowed to continue therein without subscribing the Confession of Faith" (clause 25), which was the doctrinal basis of the Church. This caused few complaints until the Disruption in 1843 when many (c6-700) parish teachers joined the Free Church and were therefore dismissed from their schools since they were no longer members of the Church of Scotland. Under the Act of 1690 and that of 1693, placing superintendence of parish schools under their local Presbyteries, schoolmasters had to conform to the Church of Scotland's ^{worship} ~~work~~ and belong to its communion. Both

Acts were ratified in the Treaty of Union of 1707.

Despite violent attacks, James Moncreiff would not alter clause 15. He was determined that no longer would able Presbyterian teachers be debarred from parish schools because, as members of a Church other than the Established body, they refused to subscribe to the test. He made his views quite clear in introducing the 1854 Bill. "Last year (1853) Parliament repealed this law as regarded the Universities: is it still to remain in force in parish schools? Her Majesty's ~~Government~~ have come to the conclusion that this state of the law should (not) any longer continue ... If (clause 15) had been conceived in a spirit of hostility to the Established Church or to diminish the security which now exists for the Religious teaching of the people, it would deserve to meet with an opposition which I have great hopes it will not receive ... It is proposed by public money to place National Schools in a much more efficient position ... I declare, I do not know by what course of logic I could defend a system restricted to less than one half of persons qualified". Referring to the Disruption, and other lesser secessions, "These contests relate entirely to questions of Church government. In creed and belief the country is not only substantially but completely agreed (taking it in its general aspect)".³

REACTIONS TO THE ABOLITION OF THE RELIGIOUS TEST

Those who opposed him tended to regard the test in its historical significance as a bulwark against Papists, Episcopalians, and all other "unsound" influences entering the schools - while clause 15 would "destroy" sound religious teaching. The Lord Advocate and his supporters, on the other hand, believed that the test was no real security at all for religious instruction.

Mr. Bouverie stated that "if there were any doubt respecting the religious opinions of any master, the attendance of children from his school could at once intimate the dissatisfaction of the parents; and this was the practical security all parents possessed!" In practical terms, "the test was only a proof that, at a certain time of his life, the master was willing to profess his adhesion to a particular creed, but was no proof that he continued to believe that creed".⁴ Lord Melgund put these views more strongly by quoting Dr Begg of the Free Church. "In his parish there are two teachers, one appointed by a public company and the other is the parish schoolmaster. Both are infidels, and both are drunkards. This is one effect of tests".⁵ Such a specific and probably exaggerated statement was influenced perhaps by Melgund's failure to achieve an Education Act in 1850 or 1851, while Bouverie's suggested "withdrawal of children" might be impossible where there was no alternative school, and it could take a long time to remove a master. Such supporters of Moncreiff, then, probably did not help to win over opponents by these statements. Nevertheless, it was true that the "test" was a poor safeguard of the sound religious doctrine of teachers. It would exclude the conscientious member of another Church, while allowing the cynical oath-taker to slip through the net.

To Moncreiff, the fundamental doctrines of the various Presbyterian organizations - Church of Scotland, Free Church, United Presbyterian, Reformed Presbyterian congregations - were the same. But this may have been the view of the politician looking at the situation from ~~the~~ outside of The Church of Scotland; others felt that there were important differences between

the Churches. "A member of the General Assembly's Parish Schools Committee" claimed that the Confession of Faith of the Established Church was not "that of all existing Presbyterian sects".⁶ Unfortunately for the Lord Advocate, the fires of controversy were still burning on this matter in the 1850s - thirty years later the embers were fading, like "phantoms at sunrise".⁷ He felt, too, that the "exclusive test" led to an inefficient system of education. There were 712 Free Church schools by 1851, schools ~~which~~ might be in poor repair, although the teachers were, according to Moncreiff, the "flower" of Scotland's ~~masters~~. The Lord Advocate believed the test must go if fullest use was to be made of Scotland's teachers, and a nationally planned allocation of school buildings according to districts' needs was better than the existing haphazard arrangements. The author of "18 reasons for rejecting the Lord Advocate's Bill" might talk of "the stimulus of a wholesome competition and rivalry between teachers of contiguous schools" but such competition did not apply to many areas.⁸ Nor, where it did, was rivalry always properly restrained.

Placing the clause in a wider perspective, Lord Melgund claimed "The whole cause of our legislation had been adapted to a repeal of all tests in regard to public offices and the schoolmaster's is essentially a public office. The only test which a man ought to be subjected to is the test of the approval of his fellow-citizens".⁹ As the Minister who had introduced, and piloted through the Commons, the 1853 Act removing such tests in Scottish Universities Moncreiff would agree with this view. In 1854 he joined four others in resisting Government policy and refusing to support the

continuing exclusion from Oxford University of dissenting students.¹⁰

Although Moncreiff insisted on clause 15, an amendment in Committee watered it down to some extent in July 1855. An additional statement was "Provided always that every such schoolmaster shall, prior to his election, produce to the electors, a Certificate, signed by a Minister of the Religious Denomination to which he belongs, attesting his Religious and Moral Character". This was not unlike the request of Inverness public teachers that, while the test should be abolished, teachers should make a public declaration of their faith in Scripture as Divine Revelation and base Religious Instruction on it.¹¹ In the Bills, too, the electors to a parish school continued to be the Church of Scotland Minister and Heritors, and even without an exclusive test this would probably have meant that Ministers could veto a candidate who was not a member of the Established Church. In practice, even after the Act of 1861 removed the test, Church of Scotland candidates were largely chosen. In 1854 and 1855, the argument which won the day was clearly expressed by the Reverend John Cook, Convenor of a Church of Scotland General Assembly Committee. "Parochial schools still maintain their pre-eminence; they serve as a pattern and stimulus to other schools, the attendance at them is numerous and greater than in former times .. The dissolution of this connection would (have) disastrous consequences, securing no certain advantages - disturbing the harmony of every parish and introducing into it elements of perpetual discord; and abolishing the security for what the people of Scotland continue to regard as the most valuable feature - its religious and

Christian character and influence on the minds of their young. (Such) a system of education void of all religious character (would tend) to weaken the Scottish Church, which the estates of Parliament are most solemnly bound to preserve and maintain" (as part of the Act of Union).¹²

If the test was the crucial clause, the specific matter of management in schools caused considerable controversy. One writer believed that managers "viz. heritors, heritors' agents, farmers, town councils ... will not seek for anything in teachers beyond professional skill and a fair moral character".¹³ On the other hand, some Presbyterians had been lax in ensuring high standards of teaching in parish schools, and heritors (contributors to the master's salary, school and house) and Town Councils could not be dismissed so lightly. The Elders' Union noted in 1854 that "the Town Council may not be the best school committee for public schools in a Burgh but it is better than a (body) for this single purpose chosen by ratepayers!"¹⁴ This recalls the arguments in 1929, when the Town and County Councils replaced "ad hoc" education authorities.

TEACHERS' VIEWS

Many teachers appear to have approved of the Lord Advocate's Bill in principle. Their views are less well represented in pamphlets and newspapers of the 1850s and 1860s than those of politicians and ministers of religion. Yet they were not slow to send petitions to Parliament and to write individually and collectively to the Lord Advocate and others in the two Houses. Arbroath teachers declared that "a great majority (of teachers) favoured a change in educational arrangements".¹⁵ In a seven part statement presented by the Rector of Arbroath Academy and Alexander Smith of the E.I.S., part 3 was

that "the combined operation of local committees of management and a central board of supervision and control, along with the periodical visitation of properly qualified Government inspectors, appears to furnish the most likely means of securing efficient superintendence"¹⁶.

Teachers, of whatever grade or denominations, did have certain reservations on the Bills. In general they believed that a greater weight should be given to teachers' voices on the Board of Education, that the local committees should include a wider range of ratepayers (the representatives of "the popular element"), and particularly that the powers of dismissal which the central Board was to have over public school masters were far too great. According to Inverness teachers, the Board's jurisdiction over public teachers "they hold to be violation of their constitutional rights as British freemen" - they could be dismissed without reason "though against (them) the tongue of scandal may have never hissed its venom".¹⁷ The problem was that, in the past, Presbyteries had had difficulty in removing inefficient teachers, and one Aberdeenshire master of 50 years' experience claimed "I have really known bad teachers - judicious dealing with a careless and immoral teacher is certainly necessary ... (but dismissal is) a delicate point".¹⁸ Edinburgh parochial schoolmasters and Free Church teachers supported those of Arbroath and Inverness in opposing summary dismissal of the kind proposed. The Elders' Union wanted justice "to be seen to be done". There should be no (inspector's) report without giving a master the chance of defence. The Union, like some teachers, felt that summary power to dismiss might "deter the best qualified teachers".¹⁹ It is, however, reasonable to deduce that low salaries and poor facilities prevented such teachers from coming forward rather than the

possibility of his removal for incompetence, crime or moral delinquency.

More powerful in his attacks even than teachers was J.C. Colquhoun who stormed that "On that Board and its veriest caprice the bread of every master depends ..."
X (clause 30) states "It shall be competent for the Board to dismiss any public schoolmaster with or without notice or reason" Anything so monstrous as this I never thought to see in England" - perhaps a significant remark, considering many English M.P.s' fear that the Lord Advocate's Bills would lead to a similar measure south of the Tweed. Colquhoun implied that with the Board's "arbitrary" powers, the "teacher, but a man ...looks for promotion to hard, sharp, cold, dry, wordly-minded men and becomes like them".²⁰

Moncreiff accepted that justice could not be seen to be done without changes in clause 30, and in framing his 1855 Bill, the corresponding clause (31) became "It shall be competent for the Board, when they see reason, to dismiss any public schoolmaster, after due inquiry and consideration which such schoolmaster may make in his defence". There was indeed no reason why the Board should not give its reason, for proposing dismissal, to the teacher. This was equitable since the parish school teacher would be allowed to lodge an appeal with the Sheriff, whose decision would be final. On parish schools, the Bill of 1854 and its successor in 1855 did not upset the old principle of Minister or Heritor being able to complain about the parochial schoolmaster, but it did add "teeth" to such complaints by allowing the Inspector to inquire into the matter and the Board to rebuke, suspend or remove the master. It is notable that the grounds for dismissal were to be "crime or Moral delinquency" while in

the case of public schoolmasters no specific grounds were laid down; the Board and Inspectors were to be given wider discretion over schools wholly supported from public funds than over parish schools.

RELIGIOUS INSTRUCTION

A more controversial topic for those outside the teaching profession was the "set hours" proposed for Religious Instruction in clause 27 of the 1854 Bill. "Every School Committee ... shall appoint certain stated hours for Ordinary Religious Instruction by the Master, at which provision shall be made in respect of the Attendance of Children at such separate "hours". In many parish schools this was the existing situation, (but no Act demanded it) since children of all denominations attended these schools. Now, however, a Government measure for the first time proposed separate hours, so that children could be withdrawn from Religious Instruction at the beginning or end of the school day by their parents. Hostile reaction to the clause came swiftly. Opponents of clause 27 claimed that it separated religious and secular instruction and placed the former in "a corner" so that the master could introduce no religious teaching outside these set hours. The clause, claimed one Free Church writer, "may be held to prohibit Religious Instruction at other hours - a new thing for Scottish masters to be restrained from giving Bible Lessons and Religious subjects".²¹ From the Established Church the Rev. George Hutchison of Banchory claimed that religious education "cannot be confined to stated hours - or it is a concession to secularism in education. D'Arnold believed that all subjects should be learned with religion. What brand of learning is there ~~that~~ of which it can be said that it has nothing

to do with religion"?²² On the other hand, more moderate opinion within the Church of Scotland was represented by the Elders' Union, which approved of "Religious Instruction (being) given at certain stated hours",²³ although "the master could not be stopped from alluding to religious subjects (or) moral training in religious principles (outside) the stated hours". Indeed, the Bill would not discourage teachers from pointing out Christian views on, or the moral of, everyday matters in a basic reading or writing lesson.

It was essential too that schoolmasters' salaries be dealt with as soon as possible after 1853. "The salaries of parish schoolmasters will, after (1854) suffer a very material abatement" - and Lord Melgund went on to explain "The salaries are at present paid on an average of periods of 25 years (since the Act of 1803); a new period of 25 years will come into operation during the present year (1854) and inasmuch as the price of oatmeal, on the average of which their salaries are taken, has very much diminished during the last period (1828 - 1853) they will consequently be very much reduced".²⁴ This early example of "index-linked" salaries, the index being the average price of a certain amount - 2 chalders of grain - over the previous 25 years, would have lowered teachers' salaries from the existing figures (of £25.13.4 - £34.4.4) unless legislation raised the salaries and set fixed minimum and maximum figures. It was generally accepted that "the calling must be made attractive to men of education and high principle and this could be done mainly by raising the emoluments!"²⁵ Evidence of this acceptance was that although the Commons voted to postpone the 1854 Bill and the Lords swept away its successor, Parliament did accept the separate measure ~~and~~ authorising higher salaries for teachers in 1857 ^{after} (continuing the

the previous levels for one more year in 1854, 1855, and 1856.

TEACHERS' SALARIES AND CONDITIONS.

The connection of teachers' salaries with the general question of a national system of education in one Bill was not acceptable to everyone.

"Reformers were determined to use the occasion to open up the whole question of Scotland's educational policies. Conservatives were determined that the parish school masters' case be heard separately".²⁶ The two main Presbyterian Churches took opposite views, as was to be expected. In deputations to the Lord Advocate, that of a group of parochial schoolmasters (chosen by Church of Scotland Presbyteries) asked for a temporary Act to keep salaries at their present amount "for at least one year more"²⁷ - clearly with the hope of a later increase, while a petition of the General Assembly of the Established Church warned that "the fall in the amount of salaries will be severely felt by the schoolmasters and be necessarily injurious to the efficiency of education".²⁸ On the Free Church side, the Synod of Dumfries "while recognising the claims of teachers to a much more liberal remuneration ...strongly deprecate any additional emolument being given to the parish schools so long as they are continued in their present exclusive and sectarian position".²⁹

The 1854 Bill, presented by James Moncreiff, set a minimum of £50 salary per annum for parish school masters of which two-thirds would be raised by the heritors and one-third by the committee of Council. That sum replaced the "cost of living" related salaries. In the new rate-aided public schools, masters' salaries would be £50, one half paid by the Committee of Council and the rest "assessed upon" the ratepayers of the parish.

The Bill allowed an arrangement which the Lord Advocate wished to encourage, by which heritors could change their parish school to a public school, thus saving them a teacher's salary and part of the building costs.

A parallel issue was that of retiring allowances for teachers, which were officially proposed for the first time in the 1854 Bill and, by an amendment to the 1855 Bill, raised from the proposed £25 per annum to a figure between £32 and £40 each year. Previously teachers had to cling to office, despite infirmity, because "retirement" often meant destitution. Not surprisingly, a constant complaint made in letters, petitions, and depositions' statements to Parliament and especially to the Lord Advocate was that the proposed retiring allowance (and indeed salaries) were too low. This point was strongly expressed in 1854 by a meeting of Glasgow schoolmasters of all denominations which nonetheless gave the Bill's "general principles their most cordial support",³⁰ and found no fault in the measure's attempts to consolidate previous Acts, which demanded better standards of accommodation, and the arrangements for teachers in new public schools. "A commodious schoolhouse ... (and) a Dwelling House ... consisting of at least Three Apartments besides the Kitchen together with a piece of ground for a Garden, one-fourth of an acre in extent, properly fenced" - coupled with good salaries - it was hoped, would encourage able and qualified masters to come forward and teach in public schools. Such accommodation would be defrayed "in the first instance" by the Committee of Council and later upkeep met by the rate-payers.

Major changes were proposed in the Bills

and as far as possible Moncreiff wished to use existing machinery to carry them out. For example, ratepayers of the parish, burgh or county were to be assessed as in the arrangements laid down by the "Act to improve Prisons and Prison Discipline in Scotland" (1838). Assessment of local ratepayers could have been replaced completely by a grant from the Committee of Council. But Parliament was still reluctant to spend taxpayers' money if local contributions could be found, and the Lord Advocate wished for a greater degree of local representation. On the principle that "he who pays the piper should call the tune" it was proper that local ratepayers should have a direct contribution to make - and involvement to gain - in their local public schools. Whereas some heritors, especially small landowners, could be very reluctant to lighten their pockets, ratepayers assessed for public schools would provide an easily collected supply of money at a time when reformers believed that the means of education had to be expanded, especially in industrial towns and the Highlands. It was also arguable that if a national system of education were to be established under a central Board, it was important that local people should have a voice in that system.

Among the other clauses (38 to 46) in the 1854 Bill, most tidied up "loose ends", defining precisely some terms, and only one clause, 36, was controversial. "Special cases" of schools could be helped by the Board "out of Council grants and general assessment". These cases included industrial and Reformatory schools, aimed at uplifting children from vice and crime and providing them with craft skills to make a honest living. The Elders' Union and almost all writers on the matter "approve

the Board's powers to set up and help industrial and Reformatory schools".³¹ But the heart of controversy over this clause was another case - denominational schools. The Elders' Union noted that "it must not be overlooked that (while) it would enable the Board to give to Sessional, General Assembly, and other schools ...its effect...and probably its intention - is to allow public aid to begin to Roman Catholic schools".³² Moncreiff's colleague, Lord Elcho, admitted that Roman Catholics and Episcopalians were opposed to the clause, preferring to continue receiving money from the Committee of Council rather than come under the Board's supervision and rules.³³ Bishop Gillis, the Roman Catholic spokesman, declared "All we can offer is to consent to be left out of the Bill. We shall endeavour to bake our own bricks and to find our own straw".³⁴ Lord Elcho offered during the debate on the second Reading of the Bill on 12 May 1854 "to meet the needs of these parties (Episcopalians and Roman Catholics)-the 36th clause would be struck out of the Bill and in Committee every assistance given to them". The 1854 Bill never reached its Committee stage but when the measure emerged from its winter hibernation as the 1855 proposals, clause 38, corresponding to the old clause 36, omitted any reference to denominational schools. In May 1855 a deputation from the Scottish Episcopal Church were clearly told by Moncreiff "that the Bill was exclusively a Presbyterian Bill" and was not intended to affect their schools, which would continue to receive grants under the old arrangements from the Committee of Privy Council. They were eager to ensure that this would be the case and had enlisted Mr. Gladstone's support for their cause.³⁵

MONCREIFF'S HANDLING OF THE BILLS

The general impression which emerges from the debate on the second reading on 12 May 1854 was that the Lord Advocate was determined to see his measure pass in to law, even if it were partly altered in committee. "He was most willing that the clause with reference to the removal of schoolmasters should be modified, and also that several other matters should be so treated, and this could better be done in Committee".³⁶ But he was tired of "the way in which (Parliament) went on trifling with this question from one year to another ...he could not see how human ingenuity could have framed it to have subscribed for more assistance. If he had listened to the Established Church, he would have had all the rest of Scotland opposed to him; if he had listened to the secularists, he would have had the Free Church, the Established Church, and the great majority of that House opposed to him".³⁷ The tightrope which he and his colleagues had to walk made it necessary to make changes before the Bill surfaced again in March 1855, but those were less extensive than the amendments forced through in Committee during the Summer of 1855.

Despite their different titles the measures introduced by James Moncreiff in February 1854 and March 1855 were very similar. Other changes were largely concessions to heritors and ratepayers, with the Board's powers being reduced slightly and those of the local minister, heritors and schoolmaster correspondingly increased. For example in clause 14, concerning Inspectors' examination of the parish schoolmaster, "such examination shall be open to the Minister and Heritors who may suggest Questions" and in clause 31 the Board could not dismiss public schoolmasters until "after

due Enquiry and Consideration of any Statement which such schoolmaster may make in his defence!

The Bill of March 1855 was the result of discussions between Moncreiff, the coalition Cabinet under Lord Aberdeen, and his assistants, particularly John Clerk Brodie, Writer to the Signet, who had naturally tested the temperature of Parliament and the tide of letters, petitions, deputations, articles, and pamphlets which ebbed after the defeat of May 12, 1854 and flowed again after it was clear that Moncreiff would again bring forward this Bill. As his confidential Memorandum³⁸ "for the use of the Cabinet only" stated on 22nd February 1855 "The tests must be abolished" - "no measure ... (should) perpetuate exclusion of two-thirds of the community in the constitution of schools which ought to be national. Nor do I see that, after the course adopted last season, it would be possible for Government in consistency to leave this defect unremedied". He suggested three possibilities; one was a Bill to abolish the religious tests and allow heritors "to throw the school on general assessment" and apply the 1854 Bill "only to towns and destitute country districts". This course would have the advantage of being probably less obnoxious to the Established Church and might become the basis in future of a more enlarged and general system. But it would not command any popularity. Another possibility was that "Government might simply bring in a Bill to abolish the test in the parochial schools and continue the temporary Act (continuing parochial schoolmasters' level of salaries) for another year". But "the course to which I would incline (would be that) the Bill of last Year ("to

make further provision for the Education of the people") may be re-introduced with certain modifications!" Moncreiff dissected the reasons for that disappointment. "The measure of last year, though it gave rise to great difference of opinion, did not owe its defeat to opposition, either in the House or in the country. On the contrary, the division showed conclusively that the feeling of the Scotch members and of Scotland was strongly in its favour. The division showed 35 Scotch Members for the Bill to 14 against, not a single ~~English~~ member voting against it, and those from the counties equally divided".

It is interesting to compare his comments to his Ministerial colleagues with a much later remark to a public audience in Glasgow. In both he stressed that "it was fully more an English than a Scottish difficulty which impeded our operations", but in 1886 he emphasised the motive of English opposition³⁹ - "The English members were afraid of the Bill being an example for England". In 1855 he was more concerned with the mechanics of the Bill's passage, as were the Liberal-Peelite Cabinet, at a time when they could not be certain of success with any measures, in a Parliament where no one group had an absolute majority. "The real cause of (the Bill's) defeat ... arose from suitable time not being allowed by the Government for discussion of the Bill. In Bills affecting Scotland, in which none but Scotch members take an interest, the business may generally be conducted satisfactorily without serious encroachment on Government time. But whenever a Scotch measure occurs which the opposition as a body treat as a party question, its defeat is all but certain unless it be brought on proper Government nights, and with the same precautions to

secure success adopted in regard to English measures .
On the second Reading of the Bill last year, between
80 and 90 supporters of the Government resident in
London, were absent from the Division, and (almost)
every one would have voted for the Bill ...If
Government therefore resolve to re-introduce the
measure, I would respectfully suggest, as essential
to its success, that it should be brought on early in
the Session, and on proper Government nights. If
this course were adopted, I should have no doubt of its
passing the House of Commons". The two statements are
not contradictory but rather take into account the
interests of two quite different audiences.

This memorandum, one of several which
Moncreiff produced for the Cabinet before arranging to
draft Bills, is typical, in its clear presentation of the
main points of a case supported by the available evidence,
of many of his Parliamentary speeches and addresses in
court and on public platforms, as well as his writing for
periodicals. It also supports to some extent complaints
about treatment of Scottish business in Parliament . The
National Association for the Vindication of Scottish Rights,
for example, was aggrieved at the manner in which Scottish
matters were brought on late at night or late in the
season and, ironically, in the major debate about the Lord
Advocate's position in 1864, Moncreiff had to defend a
situation with which he was privately not satisfied *in every respect.*

Modifications to his 1854 Bill, which Moncreiff
suggested in the memorandum, were threefold:-

- "1. The substitution of the negative declaration, introduced
into the University Test Bill of 1853, for the existing
Test. This, I believe, while perfectly harmless,
would disarm a good deal of general criticism on the

religious character of the Bill.

2. To introduce representatives of the great Religious Bodies of Scotland, as well as from the principal Municipal Corporations, as Members of the General Board.
3. To omit entirely what was termed the Denominational Clause (clause 36)".

In fact, none of these modifications seems to have been wholly accepted by the Cabinet; certainly the only one of the three which appears in the redrafted Bill introduced by Moncreiff in March 1855 was the introduction of four Lord Provosts into the Board of Education. Clause 36 was not omitted but in practice the reference to denominations was dropped. Most interesting, in view of Moncreiff's suggestion that schoolmasters should declare that they would teach nothing against the interests of the Established Church, clause 15 "It shall not be necessary for a parochial schoolmaster to subscribe any test, Confession of Faith, or Formula", remained untouched.

THE BILLS' DEFEAT DESPITE AMENDMENTS

This clause was the sticking point for most of the Bills' opponents in 1854 and 1855. Mr. H. Baillie cited it in stating the reasons which prevented him from supporting this Bill. "It contained no clause which gave the slightest security to the people that education ... would be religious education. No religious tests must be required from the schoolmaster, who might be a Roman Catholic, or a member of any other religion, or no religion at all".⁴⁰ One writer from Aberdeen took the trouble of having his sardonic attack printed. "Your Bill abolishes all Religious Tests. (What) Religious Instruction (are) the young of Scotland to receive? Will it be the Presbyterian Faith? the Mormonite? Jumper?

Voluntary?"⁴¹ Since this clause caused "a good deal of general criticism", Moncreiff's suggestion to substitute a negative declaration for the test seems a reasonable one, and it is uncertain why it was rejected. Possibly it was felt that supporters of the Bill might dislike the creation of a new "test" and the Free Church may have argued against it. It was as important to retain support as to modify opposition. Yet, in Committee, clause 15 was altered in July 1855. The following words were added: "Provided always that every such schoolmaster shall, prior to his election, produce to the Elders a Certificate signed by a Minister of the Religious Denomination to which he belongs, attesting his Religious and Moral character". "The Scotsman" saw the amendment as an unfortunate one. "How much better or worse is it than the old test? It proceeds on the same principle - which we had been taught to hope would never be revived in any British and especially any Scottish Statute - the principle of putting up an educational bar at the entrance to a civil office".⁴² Those views were probably written by Alexander Russell, "a man of strong feelings who was revolted by the expedient compromise".⁴³

On the other hand, the Lord Advocate did not regard a negative declaration as watering down his main objective: "The Lords ... said: don't touch the schoolmasters' test, and we will give you no more opposition". As he recalled in 1868 to a University audience, "Gentlemen, I was deaf to these allurements; I utterly refused to listen to that proposition; I thought that test stood in the way of the only thing worth doing - a general national extension of our system, and consequently my bills were lost".⁴⁴

Perhaps the Lords would in any case have voted down the Bill in 1855 whatever modifications were made. The Earl of Eglinton regarded "abolition of all religious

tests" as a proposal to which "he could not agree upon any account whatever".⁴⁵ The vote of 86 "Not-content" to 1 "Content" is not a true reflection of feeling in the Upper House on 19 July 1855, since the Duke of Argyll "not wishing to damage the cause of education by unduly pressing the question", begged to withdraw the Bill, and only the Duke of Richmond voted to retain the measures at that time.⁴⁶ If the February 1855 memorandum had been accepted as a basis for the redrafted Bill, it is at least possible that the House of Lords would not have dismissed the measure so summarily. In the "Burgh and Parish Schoolmasters' Act" of 1861,⁴⁷ clause 22 was in essence the clause which James Moncreiff had wanted in his 1855 measure—abolishing religious tests but including the negative declaration.

Since the Lords had decided to take the second Reading of no Bills after 30th June (originally) and Moncreiff decided to accept some changes to speed the Bill, the amendment to clause 15 was not the only change brought about in the 1855 measure during its Committee stage. Changes in clause 17 placed as great an obstacle as possible against attempts to change parish schools into public schools. The Original Bill stated that "where a meeting of Heritors ... have negatived a Proposition that the Parish School should be maintained by Assessment, it shall not be competent for the Sheriff to call another meeting for such purpose until twelve months thereafter". The alteration in July added instead of "twelve months"

the period of "three years after the passing of this Act" and subsequently if it were still negatived "the Sheriff (was not) to call another Meeting until the Expiration of Five years thereafter". Supporters of the Church of

Scotland's exclusive connection with parish schools wanted as few as possible to become public schools, and therefore voted down the possibility of annual meetings to discuss such a move which would, once achieved, probably be irreversible. Such amendments "except those proposed or yielded to by the Lord Advocate were carried against a majority of (two thirds) the Scotch members and by the votes of English ultra-tories combined with so-called English Voluntaries - an unprincipled combination ...mutilation after mutilation was inflicted and... Many of our Scotch Liberals felt impelled to (say) the Bill had been 'amended' to the death of almost all the good it ever contained. Mr. Duncan, Sir James Anderson, Mr. Ewart, Mr. Alexander Hastie, even Mr. Cowan joined in this declaration; and when we find the representatives of the chief Scotch constituences-including Edinburgh, Glasgow and Dundee - taking this course, there is strong evidence that the name of National is not truly applicable to the proposed system".⁴⁸ The Voluntarist viewpoint - opposed to any State provision of Religion - was also that of the "Scotsman's" writers.

Moncreiff's amendments - what the "Scotsman" called sops thrown to the enemy - did little to placate his opponents, but although on July 12 1855 the Bill was read a third time by 130 votes to 115, this was a distinct decline in majority and attendance from the second reading victory by 210 to 171 (on April 27). Somewhat ruefully, the Lord Advocate claimed "that whatever might be the future prospects of the Bill he was convinced that a great advance had been made in the question of the solution of the difficult question of education in Scotland, for they had done what had never been done before, since 1838, - read an Education Bill a third time" and had still some

hopes of its becoming an Act. Some frustration was shown by his warning Hon. Members "that we were allowing the nurseries of crime to increase; and while Hon. Members in that House were discussing these miserable abstract questions, the mischief was being done".⁴⁹ He believed that the House's vote on the third Reading would "evince its continued adherence to the great principle that it was the duty of the nation to educate the young and that in the education of the mind, and spread of moral and religious knowledge, dwelt the real safety and hope of the country".

The problem was that, since the Lords swept aside even the amended measure of 1855, it was difficult for Moncreiff and other Ministers to sustain interest in the attempts to create a national system of Scottish education. "Accordingly in 1856 the English Liberal Members said - Well, now, we have come down for three sessions, night after night, [a slight exaggeration] to support your Education Bill. If you think you have a chance of carrying it, we will do so again, but if you don't, (do) not bring us down next session for the same hopeless enterprise! Well, there was reason in that, for you could not expect the English members to take exactly the same view that we did".⁵⁰

By late 1856, even the enthusiastic Lord Advocate could see that the Upper House was unlikely to accept any Bill on the lines of those of 1854 and 1855. Indeed, the years 1853-55 were, as J.D. Myers has written, "the high point in the mid-century national education controversy".⁵¹

CHAPTER FIVE: References

opening quotation: q.v. reference 7, page 4.

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2. John Cook, Convener of the Committee of the General Assembly of the Church of Scotland (1853) L.A.P.Box 15.
3. Hansard volume 130 par. 115-9, 23 February 1854.
4. Hansard volume 133, par. 261, 12 May 1854.
5. "Scotsman" 7 January 1854.
6. "A member of the General Assembly's Parish Schools Committee" (1856).
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35. Scottish Episcopal Church deputation (12 May 1855): Letter to the Lord President of the Privy Council, L.A.P. box 15.
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43. "The Glorious Privilege" (1967) page 37.
44. J. Moncreiff (1868): "Address to the General Council, University of Glasgow" page 19.
45. Hansard, volume 137 par. 1046, 19 July 1855.
46. Ibid. par. 1050.
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48. "Scotsman" 7 and 14 July 1855.
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51. J.D. Myers (November)(1972) page 77.

CHAPTER SIX

Parochial and Burgh Schoolmasters' Act (1861).

"We opened the door to the choice of the best men"
(James Moncreiff, 1886).

Judging by the letters, petitions, newspaper articles and depositions sent to the Lord Advocate and retained in his files, the numbers of words written on the Education question in Scotland were greater in 1854-55 than in the entire period of 1856-1867, when the Argyll Reports were published. The flow of pamphlets and newspaper articles on the subject was also much stronger in 1854-55 than in the next twelve years (Indeed, E.F. Maitland remarked in 1861 about Scottish education "It is a subject which now one never hears mentioned except in newspaper articles and Presbytery speeches".)¹

THE 1856 MEMORANDUM

After the disappointment of the Bill's withdrawal in the Upper House late in the 1855 Session, Moncreiff wrote a cautious Memorandum to the Cabinet in March 1856,² "It is not proposed to renew the Question of Education in Scotland on the footing which led to the protracted discussion last year, but to attempt to accomplish the same result, in part at least, by the Three Bills now transmitted". The first Bill he and his officials had drafted simply continued the level of Parochial Schoolmasters' salaries for a further three years, but would also "open the schools to teachers of all denominations", that is, abolish the religious test. It "will of course be opposed in the first instance, but, in the House of Commons at least, the Opposition will be helpless".

"Bill number two relates exclusively to

Burghs and Towns. It proposes simply to confer on Town Councils power of Assessment for Educational purposes within Burghs. I do not think the Second Bill will meet with any opposition.

"I do not propose to introduce the Third Bill unless the First is carried, because, until the exclusive test is abolished, any efforts to extend the Scottish system on a national scale must be unavailing, but if it be carried, I should then advise the introduction of Bill number three. (It) has for its object substantially the result contemplated in the Measure of last year (but) instead of a permanent Board it provides for a temporary Parliamentary Commission similar to that in 1690, for the Visitation of Colleges and Schools; instead of making special provision for the Nature and Mode of Instruction, it leaves these to be the subject of Regulation by the Commission. It is proposed to give the Commission power, subject to Approval of the Minister of Education and after the full enquiry, to determine what new schools are required; it being left to Burgh or District either to support the school entirely by Assessment, (leaving it) under the exclusive Management of the Local Authority, or to adopt the Regulations of the Commissioners, and receive one half of the expense from the Committee of Council.

Before introducing Bills number one and two in the House of Commons on 8th April 1856, the Lord Advocate had taken what opportunities he could to ensure support for the measures in and out of Parliament. He wrote to Dr. James Taylor, a ~~United Presbyterian~~ spokesman, asking him to correspond with D^r Begg and arrange public meetings in major cities "as soon as possible after the introduction of (the) Bill"³ and the indefatigable Taylor visited Edinburgh, Glasgow, Dundee and other towns

"agitating the question"⁴ to gain support for the Bills. Moncreiff, who received many letters from Taylor and went so far as to send him telegraphs on occasion (e.g. 11 July 1856 just before the Lords discussed his measures) clearly regarded him as an important source of information about Scottish public opinion. The Lord Advocate was also sensitive to criticism at this time, especially from such an influential source as the Dean of the Faculty of Advocates, John Inglis, and asked another Member of the Liberal Government, E.F. Maitland, to "write to the 'Scotsman' a letter to be published with ~~my~~ (Maitland's) name along with your letter to me"⁵ on the Dean's objections, but Maitland refused. Probably wisely, he wrote, "It appears to me that it would not do for a Member of the Government to (go) directly into a newspaper explanation of a Bill pending in Parliament. I have asked (John Clerk) Brodie to shew your letter privately to the Scotsman, to shew the groundlessness of the Dean's attack, and you can do so in the House of Commons". The incident indicates that Moncreiff was particularly keen to see the measures become Acts, both because of the frustration of previous years and because his major Bill number three would not be introduced unless the others were successful.

TWO NEW BILLS

In introducing Bills numbers one and two⁶ in the Commons on 8 April 1856, Moncreiff was at his most conciliatory. The Presbyterians would retain some power over the parish schools and teachers, the parish school system would be left largely unscathed, "opportunities would be afforded to parishes to state any objection"⁷ to Inspectors' statements about the need for new schools. The first measure, the Parochial Schools (Scotland) Bill, would

"regulate and make further provision" for those schools and the second would "make provision for Education within Burghs of Scotland". In bringing forward the measures with the assistance of Sir George Grey and Viscount Duncan, he made his intentions quite clear. "He did not think that it would be expedient to resume year after year the conflict of last Session, and therefore, although he was not prepared to surrender to any extent the general principles then affirmed by the House, he thought it would be desirable to endeavour, by dividing that Bill, and altering some of its detail, to make some improvement in the present state of education in Scotland".⁸ His general aim was still to "aid in the suppression of ignorance and crime in Scotland"⁹ a constant theme in his speeches; his specific object was to end "the exclusive character of parochial schools, The tests were indefensible. The Bill would abolish, and he trusted for ever, exclusive tests".¹⁰

Other important points concerned the general administration of parish schools and the raising of money. He believed that the Presbytery should no longer initiate prosecutions against the parish schoolmasters, "since, being judge (they) ought not to be prosecutors at the same time" although heritors and ministers "might be judges in trials for moral delinquency."¹¹ Nor, as he assured Sir James Fergusson, did the Bill affect the Presbytery's judicial powers over masters accused of heretical teaching;¹² again, "he did not propose to interfere with (their) right of examination of teachers except where the master was not of the Established Church,— an Inspector would then examine him. He wished to protect Presbyterian teachers from outwith the Established Church being excluded by religious tests or Presbytery examination

from parish schools; otherwise "he did not propose to interfere further in management" of parish schools.¹³

As regards the cost of education, which would rise when masters' salaries and "comforts with regard to their dwellings" were improved, there were two main proposals. Burgh Councils could assess property for education up to a certain amount and "the basic funds for burgh and parish schools would therefore be provided by the landowners in counties and ratepayers in boroughs (sic)".¹³ The Government could not be asked to bear a greater portion of the expense when parish and burgh school systems remained largely intact, and he hoped that since Government cash was not involved in these two Bills, they would prove more acceptable to both Houses of Parliament.

On that day in April, Moncreiff outlined his proposals to the Commons as he had a month earlier in the Cabinet. "If the two Bills were received favourably, if the question of tests were settled, he would then state to the House a more general measure of education."¹⁴ Any general management would be substantially confined to new schools (i.e. public schools) and borough schools. A great deal of discontent was excited against the Board of Education which he proposed last year". As was his custom, he set out the possible courses with clarity: "to leave the local authorities without control, or to have the control in Edinburgh, or to have the control in London. He thought that leaving the control in Edinburgh the best mode ...but that was objected to". In the mid-1870s, when there was widespread demand in Scotland to retain the temporary Board of Education as a permanent body after 1872, Moncreiff must have pondered over the change in attitudes over two decades. In 1856, however, "to

conciliate those objections, he proposed a Board of Inspectors subject to the superintendence of the Minister of Education" - a new post now suggested by the Government. "The Inspectors would report to the Minister what parishes required schools, and schools would be established with a rate to support them. Before 1858 the Inspectors (in what would probably have been a more limited version of the Argyll Commission Reports) would lay on the table of the Houses of Parliament a detailed statement of the state of education in Scotland". Regulations would be made for the new schools' management and "Government money given for education (would go) to such schools as should adopt these regulations!"

REACTIONS TO THE 1856 BILLS

Most of the petitions, Memorials, letters, and deputations which were sent to the Lord Advocate, just before or after his two measures were presented, favoured such moves. Typical statements were those signed by the Lord Provost and other influential "inhabitants of the City of Edinburgh" asking that the "exclusive control of the Established Church"¹⁵ over parish schools be ended and by "Citizens of Glasgow", including their Lord Provost, stating that it is "manifestly unjust to increase (parish schoolmasters') salaries so long as the teachers are selected exclusively from a comparatively small section of the community".¹⁶ The other side of the argument was put in a document signed by H.E. Crum Ewing and Henry Bruce, officers of a Committee "appointed by a large Public Meeting at Glasgow 15th May 1856 to oppose the 'Bill to make provision for Education within Burghs in Scotland' on the ground of its interference with the principles of Civil ~~and~~ and Religious Liberty".¹⁷ The measure was considered "unnecessary, since the late census in 1851 shows a

proportion of nearly one out of seven in the population of Scotland attending school". Such a statement, implying correctly that Scotland was no worse than ^{many} other countries, did not take into consideration the great variation in quality of teaching, irregularity of attendance by many children on school rolls, or the fact that there were insufficient places if every Scottish child was to receive even a basic elementary education. Above all, the Committee ~~concocted~~ ^{opposed} the view that there were insufficient school places and a large number of wholly uneducated children in the industrial belt of Central Scotland, where population had more than doubled since the major Education Act of 1803. Inadequate statistical information before the details of the Argyll Reports were available made such an argument possible. As the Committee pointed out, the claim in an opposing Memorial that "fifteen thousand children in Glasgow are growing up in total ignorance of" their duty to God and man" was stated "in the absence of all proof. Statistics of attendance at school on a particular day may show a deficiency in the general amount of education, but cannot prove that a single child in the community is left totally uninstructed". They ~~argued~~ ^{argued} that the irregularity of some children's attendance at school depressed artificially these statistics.

The Committee also believed that no clear case had been made of ¹⁷"the existence of ignorance and vice"...nor of "the adequacy of more educational machinery" and objected to "the tendency towards monopoly, with its expensiveness and stagnancy, as opposed to the economy and vitality of free trade" - a shrewd hit at a Liberal Bill, since they might hope to "solicit votes" from Liberal Members who also strongly supported free trade in general. Finally, the writers show distaste for the step by step

approach set out by Moncreiff in 1856. "it is to be resisted as insidious and ensnaring".

DIFFICULTIES IN PARLIAMENT

However, despite some delays, the Bills passed their second reading in the Commons on 4th July 1856, by the heartening majority of 70 votes (149 to 79). As Moncreiff had predicted in March, the opposition to the measures in the Commons would be hopeless. The Lords, however, were quite a different audience. They deleted from the Parochial Schools Bill the crucial clause abolishing religious tests for parochial schoolmasters. The Duke of Buccleuch accused the Government of expediency. "Nothing would have been heard of the Bill had not the schoolmasters' salaries required improvement".¹⁸ This appears to be quite the opposite of # the Lord Advocate's attitude, which was that the salaries question was the best opportunity to alter the Scottish education system, but that the matter must be dealt with sooner or later. Viscount Melgund's Bills of 1850 and 1851, too, were not "linked" to schoolmasters' salaries in that way. Such criticism was all the more annoying to the Ministry, for Buccleuch had not opposed the second reading since he believed "there was much in the measure which was worthy of consideration". When the test abolition was omitted from the Parochial Schools Bill by the Upper House, the Duke of Argyll, who had presented the measures, intimated that "the Bill could no longer be considered the Bill of the Government" and in vain entreated the peers to consider the great advantage of "amalgamating the teaching of children of different sects under one master".¹⁸

When the Commons discussed the Lords' amendments, Moncreiff rejected Buccleuch's claims that the Parochial Schools Bill was meant to substitute Free

Church masters for Church of Scotland men. "It was not proposed to sever the connection between the Established Church and the schools. The heritors and ministers were to have the power of electing the schoolmasters left in their hands, but it provided that their choice should not be restricted to one denomination. That was the whole question".¹⁹ So angry was he at the Lords' changes to the Bills (especially since the session was so advanced that there was little time to settle the matter before the Glorious Twelfth of August took many Members out of London) that he made a rather ambiguous "threat". "In the event of (the Commons) being foiled in the attempt to place the schools on a national basis, it would be its duty to declare that the parish schools ... had no further claims to favour than those of any other denomination". Nothing more was heard of this veiled remark nor of those two Bills, though both Houses set up committees. In the Lower House, the committee was to draw up "Reasons to be assigned to the House of Lords for disagreeing to the Amendments". By 21 May 1857, Moncreiff admitted "The great difficulty of the want of time" and hoped "to be able to bring in a comprehensive measure" in 1858.²⁰ By then, however, he was temporarily out of office.

Once more, James Moncreiff, the Duke of Argyll, and their colleagues had failed to abolish the religious test for parochial schoolmasters and open up Scotland's parish schools to Presbyterians of all Churches, as a prelude to major improvement in the country's education system. All that remained by August 1857 of the plans set out in March 1856 was the Parochial Schoolmasters' (Scotland) No. 2 Bill which ensured that heritors would pay masters a proper salary. Although it

was essential that the situation of 1800, when "no one of good education and ability accepts this pittance",²¹ should not return, even the salaries measure was meant to last only two years as a "continues Bill". The result of long days' debate in and beyond Parliament was this worthy but severely limited measure, the husk of the Lord Advocate's hopes.

FACTORS IN THE FAILURE OF BILLS IN 1854-6.

During 1854, 1855 and 1856, James Moncreiff had introduced measures with the aim of establishing a truly national system of education. All had been launched with optimism tempered by reality, as his confidential Memoranda of February 1855 and March 1856 indicate. Yet all failed - in May 1854, the second reading in the Commons was put off for six months by 193 votes to 184; In July 1855, the Duke of Argyll had to withdraw the Bill in face of intransigent opposition in the Lords; and in July 1856, the Upper House altered the two Bills so greatly that with the Session almost over, the Government had little choice but to allow them to lapse. The problems in the way of these Bills were fundamentally the same in each case. In the House of Commons "it was fully more an English than a Scotch difficulty which impeded our operations. The English members were afraid of the Bill being an example for England - I do not think they need have been - but such was the case".²² Since Scottish members in the Commons voted strongly in favour of the measures (on May 12, 1854 by 36 to 14), most opposition in the Lower House came from English Derbyite M.P.s who, like Cumming Bruce, saw the measures as "pilot balloons"; since Scotland was underrepresented in the 1850s, the Lord Advocate had to depend upon English Liberal supporters of the Government

to see the 1855 and 1856 Bills through the Commons — on the third reading in 1856 by 70 votes. Those measures, however, passed the Commons and died in the Upper House, where the alarm of English Conservative M.P.s encouraged their countrymen to vote against the measures.

Yet, in the Lords, it was not entirely an English difficulty. In the July 1855 debate, the Earl of Eglinton pointed out that of the 16 representative Scottish peers, 15 were opposed to the Bill and the 16th was in India.²³ The names of 33 Scots peers on a petition opposed to the Bill (in April 1854)²⁴ bear out that the Lords, with exceptions, such as Duke of Argyll, Lord Panmure, and other Liberal^{or feeble} Lords, took the view that these measures would reduce the Church of Scotland's status by severing her exclusive connection with, and supervision over, the parish schools. Only after some years had elapsed and the particular circumstances of the Elgin case had altered the situation with respect to burgh schoolmasters and the religious test, did such a measure pass both Houses of Parliament. Security was the heart of the matter. In the 1850s the only security of sound religious teaching which the Established Church and its supporters in and out of Parliament^{would accept,} was the traditional subscription. Without such a test of religious principles, claimed the Earl of Dalkeith, "for aught he knew the Roman Catholics and all the different sects in Scotland" might dissemble about their true convictions and gain a post in a parish school²⁵ and a member of the General Assembly's Parish Schools Committee declared that an unsound master could turn the schools into "seminaries for poisoning the minds of youth".²⁶ James Moncreiff accurately summed up the

reason for opposition to his measures. They "did not continue the exclusive superintendence of the Established Church in Scotland and the exclusive privilege of members of that denomination to teach in the schools".²⁷

"Having been foiled in reforming the schools, I thought I might begin with the Universities". With this partly jocular remark in 1868, Moncreiff recalled his withdrawal for the moment from the schools battleground. For the moment "it was of no use to go on with this incessant knocking on the door of Parliament", especially since "it was constantly said that there was no educational destitution, or at least no proof of it".²⁸ The major educational survey which his Bill number three (1856) would have undertaken was abandoned, since the other two Bills of that year lapsed and the third measure was dependent on their success. Not until the Royal Commission under the Duke of Argyll was such a broad and detailed study of educational provision carried out, and the Reports "completed all that pioneers in this campaign could do".²⁹

After some years in which Moncreiff was a member of the University Commission established in 1858³⁰ and was out of office from February 1858 to April 1859, an unexpected event occurred which helped him to achieve an educational measure. "I think the time has now come when it may be proposed with some prospect of success to throw open the Parish Schools".³¹ The reason that the time was now propitious was suggested by Moncreiff's remark that Town Councils were demanding "to be relieved of the effect of a recent Judgment of the Courts in Scotland, by which the Burgh Schools were found to be subject to the jurisdiction of the Presbyteries of the Established Church".

A NEW SITUATION IN 1861.

The Court of Session decision in the Elgin case, that the Burgh schoolmaster must take the religious test

and be subject to Presbytery examination, was noted by the Lord Advocate in a Parliamentary answer early in 1861. "Until recently ... burgh schoolmasters were not generally made liable to the test, which it was supposed had fallen into desuetude as regards them. However by a recent judgment this was found not to be the case".³² Town Councils, which had run their burgh schools for centuries with little interference from the Presbyteries, and burgh school masters, who had not had to subscribe the test, were furious at the decision and complained strongly to Parliament. The Town Council of Glasgow claimed that it was "highly inexpedient that these acts (The 1690 Act had long been assumed to apply to parish schools alone) should remain on the statute book."³³ (We) have not taken into account the religious profession or denomination of any candidate but have contented ourselves with ascertaining that the party was of irreproachable moral character and best qualified. (Our jurisdiction has) never been interfered with by the Presbytery". Many other Burgh Councils made the same points, including Brechin, Dundee and Nairn, which also noted that "a great number of well qualified teachers will be called upon to sign the formularies and conform to the (Established) Church - or quit office". This would lead to "great hardship" in many cases and the court decision was "hurtful to the feelings, and in opposition to the desire, of a great majority of people of Scotland and highly detrimental to education".³⁴

Soon after the Elgin decision, Moncreiff was³⁵ "in communication with the schoolmasters and with some of the leading Scotch Members on the Conservative side of the House, as well as with those who have the confidence of the Presbyterian Dissenters, and I think there is a probability of their substantially

acquiescing in the following Heads of a Bill:.

- I. The existing test to be abolished.
- II. The patronage to remain with the Minister and Heritors as at present.
- III. The examination of schoolmasters, prior to admission, to be taken from the Presbyteries and transferred to an Examining Committee, to be nominated by the University Court in each of the four Universities, two from the Faculty of Theology and four from the Faculty of Arts.

As no one can be a Professor of Theology without being a Member of the Established Church, this will give a sufficient security for the due examination of the schoolmaster as to his religious qualifications.

- IV. Every schoolmaster on his admission to take the Declaration which is at present administered to every Professor, namely That he will teach nothing contrary to the Westminster Confession of Faith".

An additional proposal was that the schoolmaster declare that he holds and will teach the Doctrines in the Shorter Catechism. "I own I am averse to institute any Text of Belief but as the Shorter Catechism is the Text Book taught in all the Presbyterian schools (Free Church and U.F. as well as Church of Scotland) and if this concession will settle this long standing dispute, I do not think that an obligation to teach that Catechism would be practically objectionable!"

THE PAROCHIAL AND BURGH SCHOOLS BILL

The Parochial and Burgh Schools Bill which received its first reading on 3rd June 1861, was substantially the measure set out in the Lord Advocate's Memorandum, and the Act which was perhaps James Moncreiff's most significant single contribution to Scottish education was the result.³⁶

Parish schoolmasters' salaries were to be raised

to a minimum of £35, with £70 the maximum. An important change in clause 14 took from the Presbytery powers to proceed against parish schoolmasters for "immoral or cruel and improper treatment of scholars"; instead the Heritors and Ministers or the Presbytery (on their application) could complain to the Sheriff, who would proceed to the trial of the complaint, with final powers of suspension or deprivation. It is not absolutely the case that the Presbytery lost all powers - for clause 15 enabled that body or the Heritors, if they believed the teacher had contravened his Declaration (given below), to complain to "One of Her Majesty's Principal Secretaries of State" who could "appoint a commission to inquire ...and to censure, suspend, or deprive such schoolmaster". Where an Inspector declared that a schoolmaster was disqualified because of infirmity or old age or negligence the Heritors and Minister "may require (him) to resign his office; where such resignation shall not be any fault on the part of the schoolmaster the Heritors shall grant a Retiring Allowance ... not less than two thirds of the salary."

The most important clauses were 12 and 22. Clause 12 stated that "It shall not be necessary for any schoolmaster of any parochial school (or Side and Assembly school) to profess the Confession of Faith, or the Formula of the Church of Scotland; Provided that every person elected a schoolmaster shall produce before the Principal of the Faculty of Divinity (of the University where he was examined) the said Certificate by the Examiners, and shall in (his) presence subscribe a Declaration in the following terms.

'I, A.B., do solemnly and sincerely, in the Presence of

God, profess, testify and declare, That as Schoolmaster of the Parish School at _____ in the Parish of _____, and in the Discharge of the said Office, I will never endeavour, directly or indirectly, to teach or inculcate any Opinions opposed to the Divine Authority of the Holy Scriptures, or to the Doctrines contained in the Shorter Catechism agreed upon by the Assembly of Divines at Westminster, and approved by the General Assembly of the Church of Scotland, in the Year one thousand six hundred and forty-eight, and that I will faithfully conform thereto in my teaching of said School, and that I will not exercise the functions of the said Office to the Prejudice or Subversion of the Church of Scotland as by Law established, or the Doctrines and Privileges thereof". Clause 22 stated that Burgh schoolmasters need not "profess or subscribe the Confession of Faith, or the Formula of the Church of Scotland ...nor shall any such schoolmasters be subject to the Trial, Judgment, or Censure of the Presbytery of the Bounds."

Moncreiff's confidence about this measure - "The three great bodies of the Presbyterian Communion (Church of Scotland, Free Church, United Presbyterian) are I believe now ready to combine in some such proposal"³⁷ - was justified. As A.L. Drummond and J. Bulloch point out, the measure's "main relevance for the Scottish Churches lay in the fact that it transferred the power of examining new teachers from the Presbyteries to four Boards associated with the Universities, and that it ended the need to sign the Confession. Denominational inspection of schools by the Churches sponsoring them, ^{still continued} but (almost) the only control left to the Church of Scotland in the parish schools was the uncertain power of the local minister on the body which appointed a parish teacher".³⁸

In retrospect, Moncreiff recalled that the significant point of the Act was "in abolishing the tests imposed upon schoolmasters, and thereby opened the door to the choice of the best men".³⁹ In practice by 1870, only 50 out of 133 Burgh schoolmasters were members of the Church of Scotland, while in parish schools most teachers were adherents of that Church.⁴⁰ The difference between burgh and parish schools may reflect the fact that many men who held posts in 1860 were still there in 1870; and before 1861 burghs had not tested a candidate's adherence to a particular communion, while such tests were applied in parish schools.

The debates in the House of Commons on both second and third readings were brief and opposition was muted. Major Cumming Bruce felt that it was late in the season (it was introduced on June 3 1861) and it would have been fairer to Parliament to bring the measure in earlier and discuss it fully.⁴¹ During its Committee stage in the Commons, some Members, notably Mr. Black and Mr. Hadfield, claimed that the test was being continued by the declaration. Moncreiff agreed "as to the uselessness of tests; but we well know what was the fate of (previous) Bills and begged them to allow the compromise".⁴² During Committee, however, the Scottish members reduced the powers remaining to the Presbytery; originally, Moncreiff, in his endeavour to see the Bill through (and the old test abolished) in the Lords, had preserved "the general superintendence of the Presbytery (in) cases of neglect of duty" by the teacher. A few days later, he "was prepared so to amend the Bill that the Presbytery should be invested merely with the power of censure and suspension ... and not

with the power of dismissal".⁴³ Then the period of suspension was limited to three months, and finally the old superintendence was reduced to the power of complaining to the Secretary of State, about the teacher's breaking their religious declaration, and to the Sheriff, about cruelty and immorality.

In the House of Lords there were complaints but the atmosphere was much quieter than in 1855 and 1856. Lord Kinnaird called it "a revolutionary measure. By one clause it severed that connection between the parish schools and the Church of Scotland which had been a blessing to the country, by securing a religious education to the people".⁴⁴ This was the final blast against the Bill, however, and the Duke of Argyll, reminded the peers that "The Shorter Catechism was (accepted) by almost every ecclesiastical body in Scotland except the Roman Catholics and the Episcopalians".⁴⁴

On the 1st August 1861 the Lord Advocate was able to savour a moment of success. He and his colleagues had taken care - "having attempted to carry a Bill without success, he would not again take up the question unless he had reason to expect that the Bill would be favourably received not only in that House but elsewhere".⁴⁵ He had introduced the Bill late in the session "to enable the General Assembly to consider the measure". He and his advisers had consulted all interested parties - the three Presbyterian Church Assemblies, lay members of the Churches, both Houses of Parliament, the schoolmasters of parish and burgh schools - as his Memorandum early in 1861 indicates. "It was not until the Easter recess that he had reason to think that the expectation would be fulfilled".⁴⁵ He congratulated the

Commons" that at length justice was about to be done to a most meritorious class of persons" - the schoolmasters. The Act of 1861 was essentially an amended version of certain clauses in the 1854 and 1855 Bills, omitting all mention of the Board of Education in Scotland. The Act dealt with some pressing problems but did not pretend to be introducing a national organisation or system of education. It was essential both to deal as quickly as possible with the matter of teachers' salaries on a permanent basis and with the monopoly which the Church of Scotland continued to have over supervising parish schools and appointing teachers of their own communion.

One factor which had assisted the measure was the support of Mr. David Mure, Conservative Lord Advocate for a short period in 1859 under Lord Derby. The cordial relations between Mure and Moncreiff are suggested by Mure's becoming Sheriff of Perthshire in 1853 and a Lord of Session in 1864, both on Moncreiff's recommendation. In the Committee stage of the 1861 Schoolmasters' Bill, Mure agreed that the measure "had been framed with a view to the satisfaction of all parties and to secure its passing in both Houses."⁴⁶

In reviewing his career in 1895, the "Scotsman" described the Act unequivocally as "a triumph for the principles" of the Lord Advocate.⁴⁷

But with the Act safely on the Statute Book the Lord Advocate looked ahead.⁴⁸ "I believe that the time has come when that denominational system may be exchanged for a simple extension, although a large, thorough, and unsectarian one, of the National Schools; for the abandonment of the system of Government aid (which is added) to private contributions, and the absolute

endowment of such additional schools as the wants of the people may require. It is the interest of the Established Church that the Free Church schools which are conducted with vigour shall be merged in the general system. It is the interest of the Free Church to be relieved of the burden of maintaining them, while, independently of any sectarian views, the people have been all along averse to carrying the differences, which divided the Church, into education".

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SIR H. W. MONCREIFF, BART. D.D.

Home & Macdonald Lith

James Moncreiff's eldest brother, the 10th Baronet.

CHAPTER SEVEN

The Argyll Commission

"We must now address ourselves to the task of education and bringing it with the reach of all". (James Moncreiff, 1867).

As Moncreiff had promised the House of Commons, "if they would join in doing away with the exclusive test", he would introduce in a future session a measure to establish "a truly National education system in Scotland".¹ Within eight months of the 1861 measure becoming law, he was able to fulfil that promise and introduce an Education Bill "to make further provision for the people in Scotland" with the assistance once more of Sir George Grey, Secretary of State for the Home Department and on this occasion by Sir William Dunbar from the Treasury. The Bill, introduced on 19th March 1862, was founded upon Moncreiff's Memorandum for the Cabinet written in December the previous year, although certain changes were made after this document was discussed.²

MONCREIFF'S PROPOSALS FOR A MAJOR BILL in 1862.

"My proposal is to convert into an annual vote the Grants at present made under the Privy Council Minutes to the Presbyterian denominations in Scotland, to fix that sum as discharging any duty incumbent on the Government in the matter of education, and to apply that amount in extending the National School System". The sum he suggested was £75,000 a year and "this would put a stop to the further increase of the Grant" as well as relieving the Government "from the existing difficulties of the present system" - factors which he

knew would weigh with the Cabinet. "The rest of my Proposal is as follows:-

I. To abolish absolutely, unless in the case of Roman Catholic and Episcopalian schools, all Grants-in-aid.

II. To appoint a Commission to survey the country, and fix ...what existing schools, other than parish schools, are necessary, and what are unnecessary, and what additional schools are required ... all schools reported unnecessary shall cease to receive any aid from Government, and those schools reported as being necessary, whether existing or additional, should be absolutely endowed.

III. At the first starting of the new system considerable expense would be incurred in building new schoolhouses. But ... if the rest of the scheme is satisfactory all schoolhouses, to which Government has contributed, will be made over without payment ...many schools will require to be built in localities which are now entirely destitute. I propose to apply £10,000 a year towards increasing the salaries of existing schoolmasters in poorer districts, etc.

IV. I propose that the schools shall be managed as follows:-

(1) The ratepayers of the parish, if they propose to adopt the school, and to become liable for repairing and maintaining the schoolhouse, shall elect a Committee (to elect the schoolmaster)". If they decline, anybody, such as the Heritors, could elect the master, and if none come forward, then the school "shall become a parochial school under the existing law"(4) "The superintendence of all schools to be vested in the University Council of the District"....

"I propose, in addition, to institute a General Council of Education (clearly a weaker version of the Board of Education proposed in 1854-56) to consist of the Principals of the Four Universities, the Assessors of the Chancellors, Rectors, and University Courts, and three Members to be nominated by the Crown. It is not proposed to give this Council more than a general regulating power, with two meetings in the year".

The Funds were to remain in the hands of the Committee of Privy Council on Education, applied "as shall be recommended by the Commissioners, approved by the Queen in Council, and thereafter from time to time, as the University Council of each University, with the sanction of the General Council of Education, may suggest".

With the co-operation of 1861 in mind, the Lord Advocate "had" every reason to think that this proposition would be well received by the Scotch Members on both sides of the House and by the country". The other special factor - "the difficulty which exists in regard to the proposed alteration on the Privy Council Minutes" - would make this a desirable time for its introduction". It was already clear that the revised code introduced by Robert Lowe was likely to be unpopular, especially in Scotland, where the system of "payment by results" for schoolmasters, many of whom prided themselves, especially in parish schools, on their teaching in Latin, was seen as an insult. Therefore, suggested Moncreiff, the time was opportune for a fixed annual sum which would help extend a national system without the need to apply the Revised Code. "If the Government see no difficulty in the financial part of

it, I anticipate no serious obstacle to its success, now that the only impediment which has retarded it (the religious test) has been removed".²

REACTIONS TO THE 1862 BILL

One correspondent to Moncreiff just after the introduction of this measure was equally confident. "The absence of exciting questions and violent feeling (is) favourable for such proposals".³ Perhaps the Lord Advocate was rather too confident of success and did not arrange the Bill's timetable quite as well as he had in 1861. Adam Black warned him that 11th April was not a propitious day for the second reading. "I have seen several of the Scotch Members who all say that they will have left London before that day" since they had arranged to be in Scotland and elsewhere before the day was named. When the Bill was debated, ~~after~~ the postponement, on 26 May 1862, features which Moncreiff hoped would gain the measure a smooth passage proved to be matters of dispute.

During the second reading debate, he accepted that "the Established Church and the Free Church were affected ... but that effect would have been, he thought, for the public benefit".⁴ As for public expenditure, "the impression ... had prevailed that the measure would put £1,000,000 into the pockets of the landed proprietors!" This "was an entire mistake".⁵ Thirdly, "even the composition of the Commission had been made a ground of opposition to it". (16 leading University officials and four names added by the Crown). "He wondered that objection was never raised to the University Commissions of 1826 and 1858".⁴ He believed that opposition was based on small matters, but "though there was a general

feeling in favour of the measure, there were difficulties not easy to surmount". As was his custom, "he had thought it right, before proceeding, to ascertain the opinion of the representatives of Scotland".⁴

The general feeling of the Bill's opponents such as Lord Henry Scott was that "more accurate information on education in Scotland" was needed before a major Bill was introduced.⁵

Moncreiff was very reluctant to agree to this. Like Mr. Dunlop, "he did not think that any enquiry into the general education of Scotland was necessary" - only "an investigation into matters of local detail" such as the proposed Commission would undertake.⁶

The Lord Advocate had already turned down a suggestion of a general enquiry by Mr. Leslie early in March 1862.⁷ However, during the Second Reading on 26 May, he was forced to consider such a major enquiry although he viewed it as a long drawn out process which was wholly unnecessary. "It was thought by many friends of education in Scotland that the present opportunity might never recur of placing the whole system on a proper footing. But ... there were many parts of the system this measure was not intended to touch; (now) it would be impossible to except any part of it from the enquiry. He very much regretted the course which his duty to the House compelled him to take".⁸

Had the Bill become law, instead of being withdrawn on 26 May 1862 in view of "the difficulties of the question and the differences of opinion in Scotland", it would have established rural schools and district schools. "The rural schools would relate to country parishes, and would be a mere extension of the

parochial system? He proposed that the Government should pay half the entire expenses of the schools established under the Bill...The district schools would be established in populous districts (not being Royal Burghs) where schools were required. In regard to the Royal burghs, they would have power to assess themselves to the amount of a halfpenny in the pound, and the Government would contribute a sum proportionate to that raised by the district".⁹ Since the supervision of the parochial schools had been decided in the 1861 Act, district schools would be brought under the supervision of the University Courts. Such a system was a hybrid, extending the parochial and burgh system, with additional schools paid for by a mixture of the fixed Government grant and local rates; it was not as major a change as that envisaged in the 1854 and 1855 Bills, when parish schools were not to be increased in number and an incentive was given to heritors to turn them into public schools, and the whole system was supervised by a powerful Board of Education, of which the new Commission was a much paler and less representative version. In order to achieve a measure, James Moncreiff had come to believe that concessions, particularly to opinion in the House of Lords, which supported the Church of Scotland, and, to a lesser extent, English Derbyite M.P.s, were essential to achieve success. The 1861 Act had become law, but the overall attempt to extend the system, and pointless competition between schools and fill the gaps failed; since "it was certainly said that there was no educational destitution or at least no proof of it, and we came to be satisfied that without full enquiry into the educational state of Scotland it was of no use to

go on with this incessant knocking at the door of Parliament".¹⁰

A MAJOR EDUCATIONAL COMMISSION (1864): MONCREIFF'S CONTRIBUTION

The first mention of the Royal Commission was intimated to Parliament on 25 February 1864 by Moncreiff.¹¹ "He proposed to Her Majesty's Government to issue a Commission".¹¹ The body was composed "of various political opinions" and included as chairman the 8th Duke of Argyll, who had been Moncreiff's colleague in Liberal and Coalition Ministries and had presented the Education Bills in the Upper House. Other members were Moncreiff himself, Lord Belhaven, Chairman of the Church of Scotland's General Assembly Education Committee, and Adam Black, the Lord Advocate's fellow M.P. for Edinburgh. In three major Reports, their collection of oral and written evidence, supplemented by investigations of Sub-Commissions into Elementary and Burgh Schools, provided "repositories of exhaustive information and of the soundest and most enlarged views on this greatest national interest",¹² in fact their information could not be completely exhaustive, because the four largest cities would not provide all the detailed information the Commission required; therefore, they sent Messrs. Greig and Harvey to study the situation in Glasgow, as an example of one populous city where conditions of elementary schools were thought to be worst. Compared to the imperfect statistical knowledge available before 1864, the information provided by the new surveys was a major confirmation of the defects in Scottish education. In 1854 Mr. Stirling was able to point out "there were only three sources of

information - 'The reports of the Inspectors, which only glanced at Scotch schools, incidentally; 2ndly ...the body of evidence taken before the Lords Committee in 1845 ... who made no Report; 3rdly ... the census paper which had lately been furnished and ... that was all.'¹³ After the Argyll Reports it could no longer be claimed that the lack of education applied to only a small minority of children. It is probably true that the Reports were more significant than in providing entirely new information for the arguments in knocking down such claims, (but it did) add detail and depth to the "familiar outlines". (The outlines included, in fact, less formal, ~~of~~reliable statistics such as the "census" taken by Sabbath school teachers in 1846 which showed that only 46% of children between six and sixteen in Glasgow were at day school.).¹⁴

James Moncreiff's main contribution to the Argyll Commission enquiry was his work during the sessions which provided oral evidence, compiled in the First Report in 1865. Between 14 November 1864 and 18 March 1865, he attended on 12 days, taking the chair on four occasions when the Duke of Argyll could not be present. On most days, the Duke not only attended as chairman but often dominated the questioning in a manner reminiscent of Lord Wheatley in the local Government Commission in the late 1960s. Moncreiff, like the other members, asked many fewer questions than his chairman, but his questions were always pertinent; few of the 38 witnesses who attended in person were given a simple platform for their opinions, especially those whose views on education differed from the Lord Advocate's. One has the impression that Moncreiff, reluctantly forced to accept the appointment of such a major Commission (rather than a limited survey) was intent on convincing his fellow Commissioners, if not

witnesses, that final recommendations and any draft legislation should conform as closely as possible to his opinions. This was not an objective approach, but in his view "we all knew how the fact stood".¹⁵ While he certainly wished to discover new facts and precise statistical evidence, and witnesses were treated with perfect courtesy, being allowed to state their case, Moncreiff shows few signs of changing his view on educational reform.

His approach was ardent from the first hearing on 14 November 1864. "I presume your opinion is" he asked of Dr. Cumming, Inspector of Schools, "that before the Free Church commenced, the education of Scotland was deficient".¹⁶ On 21 January 1865, his penultimate appearance, he asked Dr. Mackay, a Free Church minister, about the defects in the parochial school system. He was eager to illustrate how the existing system was deficient, and that major reforms were required and supported by most heritors, Churchmen and laymen, as well as Scottish members of Parliament and Town Councils. His questions to Dr. Candlish, Founder and Director of the Free Church Education Scheme, and the Rev. Dr. Craik, Church of Scotland minister of St. George's, Glasgow, exemplify his approach to a "friendly" and "hostile" witness, respectively, when confronted by one of Scotland's supreme lawyers. Moncreiff naturally employed his forensic gifts, adapted to the situation, in this enquiry. He asked Dr. Candlish,¹⁷ "You have said that the Free Church has supported most of the measures proposed in connection with educational reform?" To this Dr. Candlish recalled that "so far back as 1851 we took it upon ourselves to suggest a cut-and-dry national plan".

Moncreiff then attempted to show this witness's general support for the most recent Education Bill, in 1862, as well as gauging the precise ways in which the Commission's recommendations might echo the Bill. "I understand that the Free Church did not object to the first part (division into parish, rural and district schools) but to the second proposal (that the rural schools were to come under the same managements as parish schools). I want to know whether the rest of that Bill would have met with the approbation of yourself and the Free Church". Dr. Candlish replied, "I believe most of us would have accepted it as an instalment". Upon this cautious support, the Lord Advocate advanced to elicit what other changes "might be permanently acceptable". Free Churchmen, according to Dr. Candlish, would welcome the addition of ratepayers to bodies managing parish schools: to ensure that the point had gone home, Moncreiff quoted the instance of Sutherland where the only people with any control over the parish school were one heritor, his factor, and the Minister. "Do you think anything can be said in justification of (that) management?". Not surprisingly, in view of the previous response, Dr. Candlish called it "a despotism". At this point Moncreiff's questions were longer than the answers and he was almost certainly speaking for the "benefit" of the other Commissioners with his supplementary remark to the Doctor. "You are aware that the practical result of it is, that the parish schools are not attended at all (in Sutherland) and that the whole population goes to the Free Church schools".

The necessity for swift action was the final point. The Lord Advocate asked Dr. Candlish, "Do you think a system should wait till you can bring in

Episcopalians and Roman Catholics or shall the system be instituted at once, leaving (them) out and providing for them otherwise?" - as the 1862 Bill had proposed. The witness gratifyingly agreed that "the latter is much more practicable". By his questions to Dr. Candlish, Moncreiff had shown one major Church's general approval of the changes which he had proposed two years before, and had complied that he would accept certain concessions over the management of rural schools. The Free Church, however, had usually agreed on the whole with the principles behind his Education Bills; therefore it was also essential, if he were to influence the other Commissioners to take his views, to win the argument with his main opponents - Church of Scotland clergymen who most resented the loosening of ties between parish schools and Established Church. His questions to the Rev. Dr. Craik¹⁸ were perhaps the most significant example of his determination in the Argyll investigations.

The Lord Advocate *set the scene for the witness by outlining Dr. Craik's main objection to a national system of education - "the fear that any management unconnected with the (Established) Church, the secular system would prevail". He hoped to draw some concessions from Dr. Craik by asking him to see the matter in practical terms. "Looking at the state of Scotland, do you think that you cannot have a system, which would substantially embrace the whole Presbyterian population, without excluding religion?". Moncreiff hoped that his witness would agree such a system was possible, but Dr. Craik would not be drawn. "Were I a legislator" he replied, referring to some of the Commissioners as well as others in Parliament, "I certainly should not consent to any Act that restricted the benefit of education to any denominations, and excluded

people who were of no denominations ...the system that has prevailed for some time is about the best system we can get". Moncreiff, however, would not let his witness prevail, especially on two points.

Firstly, Dr. Craik claimed that under the existing system as it applied in the early 19th century - but not under the Lord Advocate's proposals - no one was taxed for education. Firing four rapid questions, Moncreiff virtually forced Craik to submit. As to the heritor's payment for the support of the school, he asked:

"Is that not taxation? - Not as ratepaying is. If the rate is to be laid on the land, is that a tax? - In a certain sense. But in your sense is it a tax? - You may call it a tax. Do you call it a tax? - Well, supposing I acknowledge that it is?".

The experience of three decades in the courts are evident in this brief "cross-examination", which Moncreiff probably undertook to counter any denunciation of his proposals for imposing a new tax. It would be difficult to persuade his own Cabinet that Education proposals should be brought forward if they cost more (his 2nd December, 1861 Memorandum stressed economy); it would be far more difficult to achieve success if opponents of change were strengthened in their resolve by the spectre of another tax.

Secondly, the Lord Advocate attempted to allay the fears that, under a national system, Religious Education would lose its place in public schools. Referring to those who held "these sentiments", Moncreiff referred in three questions to their small number. "Are they not in a very great minority over the country?" -

And Craik had to admit that they were. Moncreiff also disputed Craik's claim that ~~that~~, if schools were managed by ratepayers' representatives, heritors and the Presbytery, ... "many ratepayers ~~could~~ be desirous to interfere injudiciously". He put to Craik the questions which were particularly awkward to answer. "You don't think the ratepayers could be trusted? ... Have the ... farmers and tenants in the county parishes ... no interest in the education of their families?" These questions, which bear the mark of the prosecuting lawyer, rather than of the objective Commissioner, may give an impression that Moncreiff was harrying the witness to produce favourable replies. Such an approach was unusual for him and suggests that he considered Craik's views on educational change too obstructive to leave unchallenged.

Apart from attempting to place his own proposals before witnesses and, especially, Commissioners, in the most favourable light, the Lord Advocate was also anxious to gain accurate information and he asked some very detailed questions. To Simon S. Laurie,¹⁹ then Secretary of the General Assembly's Education scheme in the Established Church, he pointed out: "In your statement you say: 'Total number of certificated teachers in Scotland, 1708 representing 1523 schools. Of these schools, 905 are connected with the Church of Scotland'. You have already said that on the General Assembly's scheme only ~~100~~ receive the Government grant, but this reads as if 905 schools were maintained more or less by the Church of Scotland". As it had long been Moncreiff's view that the Established Church educated only a minority of children, it was important for him to show it did not have a majority of schools or certificated teachers.

Lawrie had to admit, "It is impossible to state the number of schools maintained by the Church of Scotland exactly".

He also wished to take the opportunity of assessing the results of the Parish and Burgh Schoolmasters' Act of 1861. "How do you think it has worked?" he asked Rev. Dr. Stevenson,²⁰ formerly a Church of Scotland Minister and, since the Act, one of the University of Edinburgh Board examining parish schoolmasters. His reassuring answer was "I think it has worked exceedingly well". The present uniform system, whereby examiners met regularly, "has great advantages over the previous system. (Presbyteries) were very careful in their examination but that could not be relied upon steadily and always". The key point, that Presbytery supervision was uncertain and variable, was stressed by Moncreiff as a powerful argument for a new form of superintendence, and he asked similar questions of other speakers such as Rev. Robert Lee²¹ who agreed that "one Presbytery was strict, and another lax".

THE SITUATION IN 1867

Soon after the Second Report of the Commission was published in May 1867, James Moncreiff set out his "observations" to the House of Commons, on this occasion from the Opposition Benches. He summarised what he and his colleagues had achieved.²² "The Commissioners have been able to present a statistical picture of education in Scotland as complete as ever was presented in any country. We see the evils without the slightest doubt, where they have been exaggerated and where they have been overlooked". He accepted that there had been exaggerations, for "there are some encouraging figures in the statistics ... the general ratio of

education has not degenerated. (But) the moss and rust of years have encumbered (the system of schooling).” His concrete approach to educational problems, already evident in past proposals when he demanded that they should assist provision in practice, can be seen in two matters - voluntary effort and the use of statistical averages. "It is said that the national system is likely to cramp voluntary efforts; but voluntary effort is not the object we have in view. Our object is the education of the people. If the voluntary effort promotes education it does great good, and I believe there is no country in which there is so large a voluntary effort". But the crucial point was the efficiency of the system in educating children. As for the use of statistical means, "The noble Lord (Montague) has pointed to the high average of attendance in some districts, as if that would compensate for the low average of others ... If you can make the ratio (of school pupils to the total population) 1 in 4 in certain districts, you can make it this in all".

With the Reports available to all, showing that "the real deficiency is the want of schools",²² Moncreiff returned to a familiar plea. "I hope one result of the labours of the Session will be to bring this great question of education out of the mist and dust ... and that we shall no longer have it made the shuttlecock for contending Parties. We must now address ourselves to the task of education - of raising its standard, and bringing it within the reach of all". He attempted, above all, at this point to soothe opponents' ruffled feathers by emphasising the continuity in the Argyll Commission's recommendations

and their draft Bill. "The Commissioners ...intended to keep things as they are (in) existing schools, because ... they are all wanted. All that is proposed in the first instance is, that the superintending body shall see the schools efficiently conducted and open to inspection. The management is not to be altered, nor are the Privy Council Grants to be withdrawn".

THE ARGYLL RECOMMENDATIONS

The "draft Bill which forms the quintessence of the enquiries and deliberations of three years"²³ proposed that "the system of Parochial Schools be extended, provision be made for improvement of existing schools other than Parochial, and for the supply of additional schools throughout Scotland". Whatever influence Moncreiff and his Ministerial colleague, the Duke of Argyll, had upon the collective statements of the Commissioners, the Bill resembled the Education measures of 1854-1862 in certain respects. It recommended a new General Board of Education in Edinburgh, with representatives of the 4 main cities, three counties, the four Universities and four others named by the Crown - a composition very like that in the Education Bill introduced in March 1855. While that measure proposed that "the Board shall exercise a general superintendence of all the Parochial and Public Schools of Scotland",²⁴ the Argyll Commission proposals also specified their Board's duties.²⁵ "It shall be the duty of the Board from time to time to ascertain and fix, as regards each Parish and Burgh, what number of schools is necessary and to decide whether any schools in addition to the existing Parochial and Parliamentary schools ought to be erected

... the Board may enter, inspect, and examine all schools ... and each of the schools so adopted or erected by the Board shall be deemed a 'National School'." In both sets of proposals, the local ratepayers had the power to refuse the new 'public' school; the 1867 draft made refusal more difficult since it required two-thirds or three-fourths of the School Committee rather than a simple majority of ratepayers and since the Board after a year could direct the Committee to erect one or more new schools - if they considered "the accommodation in efficient schools is defective". As in the 1854 and 1855 Bills, heritors could convert parish schools into public schools - although two-thirds of the heritors present had to agree (unlike a simple majority in the earlier measures). In an editorial the "Aberdeen Herald" noted how the Commission "purpose to bring about the change by bribe instead of compulsion", since the burden would have gone off ratepayers and "not only heritors".²⁶

The draft Bill in 1867, clause 37, proposed in every landward parish where "it shall have been duly resolved to establish a New National School" that ratepayers would elect a School Committee.

In 1855, by comparison, in each parish the School Committee comprised an equal number of heritors and ratepayers' representatives (usually envisaged to be ten of each) where a Public School was established. In practice, there was little difference between the two proposals except that, under the later Bill, the size of each Committee would have been usually much smaller - only "Four, six or eight" in number. The election by ratepayers was not wholly straightforward - those ratepayers who were "Proprietors of lands in the Parish" were to choose half the Committee members, while Ratepayers who were tenants or Occupiers elected the

other half. Since the former class included most of the heritors, this was basically a more precise version of the 1855 proposal. In both measures, the School Committees were to have powers to elect the teacher and organise the general management of the public schools "subject to the General Rules and Regulations made by the Board" (clause 22) and in 1867 the Committee could also fix the teacher's salary, whereas that was set down at £50 per annum in the 1855 measure.

The important "Conscience clause" (36) was officially so named in 1867 - "Every National School shall be open to children of all denominations, and any scholar may be withdrawn from any religious teaching or service to which his or her parents may on religious grounds object". That was a condition of Parliamentary grant (or School Assessment in a New National School) being paid to the school. But the measure did not actually state that religious instruction was to be given - that was assumed to be the case and implied in clause 36, whereas in 1855 clause 27 stated "Every School Committee shall appoint certain stated hours for ordinary Religious instruction by the Master, at which children shall not be bound to attend, if their Parents or Guardians object".

As regards dismissal of existing schoolmasters in parish schools, the Argyll Commission Bill intended to repeal the arrangements in clauses 14 and 19 of Moncreiff's Parochial and Burgh Schoolmasters' Act (1861). Instead of allowing the Heritors and Minister the power to complain of a man's immorality or incompetence, the 1867 proposals were in part an expanded version of those in the 1855 Bill, which stated (clause 31) "It shall be competent for the Board (of Education), when they see reason, to dismiss any

Public Schoolmaster, after due enquiry and consideration of any statement which such Schoolmaster may make in his Defence". Indeed, the 1867 clause, 50, came even closer to clause 30 of the 1854 Bill, "It shall be competent for the Board to dismiss any Public School Master, at any time, with or without notice and without any reason assigned". The Argyll proposals were that the parish schoolmaster "has become disqualified because of infirmity or old age ... negligence or want of ability ... or immoral conduct or cruel or improper treatment of the scholars, the Board may permit such teacher to resign" or suspend or remove him. The Board could issue a final order to carry this out "without appeal to any court". Such were very great powers softened only by the grant of a retiring allowance by Heritors and Minister, at least two-thirds' salary where the teacher was not at fault.

Whereas from 1861 the Sheriff could remove a parish schoolmaster for cruelty or immorality, and the heritors and minister could dismiss him for negligence, it was now proposed that the Board should take such powers of dismissal.

As regards teachers appointed after the Act, if the Argyll Bill became law, clause 53 stated that ~~every~~ teachers in national schools "shall hold his office subject to such conditions as may be agreed upon between such teacher and (the body) having the management of the national school", subject to the Board's regulations. There was also a stern warning to all that the old idea of a contract "aut vitam aut ~~culpam~~" was to end: "no teacher to be appointed hereafter ... shall be deemed to have acquired an interest for life by virtue of such appointment". Such teacher required a Certificate of Competency from the Committee

of Council or the Examiners appointed by the University Courts. The Board could also remove such Certificates for the reasons given in clause 50, thus leading to the end of the appointment or suspension of the certificate for six months. According to D.J. Withrington, the Commissioners "were not here only concerned with improving the efficiency of the teaching but also with the attitudes of Scottish parents - the Argyll report is full of statements about the way in which parents ... refused to put their children to bad schools. Thus good teaching would also, to the Commission's mind, secure high attendance".²⁷

This was one principal aim of the Commissioners in their recommendations - they also wanted to make efficient elementary education available to all children, without incurring an enormous extra cost. All schools under the scheme would be named National, either "Old", "Adopted", or "New" National Schools, and clearly they hoped to see "these schools, all in time, assume a National character".²⁸ That course would be greatly assisted if their wishes - that within two years of the Act • no new denominational or privately managed school would be given a grant from the Committee of Council for its erection - came to pass. "The long-term advantage lay with the new National schools".²⁹

James Moncreiff declared in Parliament that the managers of denominational schools should be allowed "to throw their schools upon the national system ... gradually the denominational schools will be absorbed in the national system, and after some years will arrive at the (desirable point) namely, the parochial system,

which, it was designed by the Commissioners, shall embrace the schools of the whole community".³⁰ It is notable that Moncreiff used the term "parochial system" to emphasise the continuity with the best of the old Scottish educational system, which was more likely to win a Bill support in Parliament, especially in the Lords, than stressing the changes. Even the changes, he believed, were not rigidly insisted upon.

The similarities between the 1854-55 measures and the 1867 draft Bill were strong, especially over the composition and powers of school committees, the position of teachers, and the composition and powers of the Board of Education in Edinburgh. In considering the relationship between the 1867 proposals and earlier bills, D.J. Withrington believes that the Commissioners "were not merely following" those previous Bills.³¹ "More probably they were attempting to soften the London control of Scottish education which was exercised by the Privy Council and which had roused a good deal of objection from time to time; and also to remove fears, especially on the part of Scottish masters, that an extended State system would only make it simpler for the Privy Council to infiltrate English principles". While these were certainly objections to the manner in which Scottish educational measures were treated, especially in the mid-1850s, it is possible that the concept of a Board of Education in Edinburgh did not gain wide support until the 1870s, when it was rejected by Lord Advocate Young except as a temporary measure. In the 1850s such a Board caused strong opposition and the powers it would have, especially over the dismissal of teachers, caused great alarm among schoolteachers. To judge at least from those that wrote on the matter,

teachers continued to be alarmed by the Board's powers to dismiss them without reason given. In his speech in May 1867, Moncreiff gave little indication that the Board was included by the Commissioners to soften objections from Scotland. "Some objection has been taken to the Board sitting in Edinburgh".³² In the past he had always thought that such "was the best mode" of superintendence, but he had not insisted upon it. Now he declared, "It is a matter perfectly open for consideration".³³

It was a practical matter as far as Moncreiff was concerned. His questions to Mr. Ralph Lingan, Secretary of the Committee and Council on Education, included the remarks "Do you think any material difficulty has arisen in administering the Privy Council grants by a Board sitting in London - do you find that the want of local knowledge hampers you?" Lingan's answer is revealing. "Greatly ... the ~~only~~ ^{##} local relief which I think can be given to a Central Board is a Local Board invested with legal power or with legal responsibility".³⁴

To Moncreiff some supervision, either in London or in Edinburgh, of the new national education system was essential, and on the whole, as he had stated in 1856, he thought it more efficient and practical to have a Board of Education in the Scottish capital working with the Committee of Council. He thought ~~that~~ leaving the control in Edinburgh (was) the best mode".³⁵ It is possible that the Argyll Commissioners, sharing his views, regarded the Board in Edinburgh as the best mode, but did not believe that it would necessarily win much support in Scotland - they were putting efficiency above immediate popularity.

As for putting the Commission's proposals into action, Moncreiff might have wished that it was reserved for a Liberal Government to deal with this question, but it is too large a question for considerations of that nature. If Her Majesty's Government (under Lord Derby) will treat the question fairly and considerately, I can promise them they will have all the support of this Bench".³⁶ Conciliatory, statesmanlike, his speech from the Opposition side was the work of an experienced Parliamentarian offering what might now be called a "bipartisan approach".

In fact, no Education Bill emerged during the short life of the Conservative Ministry, which was more concerned with the passing of the 1867 Reform Act and the problems of a similar measure for Scotland. In December 1868, however, a resounding Liberal victory under the new enlarged franchise ended twenty-two years when no single group in the Commons had an overall majority. In Scotland the result was particularly gratifying for the Liberals, who won all but a handful of seats there, while Moncreiff narrowly won his Universities seat. According to J.R. Fleming, after the Liberal majority was established "the obstruction that long barred the way to educational legislation gave way before the tide of reform zeal",³⁷ the first achievement being W.E. Forster's Education Act for England and Wales in 1870 and the second Lord Advocate Young's Education (Scotland) Act in 1872. But before then "Lord Advocate Moncreiff lost no time in introducing (an) Educational Bill embodying universal School Boards, a compulsory school attendance between the ages of 5 and 13, a General Board of Education, elimination as far as possible of denominational schools and settlement of the religious difficulty, with a conscience clause".

THE PAROCHIAL SCHOOLS BILL (1869) INTRODUCED BY THE
DUKE OF ARGYLL

While Moncreiff introduced the Parochial Schools (Scotland) Bill in the Commons the measure was first of all presented to the House of Lords by the Duke of Argyll. There were two principal reasons for breaking the previous arrangement where educational measures were introduced first in the Lower House. Firstly, the Duke of Argyll was closely associated in the public mind with his Commission and its recommendations on which this 1869 Bill was based. Secondly, the aim was to gain more time for the Bill, *because* there was a heavy pressure of business with "the tide of reform zeal" leading to several important measures in the new reformed Commons. Supporters of the Bill must have hoped that the prestige of the Duke's name, coupled with the widely respected work of the great Commission, and the extra time for the measure, would bring it success. In editing her late husband's memoirs, the Dowager Duchess of Argyll described education as a subject in which "the Duke was deeply interested".³⁸ His speech (on 25th February 1869) concentrated on "the very great difference which exists between the condition of public opinion in Scotland and in England upon this great subject of popular education. If we were to propose a Bill for England, with powers of (the Central Board to impose) compulsory rating, each particular hair on the noble Duke (of Marlborough)'s head would stand on end". Marlborough, formerly President of the Council, led his forces against the Bill, using the weapon of denominational education. "You cannot have a system founding upon rating without more or less impairing your denominational system".³⁸ Despite objecting to this particular Bill, the

Duke had to agree "that up to the present time there had been a lamentable deficiency of education in Scotland". The Lords gave the Bill a second reading, but subsequent events were parallel to those of 1862. The Lords amended the Bill and when the measure came back from the Commons, there was insufficient time for the Lords to discuss Commons' amendments before the August recess. As a result, the Upper House decided to consider those amendments in three months' time, much to the chagrin of Argyll, especially as the Bill had been read a second time in the Lords as early as March.

The difficulty in 1869 was principally that their Lordships took a considerable time to amend the measure in committee, and the Commons discussed its second reading as late as 12 July. James Moncreiff, once more Lord Advocate, described the proposed reform as "a distraction of the first session of the first Reformed Parliament".³⁹ With an eye on the votes of the English Liberal majority, he set the Bill on a par with the Disestablishment of the Church of Ireland, for "we shall have established and endowed a system of education for the whole of our 3,000,000 countrymen north of the Tweed". In a characteristic emphasis on financial efficiency and orderly conduct, he claimed that "if we can succeed in founding a system of education which will thoroughly educate the people, we shall do more to diminish poor rates, to diminish intemperance, and to diminish crime than all the Bills for the direct purpose of such diminution".

As in his "observations" two years before, he stressed that this was a measure³⁹ "not framed upon any theory of any party or another". This Bill "was the offspring of a Royal Commission composed of all parties",⁴⁰ although there were a few modifications - for example,

school committees were now to be elected, two-thirds of their members by the main group of ratepayer-occupiers and one-third from ratepayer-landowners. However, the changes "were not important pointers to the readiness of the Government to offer compromise solutions in order to improve the likelihood of passing the Bill". As Moncreiff declared, in a statement which his audience were not surprised to hear,⁴¹ "we do not aim at any theoretical symmetry; we wish to produce a measure such as can be passed into law". He and his colleagues, however, wished to alter certain of the Lords' amendments. He spoke "first of the central authority, secondly, of the local authority; thirdly, of denominational grants".⁴² It was typical of Moncreiff that he presented the case clearly and simply.

As regards the central authority, the Lords objected to the representative nature of the Board and felt that three Crown appointees would be adequate. The Earl of Airlie rejected the presence of a schoolmaster representative on the Board - "schools were for the benefit of the people, not of the schoolmaster".⁴³ Moncreiff knew "that Boards are unpopular among a certain section of my fellow Members" and conceded as much as he could in proposing a temporary Board for three years "with powers to the Queen in Council to extend its existence".⁴⁴ It would comprise the Scottish Law Officers and five other paid members. In reducing the size, cost, and initial tenure of the Board, the Lord Advocate could hardly have been more conciliatory. Even at that, the Lords' amendment was passed.

On school committees, the Lords reserved half of their membership for major heritors. Moncreiff offered "to split the difference" with one third elected

by such landowners, and two thirds by other ratepayers. "It will secure a reasonable (representative) element but will not exclude the more important heritors from a share in the management of the schools".⁴⁴

He would also concede something in the Upper House over denominational schools, but not their amendment, that those schools would keep their Parliamentary grant whether or not they joined the system of National Schools. This would have been "complete licence to set up⁴⁵ such schools "in rivalry to the national system. I propose to restore to the Board, having regard to the nature of the population and the suitability of the school, the power to certify to the Privy Council any special school for a special grant. That will not be limited to the Roman Catholics. It will extend to the poorer parishes throughout the whole country".

Committee stage discussions in the Lower House were concentrated into late July and early August, often lengthy and detailed with debates on almost every one of over 60 clauses, but with only minor changes. Despite Disraeli's description of the Scottish Members as "a select vestry" executing "Scotch business in a hole-and-corner" and of the measure as "an improper Bill at an improper time"⁴⁶, since English schools would also be affected by demands for a parallel Act once a Scottish measure was passed, Moncreiff insisted that time must be made. "I remember we sat one session up to the 28th August,. I say there is no more urgent subject". On the third reading, however, felicitations to Moncreiff by Lord Elcho were premature. He "wished to congratulate the Lord Advocate on being so near the goal of his long labours in the cause of education"; to which Moncreiff

replied that "it was a great gratification to know that they had at last arrived close to the goal".⁴⁷

THE FAILURE OF THE 1869 BILL

In fact, the measure foundered on a familiar reef. 55 Lords were "not content" to discuss the Bill so late in the session, and with only 43 "content" the amendments would be heard "this day three months"; (a new Bill was not introduced until 1871). Despite the Duke of Argyll's claim that it was "in the nature of things that important business should come up at a late period", the view of Lord Redesdale and Lord Colonsay won the day. To them the Bill had undergone in the Commons "a transforming and obliterating process" - the second adjective is particularly hard to justify - and the House of Lords would become "merely the obedient servant of the Government of the day" if the Bill passed.⁴⁷

It was not only a majority of the Lords who were unhappy with the Bill. From the opposite end of the political spectrum, Mr. E.H.J. Crawford, Liberal member for Ayr Burghs, declared "The Bill was first proposed as a National Bill, it came down from the House of Lords a denominational Bill and now it was a mongrel mixture of national and denominational".⁴⁸ It is probably true that the eventual 1872 Act was in several respects a more coherent measure with a definite national system of schools, while the 1869 Bill in its final measure would have "provided something very like a dual system of rate-aided state schools and some grant-aided denominational (both Presbyterian and non-Presbyterian) schools",⁴⁹ - a solution closer to Forster's Act for England and Wales in 1870. In later years, Moncreiff admitted that he "did not deplore the ultimate catastrophe overmuch for that Bill was a compromise, although no doubt I should like to have completed the

work ... I own to a certain amount of grim amusement when I remember how for that last vote in the Lords enormous exertions were made by my opponents to destroy, although they knew it not, the last chance they were ever to have of retaining a single shred of the old influence over the parish schools".⁵⁰

Argyll said Moncreiff's final education measure failed for several reasons. Although its presentation first of all in the House of Lords was meant to save time while the Commons was busy, it enabled opponents to delay the Bill by objections on procedure, and led to Conservative amendments which altered its nature in the Upper House. Perhaps, too, the Liberal spokesmen were too willing to have a Bill passed, with whatever concessions, but the Bill did after all pass through the Commons where such changes caused some annoyance. It was primarily the Conservative peers who defeated the Bill. They "had suffered badly in the 1869 session; they had lost on Irish Church Disestablishment and they were under severe attack from the Liberals on a number of sensitive issues. They were in no mood to deal sympathetically with any Bill about which they had doubts emanating from the Liberal Government".⁵¹ That the Education Bill came back to them late in the session was the last straw to a group of men who were particularly jealous of their constitutional position in a year when their party was licking its wounds in Parliament and country.

In what proved to be his last speech to the House of Commons, James Moncreiff spoke sadly but not pessimistically of the events of 1869. "The Bill was a most important one. One cause of the regret which we feel (was) that we were in a position to undertake and

to pass a measure for Scotland. What has been done in another place will not discourage us for future efforts".⁵² ◇

The future efforts were to be undertaken by others, notably George Young, for barely a month after Parliament was prorogued, Lord Justice-Clerk Patton died in tragic circumstances, committing suicide. Moncreiff became President of the Second Division of the Court of Session as well as Lord Justice-Clerk, while Young succeeded him as Lord Advocate.

THE EDUCATIONAL MEASURES OF JAMES MONCREIFF AND THEIR EFFECTS ON THE 1872 ACT.

It was fitting that his final speech to the Commons should have concerned education. In his 70s he spoke of how he was "only too well satisfied with the actual result"⁵³ of the Young Act in 1872 "and quite content with any share, however humble, I may have had in aiding it". Dr. James Taylor, the United Presbyterian spokesman, was a constant and occasionally fulsome correspondent but he wrote no more than the truth in a letter to the Lord Advocate in April 1856. "The honour which you have gained by your persevering efforts to confer this blessing (of a national education system) upon the country is one of which any statesman might well be proud".⁵⁴ In season and out, Moncreiff and a band of Parliamentary and official colleagues, notably the Duke of Argyll, Mr. Dunlop, member for Greenock, and Mr. John Clerk Brodie, kept the subject of national education to the fore in 1854-70. The flow of petitions and letters was powerful in 1854, 1855 and 1856, when Moncreiff introduced major education Bills - it was a trickle in 1861 and 1862, when he introduced two more, and rose once more to a flood after the Argyll Commission reported and the 1869 measure was introduced. His principal success, the

◇ Mr Gladstone wrote to Moncreiff on 31st August 1869, on his appointment as Lord Justice-Clerk, regretting "you have not been permitted to give the last hand to that legislative settlement of Scotch Education, which you have (146) so energetically striven to activate".
(Tulliebole Box 21, National Register of Archives, Scotland).

Parochial and Burgh Schoolmasters' (Scotland) Act of 1861 was an important achievement in throwing the schools open to able men of all Presbyterian denominations and leaving only vestiges of Church of Scotland supervision over parochial schools. Without this limited but significant change, against which the Lords and the Established Church had been so adamant before the Elgin decision made their position so difficult, the 1872 Act could not have been passed in the form it was. That Act proceeded on "the time-honoured principle that the education of the people, while it is the duty of parents, is also the concern of the State".⁵⁵

Nor was the substance of Moncreiff's Bills in 1854, 1855, 1856, 1862 and 1869, without its influence on the Act. Certain aspects of the 1872 Act were similar to measures introduced by James Moncreiff and the Duke of Argyll. Section 17 divided Scotland into school districts, a move parallel to the educational districts in the 1854 Bill (clause 8)-while a conscience clause, ensuring the holding of formal religious teaching only at the beginning or end of the school days. ^{extended clause 27 of the 1855 Bill.} On the other hand, the "popular element" - "all owners or occupiers of lands or heritages of the annual value of not less than £4" - was more securely represented in clause 12 of the later ~~Act~~ electing the new local school Boards, unlike the special status accorded to heritors in previous Bills. Machinery for imposing compulsory education, with attendance officers, was also possible in 1872 partly because a report of 1870 showed how irregular attendance was in rural areas, such as the north-east, which had always been assumed to have the best record for schooling.⁵⁶

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In the years 1871-2 a Scottish Education Bill had certain advantages which had not been granted to Moncreiff's measures. The Church of Scotland, alarmed by the possibility of disestablishment after this occurred in Ireland, and other denominations, were prepared to make concessions and ensure some religious instruction; the landed interest was more defensive with a Liberal majority in the Commons; and, above all, the English Act had passed. No longer could the Scottish Bill be called "a pilot balloon" for England and it could be considered on its merits. Moncreiff himself stressed this factor in his "Educational Retrospect" in 1886.

In one major respect, however, the 1872 Act was a less ambitious measure than James Moncreiff's Bills. There was to be only a temporary Board in Edinburgh (clauses 3 to 6); unlike the powerful body in the 1854 Bill (clauses 1 to 8) it was permanent, with supervision of the whole educational organisation in Scotland. Even the temporary Board in 1872 was only forced into the Act by Scottish M.P.s and the real power lay with the Scottish Education Department, which was simply part of the Committee of Council and considered by the Duke of Richmond as "a room in Whitehall - a sham".⁵⁷ Bruce Lerman and John Stocks believe that the 1872 Act had defects but "above all, the vast majority of interested Scots were deeply dissatisfied with the failure to create a permanent body in Scotland to control Scottish education".⁵⁸

In 1886, however, Moncreiff was glad to praise his successor's Act. In his view it contained "two clauses which alone settled the 20 years' controversy.

Clause 8: 'A School Board shall be elected in every parish and burgh'.

Clause 44: 'Any sum required to meet a deficiency in the school fund

shall be provided by means of
a local rate within the parish
or burgh'.

In these few words provision was made for the management and expense of the education of the people and for the realisation of our most sanguine aspirations".⁵⁹

Much had depended on those who had kept the light of those aspirations aglow in 1850 to 1870. Looking at the "splendid new building" in Kent Road, Glasgow, which he was invited to open, he could feel fully justified in using the first person plural as he spoke for teachers, children and the whole nation, "We have a firm foundation on which to build for the future".⁶⁰

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CHAPTER EIGHT

The Proposals to reform Endowed Schools

"Endowments would be a magnificent foundation for a full system of education" (James Moncreiff, 1869).

Although his own attempts to establish a national educational system on a sure footing had been largely defeated, ~~he~~ rejoiced in the 1872 Act and was more than willing, when time allowed, to assist in other attempts to improve Scottish education - notably to further the reform of endowed schools. One of his last Bills to become law was the limited measure "to make better provision for Endowed Hospitals and endowed educational institutions in Scotland".¹ Although this was a small matter compared to the problems of providing elementary education for all children, he considered that "these endowments would be a magnificent foundation for ... a full system of education supported by the public property, beginning with the lowest step and ascending up to the Universities".² The Endowed Hospitals Act became law untouched by the Lords on 26 July, 1869, and was introduced to allow "trustees of some institutions to reform themselves".³

THE ENDOWED SCHOOLS COMMISSION

On Sir Edward Colebrooke's request for a Royal Commission to enquire into such schools, he believed that "the proposal for a Royal Commission was premature... until you had settled the question of elementary education it was premature to deal with the question of middle class education"⁴ which most endowed schools provided. In the 1870s, and 1880s. there was however a series of attempts to rationalise the position of endowed schools after the 1872 Act had begun to "settle

the question of elementary education". The Royal Commission of 1872, under Colebrooke, was followed by others chaired by Moncreiff and Lord Balfour of Burleigh in 1878-80 and 1882-9 respectively.

"From start to finish one fact remained true: it was impossible to reorganise the endowments without in effect transferring charitable funds from the children of the poor to the children of the middle classes. The fee-paying day schools which emerged from the reforms were essentially middle class schools, with fees that were lower than would have been necessary but for the endowments, but too high for most working class parents".⁵ Such factors made the business of reorganizing endowments difficult, despite the views of those like Sir Alexander Grant who believed that charitable endowments should be reorganised to support secondary education - and that the middle classes could benefit without the poor losing their rights.⁶ In 1878 it was Moncreiff's task to disentangle this complex issue. The Commission of which James Moncreiff was chairman was appointed by Disraeli's Home Secretary, Richard Cross "to carry into effect the purposes of the (Endowed Institutions Scotland) Act 'to amend the law relating to Endowed schools and Hospitals and other Endowed Institutions in Scotland'".⁷ After the permissive Act of 1878, allowing but not enforcing changes in the use of endowments, the Commissioners were to "submit for the consideration of the Scotch Education Department the conditions according to which the Parliamentary Grant for Public Education in Scotland may be (best) distributed for the purpose of promoting education in the higher

branches of knowledge, especially where there are no higher class public schools".

Other Commissioners, included Lord Balfour of Burleigh, Peter Guthrie Tait, Professor of Natural Philosophy at Edinburgh, and James Donaldson, Rector of the Royal High School, and on page XI of their final Report, dated 15th November 1880, they attempted to clarify the problems. "In the course of our inquiry there were three main topics to which our attention was directed by the evidence, and upon consideration of which the solution of the questions ...chiefly depends:

(1) The educational value of the different specific subjects and the method of remedying any inequality ...among them. (2) The plan of examination laid down by the inspectors of the code. (3) The efficiency of the teaching staff in the public schools".⁸

The Minutes of evidence mention 31 meetings, of which 20 were chaired by Moncreiff. In the other 11, from which he was absent, Lord Balfour acted as chairman - and was appointed in that position in the subsequent Commission of 1882. Those meetings which gathered spoken evidence, by the usual process of the chairman, and, to a lesser extent, other Commissioners asking questions, were not the only - or even the most time-consuming - part of this investigation. There was also the long process of gathering from each endowed institution proposals for altering the use of their endowment reserves, studying these in detail, recommending action to the Home Secretary, and dealing with any complaints when such proposals were changed by the Commissioners. In all the work of investigation Moncreiff played the full part of a chairman. His

questions to witnesses reveal the detailed care with which he had studied their proposals. He asked Sir William Baillie, Governor of Wilson's School, Harthill,⁹ "what becomes of your income now that the school-house is leased to the School Board?" and "what was the calculation upon which rates of 2d in the £ is founded?". As always, in whatever Commission he served, he demanded precise information. He asked Bailie Tawse,¹⁰ "what is your exact definition of this ...school?" in discussing George Heriot's School.

MONCREIFF'S CONTRIBUTION TO THE COMMISSION

His remarks often revealed his wide legal experience and offered good advice. To the Governors of Spier's Institution he remarked of one proposal,¹¹ "it had better be worded more specifically ... I think you had better consider whether you cannot devise a form of words that will not contract or hamper your operations". To the Lord Provost, appearing on behalf of the Boys' and Girls' Hospital in Aberdeen, he remarked about the word "settlement",¹² "Don't you think a simpler definition might be found than using a very ambiguous legal term? would not 'residence' be quite sufficient for the purpose?". He also had a very sharp eye for proposed or submitted accounting which seemed to be wrong. This was eminently sensible in a Commission which was so concerned with the use of endowment funds. The unfortunate Bailie Tawse was chastised by Moncreiff when he proposed that George Heriot's would take over the School of Arts.¹³ "Do you mean that you are taking this institution ... and putting an end to subscriptions without the means of carrying it on?" A few minutes later he told the Bailie "surely you know that is not answer?", when the

witness showed himself rather unclear about finance. Mr. David Lewis, Treasurer of George Heriot's, also came under the chairman's spotlight.¹⁴ "I see that in the Accounts page 20, Expenses of deputations (amount to) in all £817. I am rather anxious to know what they were incurred for ... Would you object to send a note of these expenses to the Commissioners?¹⁴ That was done, to the satisfaction of all.

While some of Moncreiff's and his fellows' questions may appear very precise on small matters it was part of their duties to judge the efficiency with which the Governors of endowments were administering their funds and such points were probably necessary information. The Commissioners, however, did not neglect broader considerations with respect to the proposed charges in each institution and to Scottish endowments and education. In the long and searching examination of George Heriot's Governors, Moncreiff noted¹⁵ "It is a very general power that you here take" - "Do you hold yourselves bound by the rules of the existing institution? (a question he repeated) ... I have not the slightest doubt that the Governors who have made this proposal mean that in all good faith. The question is whether there should not be something to indicate that the Governors are to keep the general lines on which the ... institution is founded". As B. Lenman and J. Stocks have pointed out, this was a fundamental problem - should the endowments be used to help poor children, as originally the Wills of George Heriot and others required, or converted to the use of secondary education which, because of the level of fees and the longer period before starting to earn wages, would be largely

taken up by middle class children.

The question of fees was one with which Moncreiff was closely concerned, especially in its relation to attendance. His questions to the Rev. Dr. Taylor, his old friend and supporter in the 1850s and Secretary to the temporary Board of Education in 1872-8, elicited Taylor's view that ¹⁶"the present system does not succeed in securing ... regular attendance" ... Small as was the school fee, it was a heavy burden upon parents earning perhaps 10s or 12s per week ... I can see no other cause sufficient to accept for the (poor) attendance but the payment of fees". The governing body of George Heriot's had come to a similar conclusion by 1879, despite favouring fees as recently as 1870.

Moncreiff put some searching questions also on secondary education. Professor Laurie, of the Edinburgh Chair on Education, answered important points about the working of the Revised Code which had been instituted in Scotland only a few years before, a decade after its introduction in England and Wales.¹⁷ "How are you to avoid the difficulty that the master is tempted to confine himself, or put his whole strength out, on the subjects for which he will receive the greatest remuneration? Has there been a decline in pupils who take the higher branches?" When Professor Laurie stated that there was, Moncreiff probed for the reason. "You think the cause of decline is the want of ability on the part of the teachers?" "Certainly not" was the reply.

THE REVISED CODE

In his Glasgow "Retrospect" , Moncreiff considered the Revised Code, under which payments to the schools from the Committee of Council, (from 1872 the

Scotch Education Department) depended on the "results" which pupils obtained in inspectors' examinations. Although he recognised that Scottish children were apt enough to ensure¹⁸ "material pecuniary advantage" to Scotland, "I was accustomed to question the principle of payment by results". He did not quarrel with the systematic application of the principle - "elevated to the dignity of a science"... "Nevertheless this highly-organised system of ascertaining periodically the amount of gain produced to the community in return for the price we pay for it, is not all to profit. The most valuable results of education are not produced in a year, nor can they become apparent on an examination or inspection. The results of education are for a lifetime; and what we really wish to accomplish is to communicate the love of knowledge. It is this ...which may be thought to be cramped and impeded by the present laws. Fenced round by a palisade of standards and examinations ,,. the schoolmaster's enthusiasm in his individual scholar's progress is mechanically confined". He remembered that "I had occasion to consider the whole question several years ago, as chairman of the Endowment Schools Commission, and it is beset with difficulty". Moncreiff's reservations about the Revised Code may have influenced the Commissioner's¹⁹ recommendation "that it is advisable to relax the strictness of the rule whereby the number of individual passes in any subject is made to determine the amount of the grant, and particularly that in thinly populated districts the grant for ... higher subjects should be paid upon the general proficiency of the classes and not upon the number of pupils in attendance. The evidence on the operation of the code ...is on the whole favourable. However, the amount, the mode of administration, and the regulations

are ... susceptible of improvement".

Moncreiff also took the opportunity to gain up to date information about issues which had once been controversial, especially when he was attempting to achieve educational measures in the 1850s and 1860s. He asked the Rev. Dr. Scott,²⁰ "Have you found any obstruction in working that clause in the Education Act (of 1872) about the time at which Religious Instruction is to be given?" The answer - "none, we have had very few withdrawals under the conscience clause ... in Edinburgh" must have encouraged him to believe that, as he stated in 1886,²¹ "a perfect barricade of vital questions (which) was carefully reared between the people and their education... (has) vanished like phantoms at sunrise".

EFFECTS OF THE COMMISSION

Despite the hard work of the Commissioners, their 3 Reports published in 1880-81 did not gain broad acceptance and another Commission was established in 1882 under Lord Balfour of Burleigh, which finally settled the matter after almost seven years of deliberation. Although the Moncreiff Commission Reports and recommendations, like those of the Colebrooke investigation, did not achieve agreement between all the parties to the endowments issue, they contain valuable information and insight into the considered attitudes of experienced politicians and teachers, for example about the relations of elementary and secondary education. "It is not only possible to combine thorough elementary teaching with instructions in the higher branches but ... any separation of these subjects is detrimental to the tone of the school, and dispiriting to the master. It is not possible to establish (secondary schools) for

the great majority of children in districts (without higher class schools)".²² Their comparison of numbers presented and passed at the yearly inspection of each specific subject showed "on the whole, satisfactory evidence of the zeal and efficiency of the teachers and the attention of the scholars. The number in 1877 was 41,551 of whom 14,709 passed. In 1878, of 46,382 studying there were 25,630 passed", - although the science subjects were, the Commission believed, taught badly and by rote.²³

Since the Commissioners were particularly concerned with the efficiency of teaching, they recommended that "School Boards should encourage teachers to pass some time at a University"²⁴ and an additional grant to "teachers with normal school (i.e. training college) experience" and University degree, while they should teach higher subjects efficiently". This was essential for, they claimed, "The teacher is the pivot on which success or failure of the school turns". Their views were clearly in tune with Moncreiff's, expressed in the "Educational Retrospect", and it is likely he played a major role as Chairman in the final form of the Commission's recommendations. In 1886, he spoke of the successful teacher as an enthusiast, establishing "the electric chain between master and scholar ... able to communicate his enthusiasm to those he teaches".²⁵

The Commission's belief that teachers should study at a University was typical of many Scots who regarded concurrent training at college and University as the ideal combination. It was strongly supported by James Moncreiff, who regarded University studies as a valuable "miniature of life itself"²⁶ and had worked

to improve the lot of professors and students over many years.

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From a Photograph by H. Delié, Paris.

LORD MONCREIFF.

CHAPTER NINE

James Moncreiff's Contributions to Reform of the Universities.

"That isthmus between compulsory study and compulsory labour"(James Moncreiff, 1869).

In 1869, James Moncreiff described, with perhaps recollections of his own career as a lawyer and politician, the University in Scotland as "a training-school for professional life in all its varied branches. Its object is not so much to send out accomplished scholars as to educate men for the practical business of life".¹ His connections with the Universities throughout his life were many and varied - he studied at Edinburgh from 1825 to 1833, became a Member of the major Royal Commissions which investigated the Scottish Universities in 1858 and 1876, presided over the Association of Societies in the University of Edinburgh in 1863, and was elected Member of Parliament for the Universities of Glasgow and Aberdeen in 1868 and Rector of his alma mater the following year.

ABOLITION OF RELIGIOUS TESTS IN UNIVERSITIES.

Probably ~~his~~ most important single contribution to the Scottish Universities was the abolition of religious tests, in 1853, for lay professors. In 1690, the "Act for the Visitation of Churches, Colleges and Schools" required professors² to sign a declaration that they accepted the Westminster Confession of Faith and the Presbyterian Church government - a requirement confirmed by the Act of Security in 1707. In practice, for many years before the Disruption of

1843, only Professors of Divinity had to subscribe the test but after that date there was an attempt to apply the test to all who held secular posts in Universities. Clearly the Established Church hoped to remove Free Churchmen from office. As G.W.T. Omond noted half a century later, "It says little for the wisdom (of) this attempt to enforce a test which had fallen into desuetude" that they chose "to attack the Free Church in the person ...of Sir David Brewster",³ a distinguished scientist internationally famed, and Principal of the United Colleges in St. Andrews. After the failure of this move, the matter remained in abeyance but flared up again in Edinburgh during 1852.

When Moncreiff's old professor, John Wilson, died in that year, a group of Evangelical Free Churchmen wished to install P.C. MacDougall in the chair of Moral Philosophy.⁴ His opponent, J.F. Ferrier, a professor in St. Andrews, was generally considered a better candidate, judged by his writing in philosophy, but was supported by the Church of Scotland Moderates. When the Town Council of Edinburgh, mainly Free Churchmen, chose MacDougall, Ferrier and his supporters, especially Sir William Hamilton, Professor of Logic in the capital, attempted to revive the old test and oust MacDougall. There were, then, two sides to the argument. The Liberals and Free Churchmen - epitomized by Moncreiff - attacked Ferrier and Hamilton's campaign and eventually MacDougall was confirmed as Professor and the test abolished. This, according to G.E. Davie, "seemed to many a new dawn of freedom by demolition of old barriers of reaction and exclusiveness".⁴ On the other hand, Dr. Davie sees MacDougall and his Evangelical supporters as fostering in the Universities "a provincialising

philistinism" against the forces of common sense - a philistinism which would lead to narrow teaching of philosophy and other subjects. Moncreiff would naturally not accept such views, for he could claim that his view of the needs of Scottish education was broad and an attempt to open posts in University and school to the best men. Nor was the other side notable for its moderation in this unhappy matter. In 1856, J.F. Ferrier described his opponents in another dispute as "parrots ... pests who scream such hereditary malice ought to be nailed flat against the doors of every philosophical class-room in the kingdom" - and continued "with a vibrant fury of quite appalling vehemence". Neither side was guiltless of immoderate language. Nevertheless, it is difficult to justify the dusting off and revival of the test to overturn MacDougall's appointment. Such a move "could only stoke the fires of extremism and bring the Universities greater turmoil".⁴

Even without the events in Edinburgh, James Moncreiff would probably have acted to abolish the tests for professions other than those of Divinity. The argument which he deployed as early as the debate on Viscount Melgund's Schools Bill in 4th June 1851 could be applied to Universities as well as parish schools. "The effect of the tests was simply to exclude many who differed in nothing from the Established Church, except in not belonging to it. It would be infinitely better to abolish these tests, which were but the wretched remnants of a bygone age".⁵ But he insisted that his was no partisan attack on the Church of Scotland - "he had no wish to see her decline, but the reverse - there was a great deal of good done, both

by Established and Unestablished Church". In February 1852 he moved the first reading of a Bill stating that the House should resolve itself into a Committee "to consider abolishing Tests in the Universities of Scotland", but four days later Lord John Russell's government fell and Moncreiff was out of office.

Yet he continued with this Universities of Scotland Bill, hoping to deal with the schools later. "He did not desire to mix up the two matters".⁶ Despite his caution and willingness to test the temperature of Parliamentary opinion - Forbes MacKenzie, the Derbyite Secretary for the Treasury, was one Government Member whose opinion he sought - he was not immediately successful and the second reading was put off for six months by 172 to 157 votes, a relatively full House of Commons for a Scottish measure. His arguments against religious tests in Universities were significant, however, for they were to become keynotes of many speeches which he made over the years in Parliament.

His quarrel with such tests was four-fold. They were quite appropriate to non-theological posts in Universities, the people opposed them, they were the means of intolerantly excluding men of talent, and they did not achieve even their stated objectives. As was his custom, he studied each point individually and with detailed care. "The Universities of Scotland were not ecclesiastical institutions. Students of all denominations attended them".⁷ Secondly, (there was) "no petition against the Bill excepting from the Presbyteries and the Church Courts - those in favour included Edinburgh, Aberdeen and Dundee and the Convention of Royal Boroughs, (sic) which included delegates from every municipal town in Scotland, and church judicatories of the Free Church,

the United Presbyteries,... the people had no desire to maintain these tests." Those remarks indicate the attention which Moncreiff, as Lord Advocate, and indeed all Members, paid to representations of local opinion, especially at a period when no political group was sure of a majority in the House of Commons and would make use of ~~to~~ the affirmations of support which they received from outside Parliament.

Thirdly, "a religious test that was religiously disregarded, and only used to exclude those whom its framers (in 1688-90) would have been the first to admit ... was only used for the gratification of an intolerant and persecuting spirit. The sole aim of these tests had been to exclude Episcopacy from power (at) a time when Presbyterianism seemed in danger of having its youth corrupted by the nominees of prelacy". Nor, finally, did the tests exclude scepticism. (That system) was the vice of fetters⁸ for the intellect and conscience that bound when they should not, and did not bind when they should". While it was on the whole an impressive and moderate speech (with the exception of a reference to prelacy) not everyone was convinced by this clear and well organised argument. Lord John Russell praised his speech as the most "complete and convincing"⁹ he had heard on the subject, while the Member for Berwickshire, Mr. Scott, called the measure "subversive of the character of the Scotch Universities ... the scoffer, the atheist, the blasphemer" would be as "free to occupy the chair of learning as the orthodox believer of a Christian creed. Was this a time when we should open the floodgates of infidelity and let loose a stream of pollution on the rising young?"¹⁰ Although Mr. Scott's views prevailed for the moment, they were based

upon suspicion rather than a fair appraisal of the facts; indeed, other arguments on his side were as weak. It was, for example, claimed that the Lord Advocate's father had accepted the tests during the University Commission of 1826-30, but this ignored that the Disruption had occurred since then and the elder Moncreiff himself, as a Free Churchman, would have been excluded from a University post were the test rigidly applied after 1843.

The Bill's second reading was not considered again until 28th June, 1853. James Moncreiff, once more Lord Advocate in Lord Aberdeen's Liberal-Peelite coalition, offered a "middle arrangement" since "communication had been made to him on the part of gentlemen who had hitherto opposed the views he had taken on ...University tests".¹¹ As usual, Moncreiff was prepared to make concessions and test support for aspects of his measure among Scottish and other members of Parliament (as well as in the Churches and other bodies) - so long as they considered the heart of the Bills to be sound and their fundamental principles^{went} unscathed. Now he offered two compromises. There would be a negative declaration by which every professor on admission stated that he would not exercise his office to subvert the Church of Scotland. Such a declaration was not a statement of belief and was considered to be simply what "an honest and sensible" man was bound to do.¹² Its form was the same as that which was required of parish schoolmasters under the Parochial and Burgh Schoolmasters' Act of 1861, and between the two Acts in 1853 and 1861 Moncreiff attempted to enlist Cabinet support for the "negative declaration", in place of the "positive" religious test, for parish schoolmasters.

The Lord Advocate also proposed for the first time that, if a professor violated that declaration, and complaint was made to the Lord Advocate, a Commission might enquire into the complaint (with the agreement of the Lord Advocate and Her Majesty in Council) and could dismiss the professor. Moncreiff attached great importance to this change; "he was anxious to make this statement in order, if the Bill should not come on in the course of the day, (that) the House and the public should be aware of the course he intended to follow".⁷ He was eager, as a relatively new Member, that the House of Commons should see him as a reasonable man capable of a "middle arrangement". When the Bill came up for debate on 14th July, 1853, it was moved by the Peelite, Lord Elcho, in the absence of the Lord Advocate. The concessions achieved their aim, despite the implacable opposition of a few such as Sir Robert Inglis, member for Oxford University, who envisaged a similar occurrence affecting "the integrity and the rights" of the Church of England. After the Bill was read a second time in a thinly attended House (by 196 votes to 17), there was no further debate in either House and the Universities (Scotland) Act became law in August, 1853. The first instalment of James Moncreiff's war against religious tests, which excluded able men because they belonged to a Presbyterian communion outside the Church of Scotland, had been achieved. Only Professors of Divinity needed to take the test of 1690 in future.

The credit for this abolition of University tests was not his alone. Fox Maule, Andrew Rutherford, and Charles Cowan had all seen similar attempts defeated, the last by a single vote, despite the support of most

Scottish M.P.s. The General Assembly of the Church of Scotland had urged the defeat of such moves and after the 1853 Bill passed the Commons, the Church Commission passed a resolution condemning it, "as an unmerited and unwarrantable aggression on the rights and privileges guaranteed to the Church by ...The Treaty of Union".¹³ When their resolutions failed, including a "loyal and dutiful address" to Lord Aberdeen, some of the Presbytery of Edinburgh proposed, in February 1854, to agitate for the law to be repealed and, if that were in vain, to set up Church colleges outside the Universities. So high did feeling still run that this proposal lost by only one vote.¹⁴ Lord Cockburn rejoiced at "the triumph of the Session, which at last abolished ... our University tests. This piece of nonsense is at last at an end".¹⁵ Both Cockburn, a Free Churchman, and Moncreiff, speaking thirty years on, paid tribute to the Prime Minister's help. "Even Lord Aberdeen, a Scotchman, a Tory (that is, a Peelite) and the Church's champion at the Disruption ... saw his error, and took charge of the Bill in the Lords".¹⁵ Moncreiff recalled that "The bill passed, very much owing to the liberal and statesmanlike views of Lord Aberdeen".¹⁶ This was probably an important reason why Moncreiff's University Bill became law in 1853, while the corresponding abolition of tests in parish schools took eight years longer. Lord Aberdeen's prestige was at its height just before the Crimean war and his position, as the Established Church's "champion", as well as Prime Minister, must have privately won over peers who would have voted against the measure. By contrast, the Duke of Argyll, who presented Moncreiff's School Bills in the Lords, was a much younger man than Aberdeen, an

Episcopalian, and, although an erudite and skilful Parliamentarian deeply concerned about education, could not command the same support on controversial issues. Besides, the Scottish peers, as major heritors, were not directly concerned with the choice of parish schoolmasters than with that of University professors; they were more likely to fight harder where their own influence and local power were at stake.

In the appropriate setting of the University of Edinburgh, Lord Rector Moncreiff recalled how important the 1853 Act (and that of 1861) were. "It has been the most gratifying event to me in my public career that I was partly instrumental in placing the cope-stone on this fabric of national toleration ...If any act in my public life has entitled me to (this) honour ...it is the part I have borne in removing these pernicious encumbrances"¹⁷ - the tests. In 1886 he remembered that with the close of "a long-pending controversy ...the path opened to University reform".¹⁸
THE PROPOSALS TO REFORM THE UNIVERSITIES (1857-8).

That reform was undertaken by three major Royal Commissions on the Scottish Universities in 1858, 1876 and 1889. James Moncreiff served on the first two Commissions, under the chairman of John Inglis, his contemporary from High School days, who was briefly Lord Advocate in 1858 and subsequently Lord Justice-Clerk and Lord President. The four Universities, with their different constitutions, were open to students of every class "who can afford to spare the necessary time from daily labour"¹⁹ but the standard of education, notably in teaching classics, was not always high. The problem was the generally poor Latin teaching in parish schools,

from which boys often went direct to University.
In 1869 ^{Moncreiff} he was adamant that "our students must arrive
at the University in a more thorough state of
preparation. Some have proposed a strict entrance
examination, but I look on that as tending simply
to impoverish and depopulate the University without
even touching the real evil. The remedy is to be
found in raising the standard of our schools".²⁰

In the mid 1850s an "Association for the
Improvement and Extension of Scottish Universities"
was formed; and in April 1857 laid its views before
Lord Advocate Moncreiff, who agreed that a Bill was
needed. In February 1858, he told Lord Elcho, "The
subject of University Reform in Scotland has been
under my consideration for some time. I have
prepared the outline of a measure ...and I hope to be
able to introduce a measure during the present Session".²¹
When, soon after, the Palmerston Ministry was defeated
on the "Conspiracy to Murder" Bill, Moncreiff passed the
draft measure to his successor under Lord Derby; but
Lord Advocate Inglis introduced a "more elaborate" Bill
"than anything which Moncreiff had contemplated".²²
Moncreiff "expressed his cordial concurrence in the
measure ... to appoint a Commission to carry out, as
far as expedient, the recommendation of the Committee in
1830". (He also "hoped this example would not be
without its effect" on schools, and the same unity and
energy would be applied to their improvement).²³
The Universities Act of 1858 raised the standards of
the M.A. degree and created University ^{General} Councils, so
that graduates would play a part in Universities'
affairs. Each institution was to have a Board (later
Court) to organise its course of study and revenues,

while the Aberdeen colleges were to be united.²⁴

The body set up by the Universities' Act was "in no proper sense a Commission of Inquiry but an Executive Commission".²⁵ During 1858-62 "they held one hundred and twenty six meetings, at every one of which, without missing a single occasion, the Lord Justice-Clerk presided. He was in fact the soul of the Commission, and (its) ordinances may be regarded as especially the product of his judgment, and of his untiring attention to the mass of details".²⁶ By contrast, Moncreiff attended only 30 meetings. His work as Lord Advocate bore heavily upon him and this is evident from a comparison of his period out of office (August 1858 to June 1859) when he attended 16 times, with the three years of the Commission's life (June 1859 to December 1862) when he was in office and attended only 14 times.

Under the Act the Commission was appointed "to make provision for the better government of the Universities of Scotland and improving and regulating the course of study therein, and for the union of the two Universities and Colleges of Edinburgh".²⁷ Its powers "included arrangement of the financial affairs of the several Universities and Colleges, the foundation of new Professorships, the regulation of the course of study and of examinations or degrees". The Commissioners also decided who should be admitted to the new General Council.

THE REPORT OF THE 1858 COMMISSION

Because the Reports of the Commission were set only in general terms - "we have not thought it necessary to set out the proceedings of meetings of Committees"²⁸ - there is no record of individual questions

and answers of the many witnesses who attended such meetings. It is likely, however, that on the occasions when he could attend Moncreiff would take a lively interest in the proceedings, since he had been one begetter of the Universities' Act. The biographer of John Inglis described the two men as working with "a delightful unanimity" to make provision for the better Government and Discipline of the Universities of Scotland".²⁹ As the Act's purpose was stated, Moncreiff was one of the four lawyers out of the ten-man Commission, Inglis, Duncan McNeill, and A. Murray Dunlop were the others, while the Duke of Argyll was also a member.

G.E. Davie considers that the Report "looks very like an unstable compromise between two rival views!"³⁰ On the one hand, that the old general philosophy-based degree with six or seven subjects should remain, and on the other hand, that greater specialism should be introduced into Scottish degrees. According to the "Edinburgh Review", University reform was essential after "the Indian Civil Service was thrown open to competition and those candidates educated in Scotland egregiously"³¹ (especially in Greek Prose and Algebra) failed. "Of the many benefits which the Union had conferred on Scotsmen the connection with the East India Company had been the most unquestionable". If this was not the only reason for attention to University reform, it gave a practical impetus to that concern. The Commission did not, however, carry out sweeping changes. "We considered it necessary to take as the basis of a system the course of study followed for a very long period. Classical learning (shall remain) as the

foundation of a University course".³² While "the prominence assigned to the various branches of Mental Philosophy should in no degree be diminished ..., instruction in pure and applied mathematics" had been excellent in recent years. "We were not disposed to omit any (of the traditional subjects but) we were persuaded that it was expedient to require attendance on a course of English Literature", They did, however, recommend the institution of a honours degree unlike that of Oxford and Cambridge, although "blocking full expansion of this and the specialisation ... sponsored by (Professor James) Lorimer".

Full expansion was not possible because there were to be no State-endowed Chairs - Lorimer had proposed forty new chairs - and Sir David Brewster claimed that although "the Royal Commissioners pleaded most earnestly for more liberal endowments... the Ministers of the Crown absolutely resisted every measure of liberality".³³ The Commission, therefore, did not settle a number of important issues, such as the balance of general and specialised education, and the crucial relationship of endowments and standards of teaching in the Universities. Yet the Act and its executive Commissioners did establish new constitutions for the Universities and allowed them to retain a good deal of independence in such matters as graduation - "the greatest apprehension was manifested of any steps being taken to deprive the Universities of their ancient privilege not merely of conferring degrees but of conducting examinations".³⁴ Wisely, too, they opposed a national University of Scotland with each existing University a college. - Gladstone's amendment

to carry this out was impracticable, as the Bishop of London noted at the time, and every University body rejected the scheme outright..

THE 1876 COMMISSION

The 1858-62 Acts and Reports "did not end conflict between the educational factions in Scotland"³⁵ and another Commission, in this case an investigating rather than an executive body, was appointed in 1876. John Inglis was again Chairman, while the distinguished Commissioners included Professor T.H. Huxley, Lyon Playfair, M.P. for the Universities of Edinburgh and St. Andrews, and Archibald Swinton. As J.C. Watt noted, "The legal element did not predominate ... the investigations were largely influenced by the representatives of science",³⁶ but Inglis's biographer then goes on, "I do not know to what it was due, but it is the fact that Inglis was rarely present at these enquiries" and "the work fell chiefly upon Lord Moncreiff". While flattering to Moncreiff, this statement is baffling. The Commission's Report stated: "We have held 93 meetings and have examined 112 witnesses"³⁷ and according to the Minutes of evidence set out in the first volume of the Report, Inglis was absent from only three meetings, acting as chairman on all but ten occasions when Swinton deputised. In contrast, Moncreiff, who was then Lord Justice-Clerk, attended barely two dozen meetings, and cannot be said to have borne the burden of the work. Nor did Inglis shirk from asking the majority of the witnesses long series of searching questions. Moncreiff, on the other hand, raised relatively few points even when he was present. He asked witnesses their views about the powers of University Courts, the organisation of honours degree

courses, and the method of electing Professors. But his interests were quite clearly concerned with the relationship between educational standards in schools and Universities. Of the fourteen matters into which the Commission was "authorised and appointed to make diligent and full inquiry", he was above all interested in "the institution ... of Entrance Examinations" in Universities.³⁸ He put questions on this matter to Principal Grant of Edinburgh, Professor Swan of St. Andrews, Professor Geddes of Aberdeen, Mr. James Donaldson, Rector of the High School of Glasgow, Mr. Robert Somers, a parish schoolmaster from college and others.

As Moncreiff claimed in 1869, "our students must arrive at the University in a more thorough state of preparation. Some have proposed a strict entrance examination, but I look on that as tending simply to impoverish and depopulate the University, without even touching the real evil. The remedy is to be found in raising the standard of our schools."³⁹ Now, four years after the great Education Act, he was keen to find the opinions of University and school teachers on this crucial matter. Examples of the questions he put to Principal Grant are, "Is there any example in a European University of an entrance examination such as you propose? Your object, I presume, is to increase the teaching power in the University, so as to make it unnecessary to teach the elementary branches there? But (do you not run) the risk of excluding permanently a material proportion of your students?"⁴⁰ He asked Professor Geddes, "What proportion of your present students when they enter the University, could come up to the standard ...for the entrance examination? Because if

the standard is to be as high as the result of the first or junior class teaching, then the junior class might be dispensed with as regards the students who come in under that category ...What is the precise benefit you expect to obtain from an exclusive entrance examination?"⁴¹

Yet Moncreiff remained doubtful about such examinations and eliminations of the junior classes. "Do you think you could do that and have the Universities as much the instructors of the community as they are?"

To Principal Brown of the Aberdeen Free Church College, he stated his own opinions. "If sufficient inducements were held out to the masters to raise the Board pupils to the higher branches, would that accomplish the object?"⁴⁴ on which the Principal strongly agreed that it would. Moncreiff's main worry was that a strict entrance examination might exclude lads, who although poorly prepared, "might make up their way during study at college". Instead of such an examination, "if a larger system of bursaries were instituted throughout the schools, it might give an impulse to higher education within the ...schools... especially if the master had some interest in its issues".⁴³

The Report of the Commission, however, suggests that Moncreiff was in the minority on the question of an entrance examination. The Summary of the Report recommended that "all students before entering on the curriculum for the degree of M.A. shall be required to pass a 'First Examination' in Latin, Greek, Mathematics, and English, and when the state of education in the schools renders it practicable in elementary Physical and Natural Science - and with modifications, in other Faculties".⁴⁴ The General

bursary competition should be combined with the First examination - not, as Moncreiff wished, to be distributed throughout the schools and their masters.

On the whole, Moncreiff seems to have had a relatively small influence on this Commission's findings. He was seldom present at its meetings and appeared by 1876 to have taken a greater interest in the relation of Universities to schools and their standards than in Universities themselves. This was reflected in the much fuller part he played in 1878-1880, as chairman, of the Endowment Commission studying the organisation of endowed schools and hospitals in Scotland.

LORD RECTOR OF THE UNIVERSITY

Throughout his career, nevertheless, James Moncreiff was a loyal friend to the Scottish Universities. In 1869, as Lord Rector of Edinburgh University, he naturally praised the bodies which had honoured him. "We formed our seats of learning on European models ... the Scottish curriculum is complete".⁴⁵ But his actions showed that he trusted the Universities. He proposed that their representatives should be members of the Board of Education and achieved, in his Parochial and Burgh Schoolmasters' Act in 1861, Examination Boards which would test the competence of candidates to teach in parish schools. Those Boards comprised University professors, despite the disagreement of some advisers, including E.F. Maitland, who feared they might become "little Town Councils, forgetting their proper objects".⁴⁵ His Universities Bill, on which John Inglis built the 1858 Act, was not accepted by all those connected with those institutions, but Moncreiff's emphasis on a role for graduates in Universities through General

Councils made him a popular figure with many professors, students, and graduates.

UNIVERSITY HONOURS

It was not, therefore, surprising that he was honoured on several occasions - he received, with Inglis, the degree of Doctor of Laws from Edinburgh in 1858 and from Glasgow in 1879; and in 1863 was elected President of the Associated Societies of the Edinburgh University against the competition of Dean Ramsay and Charles Kingsley, whose "masculine and original genius" he praised.⁴⁷ His graceful compliments to his rivals led to invocations and praise for the societies, "your young and vigorous republics".⁴⁸ He spoke highly of two virtues which strike a familiar chord in his speeches - earnest enthusiasm ("let no mature philosopher persuade you out of your enthusiasm") and liberal toleration ("on the subject of religious opinions ... treat all sincere conviction with respect").⁴⁸

The Universities also offered him a more practical honour. When the 1867 Reform Act established two University seats in Scotland, Moncreiff was a natural choice as a candidate for one, after local controversies in Edinburgh led to his withdrawal from the capital constituency. In Glasgow he had a comfortable majority of 243 but, losing in Aberdeen, was returned by the two Universities with only 47 votes to spare. In tune with the rest of the United Kingdom, the "dissenters", in Scotland, Free Church and United Presbyterians, voted solidly liberal and the Church of Scotland men were strongly Conservative, as an analysis of ministers' voting in the four Universities shows.⁴⁹ He was able to serve the Universities of Glasgow and Aberdeen for only nine months before becoming Lord Justice-Clerk.

His tenure as Rector of Edinburgh lasted

longer, after the Rectorial election was held at the same time as the greater Contest. Professor Christison, of Materia Medica, and the Whigs proposed Moncreiff, while the University Conservative Club supported John Ruskin as "the greatest living writer of the English language". They denegated the "ex-Lord Advocate" as "purely a political partisan, chosen by the Parliament House clique"⁵⁰ - Moncreiff was used to being described as a lawyers' puppet, although most lawyers voted Conservative in the Parliamentary University elections and the objective voter must have recognised that Moncreiff had been his own man in the Commons. The Whigs also used a familiar cry - Moncreiff would be a working Rector. In a letter in November 1868, Christison stated that "the rectorship ...was intended by the framers of the University Act and the new constitution (including Moncreiff) not as an ornamental office merely but as one with important functions, placing its occupant at the head and for the guidance of an important Judicial Court".⁵¹ Moncreiff won by 182 votes. His Rectorial address, praising his alma mater and the Scottish Universities in comparison with those of England, in a good humoured manner, and swiftly quelled a disturbance by followers of Ruskin with a Latin epithet, appropriately while praising classical learning. So he followed in the footsteps of other distinguished men, most recently Gladstone and Carlyle. As far as his duties as Lord Justice & Clerk allowed, Moncreiff attended the University Court - presiding on a famous occasion when J.H. Finlay appealed against the presence of Gladstone, Lyon Playfair, and William Chambers, on the General Council Register - because they had not registered at the correct time. It was a time when the concept of a General

Council was still new and controversial. On this occasion the Lord Rector would not vote (he "had not heard the statements of the parties") but accepted the majority vote to delete their three names.⁵²

From his days in the Classical, Dialectic, and Speculative Societies, as "the Don of the Spec", James Moncreiff always had an affection for the Universities and a concern for their best interests. In his contribution to the Universities Act of 1858 and the subsequent Commission, as well as his work for the 1876 investigation, he always had those interests in mind, but it was the abolition of religious tests for lay professors for which he was noted above all - "the most gratifying event in my public career".⁵³ As important was his insistence that the Universities could not be considered on their own, for the standards of education in schools and Universities were inevitably bound together. It was essential to elevate the standards of provision, and of teaching, in the schools and so provide a sure foundation for the improved organisation and courses in Universities.

Chapter Nine: references

- Opening quotation: q.b. reference 1, page 15.
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 3. Omond, page 95.
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CHAPTER TEN

James Moncreiff's legislation and speeches
on Government policy.

"Moncreiff guided the passing of over a hundred
Acts" (D.N.B. 1903).

As Lord Advocate in 1853-8, 1859-66, and 1868-9, James Moncreiff served under Lord John Russell, Lord Aberdeen, Lord Palmerston and Mr. Gladstone and "guided the passing of over a hundred Acts of Parliament".¹ Though education was one of his principal concerns and the issue with which Scottish people associated him most closely, it was only one of a multitude of matters which took up his time, although he personally considered its importance as paramount. He recalled about his attempts to introduce education Acts that "our object was so thoroughly national as to give life and spirit to our enterprise".² The aim above all was to get "hold of the moral nature of the people, spreading education, producing a better and healthier tone in the moral state of society".³ He hoped to extend the franchise to include a wider electorate of honest and independent men, and to this end introduced three Parliamentary Representation (Scotland) Bills in 1852, 1860, and 1866.⁴

But as the Government's minister for Scotland, in the days before the post of Secretary for Scotland was revived, "his name will also ever be associated with the reform of legal procedure and mercantile law".⁵ J.C. Watt claimed in the 1890s that "he succeeded to a large legacy of legislative projects which had been germinating for years in the minds of lawyers such as Lord Advocates Andrew Rutherford and Duncan McNeill and

in the halls of legal corporations".⁶ Although, by "established etiquette", he communed with the heads of the legal profession "on the bench and at the bar ...⁶ the accomplishment of the multifarious reforms of that period was ... almost exclusively due to him" with the help of his principal adviser, John Clerk Brodie, Writer to the Signet and Crown Agent for Scotland.⁷ He was prepared to give attention to all "the numerous applicants whom duty or interest brought before him".

LEGAL REFORM

His objective in legal reform was to achieve greater efficiency and simplicity, and curb delay. For example, he tried to improve procedure in the Sheriff Courts, where⁸ "abuses had crept in and delay and expense were occasioned from three causes - the pleadings were not conducted orally, proofs must also be committed to writing, and facilities were given for appealing on mere matters of form from the sheriff substitute to the sheriff principal. He proposed to do away entirely with written argumentative pleadings and depositions. Instead ... the sheriff should take a note of the evidence, a case should be argued orally, and (any) review proceed upon his notes". As was his custom he met the Scottish Members of Parliament, "a wise course ... to ascertain the various sentiments of their constituents previous to its second reading".

He was also anxious to retain what was valuable in the Scottish system - an approach typical of one who had "learned my liberalism in the school of the old Edinburgh Whigs".⁹ When a Member criticised the sheriffs' posts as political structures, he defended them strongly as "the organs through which the country was governed, and the persons with whom the Lord Advocate

communicated on subjects affecting the general welfare".¹⁰ His reputation was less important than the practical efficiency of the legal system. "He had been appealed to as a law reformer, and he was most anxious to deserve that name, but not by the sacrifice of the most useful institutions in the country". It was characteristic of Moncreiff that he met the Scottish members to ascertain their constituents' opinions before the second reading and that he considered the opinion of the country as carefully as possible; and he found that only five of thirty one counties wanted the sheriffs' posts abolished - Glasgow being "the Headquarters of the agitation" - and the Faculty of Advocates also opposed such drastic change. "His measure was not to extend (English) County Courts to Scotland but to improve the Sheriff courts",¹¹ and this he achieved in the Sheriff Courts Act of 1853.

The question of relationships between the legal systems in Scotland, England (and Wales), and Ireland was a vexed one in the mid-19th century. Above all, in presenting measures which would apply to all the Kingdoms, the great problem was how a court in one country could enforce its jurisdiction on another - as the Lord Advocate realised when he saw anomalies in a Judgment Execution Bill of Mr. Crawford in March 1854, which might lead to "inextricable confusion".¹² While he believed that Scots law was superior to that of England - "the principles of law were infinitely more simple than those in England", partly because it was in tune with the great corpus of Roman law and therefore with the law of many European countries. - Yet he believed that close co-operation between the countries' systems was beneficial. After acting on a Select Committee

studying Mr. Crawford's Bill, he claimed that although "the decisions of courts in all countries could (not) be executed everywhere; in the three kingdoms, where the courts were governed by the same principles, it was absurd to have three distinct rules".¹³

He was also vigilant to ensure that measures applying to England did not raise difficulties in Scots law. During the second reading of the "Probates of Wills and Grants of Administration (England) Bill" he made "a single observation. The object of the sixth clause was not only to make the probate of a will in England good in Scotland, but also to affirm the principle that wills proved in Scotland should be good in England. That was very desirable, but as the Bill was now worded, there was not a single expression in it applicable to the mode of procedure in Scotland. He believed provisions might be introduced in Committee".¹⁴ In general, he believed it right that "upon some subjects provisions of the law of England were incorporated with that of Scotland" and vice versa - "That was the spirit in which law reform ought to be pushed".¹⁵

It is a tribute to the skill and determination of James Moncreiff, (with the assistance of John Clerk Brodie, A. Murray Dunlop and other colleagues, as well as of John Inglis for the Derbyite Conservatives on several occasions) that he achieved so many Acts. In a Parliament where no single party had an overall majority between 1846 and 1868, where party discipline was primitive compared to that of the late 19th century, and Scottish matters were often dealt with at a late hour, this was recognised as an outstanding attainment.

IMPORTANT ACTS ON OTHER ISSUES

Among the most important measures which he helped pilot through Parliament, "the Bankruptcy Act of

1856 is possibly the most complete code in the Statute Book, the best testimony to its excellence being the slight nature of subsequent amendment"¹⁶ - a comment written forty years later. In an election address he "claimed the credit of the Mercantile Law Amendment Act of 1856, which ...had for its object the assimilation of the laws of England and Scotland in matters of common occurrence ... of trade, and ...the claim was just".¹⁷ He also introduced further reforms in areas of the law with which previous Lord Advocates, particularly Andrew Rutherford and Duncan McNeill, had dealt. The law of evidence "was further improved by changes which permitted the examination of witnesses whose testimony had been excluded"; he introduced in 1854 a more efficient system of registering births, marriages and deaths; and succeeded in bringing ...the principles of representation in moveable succession"¹⁸ by the Intestate Succession (Scotland) Act of 1855. Apart from education, however, it was perhaps his contribution to commercial legislation, at a time when Britain's trading position in the world was at its peak, which was most important in the 1850s and 1860s.

More detailed matters such as the valuation of land; laws respecting lunatics, registration of leases, police, marriage, and divorce, fisheries and game, and roads; and writs registration also took up a good deal of his time - the last matter was a particular vexation. "We have been ten years at it",¹⁹ attempting to centralise the registration of writs. County feeling against it proved to be too strong.

The importance which M.P.s, including Moncreiff, attached to local opinion is evident in debates about education as well as legal reform. "There is a

kind of esprit de corps in the counties, and they are unwilling to part with the prestige of the ancient registers. That is only natural ... and it is an element with which we must deal if we want to carry out an efficient reform".¹⁹ To Moncreiff an efficient reform meant substituting one general register for local registers, since this would save money "and enable the persons employed to make the indices of these registers ... to keep their work up. They were five years behind"²⁰ Local opinion, whether discussing the police forces, writ registration, or education, was an element which Moncreiff had to consider before measures were framed and during their Parliamentary progress. A bone of contention was centralization, for many feared Edinburgh would control other towns and counties without respect for their interests. This fear was one reason for hostility to the Board of Education which Moncreiff proposed in various Bills. He always attempted to allay those suspicions. "Centralization", he said of the Writs Bill, "had nothing to do with the matter, but the simple question was how to keep our registers in an efficient condition".²¹ Indeed he went out of his way to emphasise the value of his measures to localities, for "at the present day one-half at least of the deeds are sent by post".²² Yet in previous attempts in 1856 and 1863, the Writs Registration Bill was withdrawn in 1865. As with some unsuccessful education measures, Moncreiff believed that "he had received the support of the majority of the Scotch Members in regard to the Bill, yet the opposition was so formidable that he had no hope of carrying the measure this Session"²² even if the ample discussion had been useful.

An even more localised issue, which caused fierce controversy, was the Edinburgh Annuity Tax and even

his Act of 1860 could not dampen hostility on the matter, which eventually led more than any other factor to his withdrawal from his Edinburgh constituency.²³

MAJOR SPEECHES IN THE COMMONS

In contrast, James Moncreiff was asked to make major speeches for the Government on matters of broad and even international importance. "The Mutiny with its tragedy and pathos, the Crimean War, the fall of Kars, the bombardment of Canton and the march on Peking afforded subjects of rich interest for his graphic rhetoric, which his party eagerly employed in some of their critical struggles".²⁴ Nor was this true only in the 1850s - "so versatile and acknowledged was (his) faculty of felicitous phrase that he was selected by the Government to compliment Mr. Speaker Denison on his re-election to the chair after the second Reform Act (in 1867)". The "Scotsman" recalled that he was "peculiarly happy in the use of eulogy".²⁵

When the fall of Kars in April 1856 led to virulent attacks on the conduct of the war in Crimea, Moncreiff was called by Lord Falmerston to wind up the debate for the Government. One of his most polished speeches helped to stave off the assault and Lord John Manners's motion was defeated by 127. He used all of his "power of convincing ... and ... selection and arrangement of fitting words".²⁶ "The Motion was ... liable to one objection which would be fatal to it - it was not true. It was not true that the disasters at Kars resulted from a want of foresight on the part of Her Majesty's Government ... When the present Minister of War came into office, he found the

troops in the Crimea in a state of great suffering and they were now more healthy. Hon. Gentlemen opposite had, during this war, taken small objections and had overlooked great results".²⁷ It was fitting that six months later, during a banquet for Crimean veterans, Moncreiff should propose the toast "The British Army" and in 1859 when the Faculty of Advocates formed a Volunteer Corps, he became Lieutenant-Colonel.

In another major foreign policy speech during the "Arrow" war with China, the "fervour ... from inner fires"²⁸ were clearly visible. "He had no doubt that (the Chinese) proceedings were no mistake at all. Talk of civilised nations! He could not say that a country which offered rewards for the heads of its adversaries (were) in the category of nations with which it was possible to deal according to strict international law".²⁹ Whereas some M.P.s deserted Lord Palmerston on this issue, Moncreiff constantly supported the Prime Minister against the attacks of Richard Cobden.

Another instance among many important speeches was his contribution to the debate on Palmerston's "Conspiracy to Murder" Bill. Clearly his deep understanding of the law - both national and international - was considered a strong asset to the Government case. Moncreiff's speech was a clear and precise evocation of the relevant factors (although there was a major upset with the Government defeat by 19 votes and its resignation). "That which we now propose is that conspiracy to commit murder should be a felony, punishable with penal servitude varying from five years to life. (At present) the

law in England treats a conspiracy to commit murder simply as a misdemeanour ... punishable on the same level ... as a conspiracy for ...hissing at a theatre".³⁰ That comparison may have been prompted by the reaction of some members during a particularly heated debate, and made the point in a memorable and humorous fashion to offer some light in a serious speech. His parting shot was a telling rhetorical question - "Will any man say, the object of the law being by punishment to deter persons from the commission of the offence, that by increasing the penalty you do not add to the deterring effect?". In his letter to the Queen, Lord Palmerston wrote that night that "The Lord Advocate made a good speech".³¹ The "Scottish Law Review" spoke highly of his "great fertility as well as splendour of illustration. On the floor of the House (as well as) in the hustings and public hall, shaking from head and wing his dew's of splendour he frequently stirred his audience to tumultuous applause".³²

James Moncreiff's experience in the courts ⁴¹ would not alone have ensured success as a House of Commons Speaker. His friend and political opponent, John Inglis, had a short and rather difficult Commons career, for "his manner has that distant forensic stamp which few lawyers ever get rid of and to which the House of Commons has (so) great an objection".³³ Moncreiff's long experience on political platforms from his twenties, when he spoke on the Great Reform Bill of 1832, stood him in good stead and he seems to have enjoyed the cut and thrust of Parliamentary debate. In general, however, he wished to advance by co-operation and moderate concessions wherever

possible. Often it was necessary to placate local interests and individual Members, both Scottish and English, and regular consultations, with M.P.s and representatives of interest groups, helped a good deal. With measures which he could not support as framed, in many cases he promised early and careful consideration of the question. His record of piloting legislation through Parliament was particularly impressive in the 1850s, a time when "the House of Commons has run riot with independence and waywardness ... The Government has had no majority on which it could depend, and has never brought forward any measure which it could count upon carrying through".³⁴ Clearly the keynote, sounded during the Annuity Tax debates, could be applied to his Parliamentary career as a whole:

"Let us try, without contention, to come to some arrangement".³⁵

Chapter Ten: References

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3. Omond, page 173.
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6. J.C. Watt (1893) "John Inglis" page 224.
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30. Hansard, volume 148, par. 933, 19 February 1858.
31. Omond, page 201.
32. "Scottish Law Review" (June 1895) page 163.
33. J.C. Watt, (1893) page 180.
34. Greville's "Memoirs" (1896 ed.) volume VII,
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CHAPTER ELEVEN

The significance of local issues for Moncreiff's career.

"It was humiliating to me that we should split ...
in turmoil about matters so local". (James
Moncreiff, 1868).

Although Lord Advocate for many years and an impressive Government spokesman, on international law and diplomacy, James Moncreiff naturally took an active interest in local affairs in his native city. Member for Leith in 1851-59 and for Edinburgh in 1859-68, he was honoured with the freedom of the city in January 1857, partly for his support of the Municipal Extension Act and the Registration of Voters Act. There is no doubt that this award, and the honorary degree which he received a year later from the University of Edinburgh, brought him great satisfaction. As he affirmed in 1866, "I have learned my liberalism ... in the school of the old Edinburgh Whigs, and I believe that the lessons I have there learned are sound".¹

Yet, although his affection for the city remained strong and he lived there throughout his life, at 15 Great Stuart Street from the 1840s onward, the hostility of certain of its citizens to Moncreiff caused him perhaps the greatest vexation and frustration in a long and distinguished career. G.W.T. Omond described this as a "deadly feud between a section of the city Radicals, led by Mr. Duncan McLaren, and the Parliament House men, of whom Mr. Moncreiff, as Dean of the Faculty, was the natural champion".² The Liberal cause was clearly split between Radicals (with the Voluntaries) who had been angered by their treatment at the hands of

Macaulay as Member for Edinburgh, and the Whigs. McLaren's twin ambitions were to see the disestablishment of all Churches and radicalism supreme in Edinburgh, and he had a powerful weapon, the local grievance of the "Annuity Tax".

THE ANNUITY TAX AND DUNCAN McLAREN'S PARTY

This intractable problem, the Edinburgh and Canongate Annuity Tax, ached at capital tempers like a nagging tooth, "the source of much bad blood and a thorn in Moncreiff's side for many years".³ The Tax, dating from Charles I's reign, was paid by occupiers of shops and houses on a percentage of their rent, in order to provide stipends for city clergymen. Never a popular levy, it was especially galling to many that all Edinburgh lawyers - as members of the College of Justice - were exempt from paying. McLaren claimed that "the exemption ... comes to this: in Edinburgh the aristocracy are the lawyers; they occupy the highest rented houses, and they are exempted; they are the parties who chiefly remain in the Established Church".⁴ Clearly he hoped to organise Free Church and Voluntary opinion into a political force against the Parliament House Whigs.

Moncreiff was attacked by McLaren's "party", although the Lord Advocate was not a member of the Established Church and tried repeatedly to abolish the tax. Indeed, the hostility between the two men and their supporters was inflamed when Moncreiff defended the "Scotsman" in a famous libel suit brought by Duncan McLaren. During the 1856 election, Alexander Russell described McLaren in an editorial as a member of an "Unholy Alliance" to support one candidate and as a snake, one of "the Viperidae".⁵ Moncreiff's

speech for the newspaper was "one of the cleverest as well as one of the longest he ever made in a civil court"⁶ and attacked McLaren as "thin-skinned and malignant", raising "the action purely out of spleen at the result of the election" which the Whig Adam Black had won. McLaren, however, was awarded £400 damages: the Lord Advocate's speech helped reduce that award from the £1,000 claimed. "Mr. McLaren's party thenceforth worked night and day on his behalf, and against Mr. Moncreiff." It is unfortunate that the parties to the dispute could not have taken throughout the humorous view which Russell occasionally displayed - of McLaren's financial acumen, he said, "if he is not a snake, he is a remarkable adder".⁵

The most painful thorn in Moncreiff's side, the Annuity Tax, had been studied by ten Parliamentary Committees since 1833 and several measures to deal with it had been proposed in Parliament. From 1852 the Lord Advocate strove to find a formula which would pacify everyone and "put a stop to the heart burnings";⁷ irritation had long prevailed to an extent most injurious to the peace and the best interests of the Church in Edinburgh".⁸ "In England agitation about church rates (had made it) almost impossible to collect them. He looked upon this question as one affecting social order, the efficiency of the clergy, and the cause of religion".⁹ A local matter it might be, but the flame of bitterness burned fiercely over this tax - in 1848, as Moncreiff recalled, "it was actually found necessary to call out troops of military in order that a sale might take place of property seized by the ministers of Edinburgh, because the owner refused to

pay the tax".¹⁰ Disorder, inefficiency, attacks on religion were abhorrent to an Edinburgh Whig, and Moncreiff stated the classic Whig argument for reform - moderate change carried out in good time could remove the danger of revolutionary change enforced by disruption; indeed, moderate reform could strengthen an institution.

ATTEMPTS TO SOLVE THE ANNUITY TAX QUESTION

In a Bill whose second reading was moved on 19 July 1853, "he proposed to settle the question in this way - to abolish the exemption, to reduce the number of ministers from eighteen to fifteen, to abolish the annuity tax altogether, and to charge instead a municipal tax of three per cent".¹¹ The stipends might be lowered from £600 to £550, and fewer clergy were required in the capital because of the fall in the work of the Established Church since the Disruption. Although that Bill lapsed when there were less than forty Members in the House, objections to it had already come from both sides. J.B. Smith considered that the levy should be for "six ministers" only while Colonel Blair believed that the Bill "encroached on the institutions of the Church of Scotland (which) chiefly objected to the clause reducing the numbers of ministers".¹²

After another compromise Bill failed in 1857 (when some non-payers went to prison in handcuffs) and Adam Black's measure in 1859 ~~which~~ lost by one vote at its second reading in the Commons, the times seemed right for a final settlement. Throughout, by contrast with the bitter arguments in Edinburgh, Moncreiff took a conciliatory line. "Let us try in Committee, and without contention, to come to some arrangement by which the pressure of this tax can be lightened".¹³

Desiring to avoid a contest with the House of Lords .
"where the interests of the Church of Scotland were powerfully represented, he set out an arrangement which was the result of negotiations between the Government, the Corporation of Edinburgh, members of the College of Justice, and city clergy."¹⁴ Despite his customary attempts to gain broad support by discussing the matter with all interested parties, after he had made further concessions in Committee, "the Town Council turned round and said it was a new Bill (which ought) to be withdrawn".¹⁴ In fact, the Bill became law in July 1860, after a sweeping victory in the Commons by 204 to 17, and debate in the Lords was restricted to the second reading.

At the time, most of those involved believed that the Act of 1860 had ended disputes once and for all. During a speech in the Edinburgh Music Hall that Christmas Eve, Moncreiff assumed that "there is one thing I shall ever remember with gratitude - I have been instrumental in passing the Act which terminates the Annuity Tax for ever".¹⁵ But there was an ominous sign during this speech. He had "no easy task to go through a statement consisting entirely of details and partly of figures" while there was "an unusual effort to obstruct ... free discussion". So great was the uproar that "I was obliged to omit many things" and he published them in a pamphlet with documentary evidence in the appendix. (This was a remarkable event, since Moncreiff had a powerful voice and was experienced at dealing with hecklers). In an election meeting of July 1865, his voice "rose above the din" of "a compact body of electors, some of them personal friends of McLaren".¹⁶

Such interrupters believed that the Act was

far too generous to city clergy. After 1860 the lawyers' exemption ended, thirteen ministers were paid a maximum of £600 a year, while the city collected funds with the police rates to the sum of £4,200: that was paid as a perpetual bond of annuity to support the clergy, with the city's whole property as security. Agitation continued - "goods of resisters were sold at the town cross, some went to prison" and G.W.T. Omond, an admirer of the Lord Advocate, writes scathingly that "a good deal was heard about tender consciences and religious scruples. But it was well known that the cause of the movement was the determination of the leaders to capture both seats for Edinburgh from the Whigs".¹⁷ This they succeeded in doing. In 1865 McLaren came top of the poll, with Moncreiff second, while Adam Black lost his seat. Moncreiff's own position in the constituency, especially after he helped defeat McLaren's Annuity Tax Bill in 1867, became more and more impossible. In June 1868 he declared that he would not stand again for Edinburgh - but he won the constituency of Glasgow and Aberdeen Universities at the next election.

MONCREIFF'S WITHDRAWAL FROM HIS EDINBURGH CONSTITUENCY.

To his constituency committee, he explained his reasons, while offering them his thanks "from the bottom of my heart".¹⁸ The factors which would be emphasized to the public "are simply these. The Reform Act has altered the constituency ... from ten thousand up to seven-and-twenty thousand voters; and in the circumstances in which Edinburgh is at present placed, the reason that has induced me ... mainly, I may say solely - is that I do not feel that the task of canvassing in a contested election such an enormous

body of voters is one which I ought to undertake". While the threefold growth in voters after the second Reform Act may have weighed with him, it is more likely that this was largely an attempt to leave with a good grace. A more authentic note, however, was sounded later in his speech, when he admitted his frustration. "It has been humiliating ... to me in this, the great metropolis of Scotland, the cradle of Scottish art and science, the very abode also of Liberal opinion, where our celebrated forefathers maintained the flag of free opinion - it was humiliating to me that we should split and exhibit ourselves before the nation as ... engaged in turmoil, keen though ignoble, about matters so purely local and, in my opinion, so almost infinitesimal as those on which this great schism has been founded." Even the form of this sentence betrays the anger and disappointment which the Lord Advocate felt at his having to leave his native constituency: it is unusually long and overloaded with epithets for a man whose sentences were constantly brief and clear.

Although the matter was not finally laid to rest until the Act of 1871,¹⁹ James Moncreiff could claim much of the credit for achieving the first Parliamentary success in the matter - "it passed with a greater Parliamentary unanimity than ... the settlement of any long-contested question in my recollection"²⁰ and his tact and willingness to make concessions helped create that unanimity. It is ironic that he left his constituency on account of the Radicals, who, like him, wanted to end the Annuity Tax. The difference was that they would accept no "arrangement" while he had to consider and consult the interests of all those

involved.

It is a tribute to Moncreiff's patience and determination that he was able to achieve so many valuable measures in Parliament despite the constant attacks of the supporters of Duncan McLaren in his constituency. Previous Lord Advocates had far fewer problems of this kind and had no contested elections to fight between 1835 and 1851. Admirers of Duncan McLaren claimed he was an effective Lord Provost in the early 1850s and "a man of dogged determination (to whom) we owe it that our city affairs are now in order",²¹ and both he and James Moncreiff, in their different ways, were deeply concerned about the wellbeing of their city.

THE COCKBURN ASSOCIATION

Moncreiff's pride in Edinburgh, "a city which has spread, all over the earth, the refinement of cultivation, of manners, of thought",²² was evident when he became first President of The Cockburn Association in 1875. Its aim is "to encourage the formation of a right spirit over the community so as to secure the existence of a general and intelligent attachment to what is essential to the city".²³ "The Council of 15 Gentlemen resident in Edinburgh or its Neighbourhood" included Professor Lorimer, the Bishop of Edinburgh, and as Vice-President Sir Alexander Grant, historian of the University. "One main object", the President claimed, "was to form a link between their civil rulers and public opinion ...for the improvement of the city. What they really required was a watchful eye, kept by a kind of collective Argus, to take care that treasures of romantic scenery should be protected and respected". Although its numbers were initially few,

the Association developed over the years and is now an important "Argus" for the improvement of the capital. By 1900 it had already helped improve Princes Street and the Meadows, established the Arboretum at the Royal Botanic Gardens, preserving West Princes Street Gardens, and saving Mowbray House. In his inaugural address, James Moncreiff, whose son Frederick was secretary, explained that their inspiration was the late Lord Cockburn, "the embodiment of a patriotic citizen" and cared passionately about his city.

Moncreiff, as Lord Advocate and then Lord Justice-Clerk, raised the standard for Edinburgh's best interests in Parliament, University, and beyond. "He had seen something of other lands and cities, but he had never anywhere seen anything equal to the beauty of 'mine own romantic town'. That was not mere sentiment. The beauty of Edinburgh was one of its most important material advantages ... anything which marred it was not only a sentimental but a practical evil or grievance".²⁴ It was characteristic of Moncreiff, however moved he was or however passionately he felt, that he stressed the practical advantages of a particular action to his audience.

Chapter Eleven: References

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5. "The Glorious Privilege" (1967) page 35.
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8. Hansard, volume 128, par. 440, 19 July 1853.
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11. Ibid. par. 442.
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20. J. Moncreiff (24 December 1860), page 29
21. Sir J.H.A. MacDonald (1915) "Life Jottings" page 417.
22. J. Moncreiff (27 February 1867) Address to the Aggregate Liberal Committee on the representation of Edinburgh.
23. J. Moncreiff (1875) Address to the inaugural meeting of the Cockburn Association, page 8
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CHAPTER TWELVE

James Moncreiff in the Law Court, as Advocate and Lord Justice-Clerk.

"His speech was as beautiful in language as it was clear and perspicuous in its statements" (S.H. Walpole, 1854).

While those who read newspapers, had the right to vote, or were members of "the political nation" knew of Moncreiff's attempts to pilot measures through Parliament, and his Education Bills were talking points up and down the country, it was when he appeared in important trials that the nation as a whole took the closest interest in James Moncreiff's words. His obituary in the "Scottish Law Review" noted that although the Advocates-Depute undertook most prosecutions in criminal cases, "the length of time Moncreiff was in office brought him before the nation as head of the Crown Office more notably than most Lord Advocates".¹ Indeed there were three periods in his career in the law courts. As a young lawyer, he had been closely involved in the Church Disruption cases such as the Auchterarder contest, and had also defended a group of Scottish Chartists on trial for sedition in 1848 - a matter which throws significant light on Moncreiff's own attitude to working men and to reform. As Lord Advocate, from 1851 to 1869,[◇] he led the prosecution in such famous cases as Miss Langworth ~~versus~~ Major Yelverton, which had all the ingredients in 1862-3 of an alleged marriage, scandal, and noble birth to

◇ with three brief periods out of office

capture public attention, and defended the "Scotsman" against Duncan McLaren's libel action, as well as acting for Sir William Johnston, a Director of the Edinburgh and Glasgow Bank, in 1861. Finally, as Lord Justice-Clerk, he presided over the trials of the city of Glasgow Bank Directors in 1879, the dynamitards in 1883, and the crofters in 1886, as well as other less celebrated cases.

THE MADELEINE SMITH TRIAL (1857).

There was one occasion, when the spotlight of world attention was fixed firmly upon a case in which he was a leading figure.- "The whole story was beset by circumstances of such deep fascination that all else in the criminal jurisprudence of Scotland in this century seem tame beside it. The trial of Madeleine Smith from June 30 to July 9, 1857 stands alone in our annals in point of romance and mystery".² Seldom has a trial evoked such public interest; wherever a journal could be read, the headlines were of this strange story. The young Glasgow woman, accused of attempting, and finally achieving, the murder of her lover, Emile L'Angelier, had all the dramatic, even gaudy qualities of a thrilling screen play. It is surprising that studios have not presented more film versions over the years. The middle-class girl from a completely respectable family, the penurious dandy of French extraction, clandestine meetings, amorous missives - newspapers and their readers, not to mention the Edinburgh citizens, could think of little else. In this scene the conduct of Miss Smith, her champion, John Inglis, and her prosecutor, James Moncreiff, and of the Judge, Lord Justice-Clerk Hope, were scrutinised as never before. If all eyes

were on the incredibly unruffled manner of the defendant, who took no refreshment in court during the trial, Moncreiff's manner was also noteworthy. His presentation of the case was as calm and as objective as possible, in presenting the facts as he understood them. This restrained manner has been interpreted in different ways. Henry Blyth's recent study states: "it seemed to some that (he) had no real stomach for the task ... and would (not) resort to rhetoric. Not for him the thundering denunciation of what he believed to be a falsehood, nor the pointed finger of accusation. He spoke quietly, expressed himself with moderation ... but when he had a point to make, he made it loudly and with force".³ While G.W.T. Omond's description of Moncreiff's manner is similar, he believed that such restraint was not due to any distaste for his solemn duty. "Mr. Moncreiff conducted the prosecution with absolute impartiality, in accordance with the tradition of his office, seldom broken since the close of the seventeenth century. This tradition - that the prosecutor must ^{not} throw into the performance of his duties the ardour of an advocate, but must exhibit the calm impartiality of the Crown, of which he is the representative - is so well understood in Scotland that if a Lord Advocate, or any of his deputed betrays eagerness ... they would be thought guilty of a breach of professional decorum".⁴ Probably the custom of his office fitted the manner which he personally favoured.

In no other case was Moncreiff's performance subject to the gaze of so many commentators. One contemporary quoted forty years later stated that "The Lord Advocate and the Dean of Faculty (John Inglis), like truly able men, rose with the magnitude of the occasion".⁵

Moncreiff's speech "was pervaded by a moderation which gave it the character of an eloquence altogether judicial ... This trial will be remembered, apart from other circumstances, for the credit it has brought the bar".⁵ According to Henry Blyth, Moncreiff "developed his attack with quiet logic, allowing the facts to speak for themselves". His practice appears to have matched the precept he laid down for others in speech and writing. In a talk on "Legal Education" in 1870, he claimed that a speech should be "clear, well reasoned, elegant, and persuasive".⁶ Writing for the "North British Review" in the 1840s, he criticised the style of Macaulay who "is always in full dress marching to the same majestic but rather pompous strain",⁷ while "the vice of (Mr. Carlyle's) writings is the unpardonable offence of affectation. The very quality in which (he) is so deficient is simplicity".⁸ Clarity, simplicity, restraint are also words which aptly describe his closing speech for the Crown in this trial.

Speaking for over five hours, he reminded the jury, "If the charges be true, if the tale which I have to tell be a true one, you are trying a case of as cool, premeditated, deliberate homicide as ever justly brought its perpetrator within the compass ... of the law".⁹ The facts he set out were that L'Angelier had died from arsenic poisoning and that Miss Smith had the means, opportunity and motive to poison him. As to the *difficulty of the* circumstantial evidence, "administering poison before witnesses (is) sometimes the strongest proof of innocence". Few prisoners can have been asked their opinion of the Lord Advocate's prosecution during a trial. The defendant's reply was one of the coolest ever recorded. "When I have heard the Dean of Faculty I will tell you.

I never like to give an opinion until I have heard both sides of the question". John Inglis's description of his opponent's speech as "a web of sophistry" was a notably unfair picture of Moncreiff's careful presentation, and Inglis went on to destroy L'Angelier's character in the eyes of the jury and to elevate the Purity of Woman. Inglis was reasonable in supposing that to prevent the exposure of letters, Madeleine wanted Emile to live, but a much weaker case was that her cool courage proved innocence. Moncreiff was closer to the truth in stating that such a demeanour was "not inconsistent" with guilt. Blyth describes the defence counsel's performance as "an astonishing exercise in making bricks without straw".

The greatest difficulty for Moncreiff, however, was that it could not be proved that she had met Emile on the night in question, and as Lord Hope told the jury, the prosecution's case was "radically defective in evidence". This was the sticking point, despite Moncreiff's calm eloquence (and he did not read out the most shocking sections of the couple's letters). Foreman William Moffat, teacher in the High School of Edinburgh, finally read "The jury find the panel not guilty on the first charge by a majority, (attempted murder), of the second charge not proven (attempted murder) and by a majority find the third charge not proven (murder)".

DEFENCE OF THE CHARTISTS (1848).

If the trial of Madeleine Smith was the most sensational in which James Moncreiff appeared, one of the most significant for understanding his personal views was his defence of 3 Chartists in 1848.

Looking back on the trial from the tranquil

1860s, Moncreiff recalled the Hungry Forties and Chartist activities.¹⁰ "We all remember with pain the dark times - the darkest hour before the dawn, with commercial distress at home, scanty work and bad wages for the men. I was a member of the bar and I willingly complied with the Chartists tried for sedition in 1848 who asked me to become their counsel. Ever since, I have had a very warm heart to the working man". He drew two major lessons from the Chartist agitation. First, that a national education system must be established so that all children should be educated, Speaking in 1851, he warned that¹¹ "should another (such) period arrive and find the lower classes ... in a state of ignorance, it was impossible to say what might be the consequences. In quiet and peaceful times let that House (of Commons) do its duty by educating the people." Secondly, a further measure of Parliamentary reform would be a wise precaution against class war. "I lamented the line of demarcation which appeared almost impassable between a large class and the other classes. I am glad to say that line has been greatly effaced since then. We have had prosperous and happy times but from that time I have thought it was a great mistake not to embrace many of these men within the pale of the Constitution".¹² (In 1848 groups of men had gathered, armed with stones, in Princes Street but the Yeomanry and Cavalry soon dispersed them). It is probable that the Chartist riots in Edinburgh, which, as in England, engendered great fear among the upper and middle classes, helped convince Moncreiff that further reform of Parliament was necessary, to bring honest, independent men within the franchise and calm the anger of those who demanded the Six Points and

who felt that the 1832 Reform was a fraud. Such incidents caused some to take the opposite view from Moncreiff - that extension of the franchise would be dangerous, and it was two decades before this reform came about.

In the subsequent trial, Moncreiff acted with Alexander Logan on behalf of three Chartists, John Grant, Henry Ranken, and Robert Hamilton. Familiar figures in the court during November 1848 were Lord Moncreiff, James's father, one of six Judges, and Lord Advocate Rutherford, who had led the young Moncreiff in the Church cases of the 1830s, now was the principal counsel for the prosecution. The grave charges were ¹³ "wickedly conspiring to effect an alteration of the laws and constitution of the realm by force or violence" and of "sedition", after the Chartist meetings on Brimsfield Links and Calton Hill in June and July 1848. James Moncreiff, addressing the jury on Ranken's behalf, warned them not to be "carried away by the whirlwind of excitement. There have been times when verdicts have been returned under circumstances of public prejudice, in which the voice not of law merely, but (of) reason and sense, was doused in one overpowering terror; verdicts which filled some, who pronounced them, with undying regret, and have stamped an indelible stigma on the times they characterise. I am under no apprehension of that kind today. The bubble is burst". He was confident of their verdict, above all because of the "remarkable advance which the doctrines of constitutional liberty and the principles of freedom have made within the last fifty years". This was clearly a reference to the efforts of Whigs such as his father who had fought for causes, including Catholic

Emancipation and the Reform of Parliament, which had come to be broadly accepted in the country. In the event, the conspiracy charges were found not proven, Grant was not guilty of sedition, while Hamilton and (by a majority of one) Ranken were found guilty of using language calculated to excite popular disaffection and resistance to lawful authority, leading to sentences of four months' imprisonment.

DEAN OF THE FACULTY OF ADVOCATES (1858).

Humanity and restrained eloquence characterised James Moncreiff's speeches as an advocate. "He never allowed himself to be carried away by fervour of conviction or exuberance of language".¹⁴ Nor did he forget the wider significance of the trials in which he was involved - the political setting of the Chartist trial, society's attitudes to marriage in the Yelverton case. Coupled with a powerful voice audible from the hustings before the Signet Library to the High Street, according to J.C. Watt, and a "copious vocabulary (and) lucid illustrations", his "power and fame" (in court) became "very great", and in 1858 he was rewarded with the baton of Dean of the Faculty of Advocates. Although it was customary for a Lord Advocate, whose term ended without promotion to the Bench, to become Dean - and Moncreiff had lost his post when Lord Palmerston resigned - there is little doubt that his high prestige in the profession merited his award. The dual role of Dean and Lord Advocate from 1859 was not, however, entirely satisfactory. Moncreiff was frequently absent in London and although his Vice-Dean, Mr. George Dundas, was highly "esteemed, the two dignities were never afterwards, except upon one occasion, held by the same person".¹⁵

LORD JUSTICE-CLERK (1869).

In 1869, on becoming President of the Second Division and Lord Justice-Clerk, he apologised for his lack of experience in certain areas of the law - such as the appeal courts. "I am painfully conscious that, although for five and thirty years I have been engaged in the practice of the law, a large portion of that time has seen me drawn away by pursuits and distractions alien to the profession, and inconsistent with its constant exercise".¹⁶ He hoped that his fellow Judges would "supply my deficiencies". He stressed once more that practical efficiency which was his constant aim. "We should never forget that the vital essence, the life-giving spirit of judicial institutions resides in their administration, and that courts of law fulfil their high mission only when they provide, not abstract, but practical, justice, and furnish just and therefore speedy and cheap redress. To take part in such administration is a great distinction; to do so faithfully and worthily will be the ambition of my judicial life".

After "the ancient farce" of facing a trial before his admission as a judge¹⁷ and becoming briefly "the Probationer" he entered fully on his judicial and administrative duties as Lord Justice-Clerk. "The requisitions of the Home Secretary in regard to the appeals or petitions of convicts are addressed to him. He is the medium of communication between the State and the judge who tries malefactors... It is (he) who reviews the case appealed in the light of the judge's notes and opinion".¹⁸

Although he succeeded such great judges as John Inglis, it was generally agreed by his contemporaries that he filled the post of Lord Justice-Clerk with

distinction. "His brilliant rhetoric had always found ..a fitting sphere in jury practice,"¹⁹ according to J.C. Watt, advocate, and biographer of Inglis, and "this style clung to him on the Bench, so that with him even the trivialities of judicial remark were invested with a certain finish and dignity. In..the drudgery of judicial work he spared neither pains nor thought, and his exposition of the law was invariably characterised by lucidity and picturesqueness". He could "relieve the ennui of a somniferous harangue by a Greek Epigram or a Roman idyll". The "Scotsman" obituary recalled that ²⁰"his judgments were always lucidly expressed. Evidence in his hands became simple (as he) brushed aside irrelevant details. The jury was always clear on questions of law and their freedom to decide on fact." His friend, G.W.T. Omond, did not consider him the equal of his father as a judge, but "no one knew better how to deal with facts, however complicated".²¹

All agreed on his impartiality and the respect in which he was held by the profession - qualities which, legal biographers suggest, have not been those of every judge. "With what admirable skill did he check himself when he felt the judicial balance to incline from the equilibrium! No judge could be more ..scrupulous to present the best features of both sides of a case".²² The "Scottish Law Review" noted that occasionally, he might take offence - "You ought not to have contradicted me" to a leader of the bar - but usually his tone was high-minded and amiable in presiding over famed and forgotten trials. The best remembered was perhaps the trial of the City of Glasgow Bank Directors in 1879.

THE TRIAL OF THE BANK DIRECTORS (1879).

His address to the jury "was, it was generally agreed, extremely fair"²³... "luminous and weighty" was

the description of William Wallace, writing in "Scots Law Times". As the man who had taken such a deep interest in Mercantile Law, Moncreiff naturally spoke with great authority in this case. "Great mercantile success necessarily produces great mercantile transactions. But then, gentlemen, with the magnitude of the transactions there comes a magnitude of danger also, for the merchant ...A war, a famine, a drought, a strike, may make the whole of that edifice tumble down. Then it is that the unprofessional director finds himself face to face with an emergency which it is difficult ... to meet. Is he to bring the bank down by bringing down the debtor, or is he to carry on the debtor in the hope of the vessel getting into calmer water?" It would be no defence that they intended "to keep the Bank afloat" by falsehood. "Gentlemen, I have to tell you that, so far from that being a sufficient defence, it is exactly the offence and the motive described in the indictment". Two directors were sentenced to 18 months' imprisonment for falsifying balance sheets, and five others received 8 months. Reviewing the trial in 1930, the "Scots Law Times" believed these sentences were "too lenient" for "the widespread ruin and misery, some of the effects being felt to this day". The shock for many families in Glasgow and beyond was so severe that many would not trust a bank with their savings for decades afterwards. Yet Moncreiff could only be concerned with the specific charges, after expunging two other indictments, embezzlement and theft, from the record as irrelevant before the trial.

On Moncreiff's retirement in October 1888, John Inglis spoke of their "unbroken friendship of nearly seventy years"²⁴ and a reputation "high and well sustained".

As the "Scottish Law Review" noted in its obituary, critics considered that his dignity leant to pompousness, but "long habit had ingrained into mind and manner the proprieties of a high position"²⁵ while the "Scotsman" claimed that "His dignity never deteriorated into ... pompous pride".²⁶

In a recent book, Judge Gerald Sparrow put and answered the question:²⁷ "What is it that makes a good judge? Perhaps the qualities are (1) knowledge of the law (2) common sense (3) restraint (4) wide human experience of all manner of men and women". Without doubt James Moncreiff had the first three of those qualities and, if one considers the great variety of audiences²⁸ to which he lectured and of men and women he met through his legal and political career; and his comments in cases such as the Chartist trial, one may agree that he was not lacking in the fourth.

THE EFFECT OF A LEGAL CAREER ON HIS OPINIONS.

This experience of all manner of people was valuable throughout a long career in the law. What he saw of crime and vice led him to believe that major reform, notably in education, was essential to curb these hateful growths. His broad attempts to establish a national education system, and the more limited measures to extend Reformatory and Industrial schools,²⁹ illustrate that belief. He did not imagine that such moves would end crime immediately. "It would not at once raise the miserable and squalid ... class of society from ignorance and crime to the position of good citizens, but it was part of what Parliament was bound to do... (Men) saw that crime before their eyes day by day .. the time would come when the end would have overgrown

any efforts they could make".³⁰ These statements were made at the (~~second reading~~) debate on the second reading of his Education Bill in 1854. In contrast, in 1886, in his closing years, he described how³¹ " a professional or judicial instinct led me to inquire what bearing increased ...instruction have had on juvenile crime. I know that it is only after many days that fruit of that kind can be looked for, but the subject has always had a strong attraction for me... Ever since ... Dr. Guthrie first stirred my emotions in this direction, and Mr, Watson of Aberdeen , had shown what judicious training with an outcast multitude could effect ...Taking the juvenile commitments in Scotland - below the age of 16 - I find that in 1850 the numbers were - males, 1515; females 442; whilst in 1884 the numbers were - males, 1,085; females, 105 (although) the population has largely increased". He believed that "although the figures are not as favourable as could be desired, the results are certainly full of encouragement".

ATTEMPTS TO STEM DELINQUENCY.

These words are similar to the remarks of the Commissioners who investigated Reformatories and Industrial Schools, reporting in 1884, two years before Moncreiff's "Retrospect". In quoting the number of juvenile commitments between 1866 and 1880, they noted that numbers had "increased from 1061 to 1188. In 1881, however, they fell to 857. Allowing for the increase of population, the general results, although not so striking as those in England, are yet of a satisfactory character".³² Moncreiff himself believed that a national system of education was essential to raise the populace to higher standards of honesty and intelligence, and also that more precise educational measures could be useful in combating

crime and the effects of a squalid environment.

Although most of his exertions for Scottish education were directed to establishing a more coherent and expanded school system for all children, he considered in the 1850s that Industrial and Reformatory Schools were "the most promising opening for the exertions of the future"³³ to curb juvenile crime.

Industrial Schools

Several Acts, in 1854, 1855, and 1856, were passed with his support to establish more of such schools. "I had in 1854 so strong an impression that the system of industrial schools was more likely than any other to reclaim, or at least to limit, the numbers of the criminal population that I proposed in the Bill of that year to give the Board of Education ... a power of imposing a general assessment over Scotland, the proceeds to be applied in the first instance to this purpose". This wide-ranging Education Bill "to extend the provision of education for the people of Scotland" (March 1854) was lost in the House of Commons, but Moncreiff supported his colleague, Alexander Murray Dunlop, who introduced a Reformatory Schools Bill "to render Reformatory and Industrial Schools in Scotland more available for the benefit of juvenile delinquents and vagrant children".³⁴ The Act which passed on 7 August, 1854 allowed magistrates "to send delinquents to school instead of to gaol and receive good training, habits of industry, and some prospects of bettering their conditions."³⁵ Those various Acts were consolidated in 1866, gaining the support of both Houses with virtually no debate.

Although his interest in Reformatories and industrial schools was only one specific aspect of

◇ A Committee of Council Minute in 1846 defined an Industrial School as one "situated in the denser parts of great cities, and intended to attract from the streets vagrant youths." In Palkshaw's industrial school, boys learned carpentry and tailoring, girls sewing and cookery. Reformatories, such as The Old Mill School in Aberdeen, took children already convicted — in that case giving literary and agricultural education, from which most went to farm work. (219)

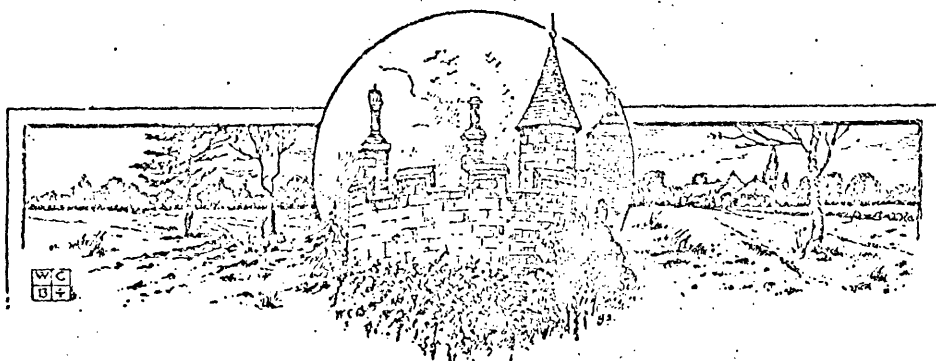
Moncreiff's concern for education, and the school system as a whole, it suggests the influence which his involvement with crime and the law had upon his attitude to education. Apart from the great virtues of education in benefiting the nation and its youth, it could have a significant part to play in reforming the lives of delinquent children and damping down the danger of crime, vice and disorder. "The object of (the 1854 Act) was to remove the outcast children from the streets".³⁷

Chapter Twelve: References

Opening quotation: q.v. reference 1, page 162.

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2. Ibid.
3. H. Blyth (1975) "Madeleine Smith" page 142.
4. Omond, page 197.
5. "Scottish Law Review" (June 1895) page 165.
6. J. Moncreiff (1870) Legal education, page 6.
7. J. Moncreiff (May 1844) "North British Review" page 265. ^{volume 1}
8. J. Moncreiff (February 1846) "North British Review" page 50⁷
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16. Ibid. page 168.
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18. Ibid. page 199.
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29. q.v. page 256 of the present work.
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Craigcrook Castle and Francis Jeffrey.

"15 GREAT STUART STREET,
"EDINBURGH, 27th November 1886.

"DEAR DR. TAYLOR,—You have been good enough to ask me to furnish for your intended book about Craigcrook my personal recollections of the place, and of its celebrated occupant, Jeffrey.

"It is not always easy to break down into intelligible or readable fragments a general remembrance extending, as in this case, over the greater part of a long lifetime. Neither is it easy to express in words the emotions and associations which the theme you propose to me calls up. I do not remember a time when it was not identified with visions, growing more defined as age advanced, of interest, brilliancy, and pleasure. Old Craigcrook, with its gray towers, tea-roses, and its overhanging woods, is indelibly associated in my memory not only with sunshine and flowers, but with the sowing of the seeds in literature and politics, which produced so plentiful a harvest. Time moderates many enthusiasms, and reduces boyish idols to smaller proportions; but I have not found it so in the present instance. In the course of my life I have come in contact with many distinguished standards by which my early admiration might be tested; and looking back through more than sixty years, I still bow before the images I first worshipped.

[JAMES MONCREIFF'S PUBLISHED LETTER TO DR TAYLOR ON CRAIGCROOK]

CHAPTER THIRTEEN

Lectures and Writing

"The rare merit of keeping alive the attention of a large audience" ("Scotsman" 1895).

While much of his life was spent on serious concerns, James Moncreiff was clearly a good companion. *When he could gain some relief from his heavy official timetable, he would spend it with his large family of five sons and two daughters, or in fishing for trout (especially at the Almond), golfing at St. Andrews or North Berwick, or in winter skating at Lochend. There was seldom a time when he was completely free from work, yet "he went through with it all cheerfully, with a humour ... unfailing".¹ Omond spoke of his "bright and happy disposition. He thoroughly enjoyed his life. I recollect him starting one morning from a country house in Fifeshire, where he was living in Summer, for a day of toil in Edinburgh. The mist, which had been lying thick, began to roll away, and North Berwick Law could be seen across the Forth. 'It will be fine. The head of the Law is clearing' some one said. 'The head of the Law's always clear' was the quick reply; and he drove away, laughing like a schoolboy, to return in the evening apparently as fresh as when he left".¹

MONCREIFF AS A PUBLIC SPEAKER.

This joie de vivre communicated itself to his audiences. "His popularity as a public speaker was so great that he was inundated with requests for lectures and addresses, and gave his services with a profuse generosity. His lectures gave him on the whole

very little trouble. He knew what he wished to say, and could gratify his audiences with something invariably attractive".² It was unusual for the "heads of the law" to undertake such projects. As Lord Cockburn noted in his Journal,³ 6th April 1853. For the first time since the creation of the world, a Lord Advocate has delivered a popular lecture to a popular audience. This feat was performed ...last Friday by James Moncreiff to the Philosophical Institution of Edinburgh. And a very good discourse it seems to have been, consisting of a contract of the first with the last half of the current century". Cockburn strongly approved of such lectures - "it marks the desire of the people to receive knowledge ... and of the aristocracy to give it. It tends to unite our ranks agreeably". It is probable that Moncreiff noted the success of Brougham, Russell, and Argyll in such lectures and was glad to follow them in gaining the attention of large audiences - unlike his friend John Inglis. Lord Deas believed⁴ "there is no subject whether it be grave or gay - law or physic - divinity or faction, or poetry, upon which my right honourable friend is not able to deliver an interesting lecture".

Subjects on which Moncreiff spoke included "the extension of the suffrage" (1866), "the history of Scotland from 1600 to 1660" (1863), "legal education" (1870) and "Science and Scripture" (1867). Groups to which he spoke varied from the Sheffield Foreign Affairs Committee (1866) to the Scotch Trade Protection Society (1865), and in September 1860 he was in Glasgow, speaking as a member of the Social Science Association (on "jurisprudence") and a guest of the Glasgow Legal and Speculative Society (on the "art of pleading"). His

speech to the S.S.A. was described in the "Scotsman" obituary as "the best I ever heard on that subject ...⁵ It had the rare merit of keeping alive the attention and awakening the admiration of a large and miscellaneous audience. From the respect with which he was treated by Sir John Pakington and Mr. Kinnaird, all I had heard of his popularity in the House of Commons was well founded". The cordiality and friendship shown at Possil House, where the Lord Advocate resided as guest of Sheriff Sir Archibald Alison, was notable, since "all at Possil were Conservatives".

This spirit of cordiality chimes with the tone of Moncreiff's comments⁶ in the 1880s about Parliament. "Where tastes are congenial, there is a freemasonry, a spirit of good fellowship (in the Commons) apart from office and even party. You may politically abhor the man who sits opposite ... but when it comes to seeing him night after night he becomes, ~~the~~ ^{an} insensible part of your life. (From) this comes many fast friendships. Much more is this so, when comrades are also united by community of opinion and official responsibility". There were occasions when there were rowdy scenes at Moncreiff's speeches but this applied only to meetings upset by major political dissension, in practice at elections or the issues fought by the Radical group in Edinburgh. In most cases, the occasions when Moncreiff spoke were enjoyable for all - whether it was the Judicial Society, the Philosophical Institution, Royal Society, Scots Law Society, or the Laymen's League of which he was President.

AN ACCOMPLISHED LAWYER.

He was expected on many occasions to speak

about the law and usually he had something fresh to say each time. "An accomplished lawyer", he told the Judicial Society of Edinburgh,⁷ "ought to excel in 3 intellectual branches. His gifts should include, knowledge, reasoning, expression - I have known men of great learning and of great intellectual power who ... were incapable of clear expression". To the Glasgow Legal and Speculative Society⁸ he emphasized the importance of presenting facts correctly in a legal argument. "An argument without facts is a house built on the sand". On the other hand "There is a great temptation to colour facts, so as to omit those which are adverse, or unduly exaggerate those which are favourable. It is inconsistent with high art and (causes) distrust in the mind of the judge". Above all, the lawyer should "direct the whole force of the argument upon that point (where the strength lies) - the pole star of the pleader". Such serious points were leavened by light humour. "Garrow found a witness dishonest because he shifted his legs from one side to the other. And to tell the truth I have acted on that hint with success".⁹ Nor did he have any ~~pretensions~~^{illusions} about the public view of lawyers. "Our craft is certainly not popular outside its bounds. Erasmus writes of lawyers as 'those donkeys to whom is committed the determination of all things great or small'".¹⁰

Occasionally, despite his usual felicity, he claimed to be at a loss for a subject. When he spoke to the Edinburgh Chamber of Commerce at a conversation~~ions~~ in 1862, where the audience included his brother Sir Henry, Professor Archibald Swinton, and his fellow Member of Parliament, Adam Black, he professed

to be at a loss. "He first considered 'a commercial and professional' topic - perhaps a discourse on a bill of exchange. 'My friend shook his head' though Moncreiff thought 'much of imagination and romance lurks in a bill'. Bankruptcy and debt - too dreary; feudal conveyancing - too tame; the Trent affair and the rights of neutral (shipping during war) - much too fiery." Finally, "in despair", he chose "A Happy New Year", in which he considered the commercial history of the previous half-century. As a strong free-trader, he was sure that "the true secret of national prosperity is to leave trade as unfettered as you can - leave it to its natural career - if (your neighbour) prospers you will also prosper".¹¹ An old member of the Anti-Corn Law League, he had not seen any reason to change his convictions about trade.

SCIENCE AND SCRIPTURE

Nor was he prepared to change his fundamental attitudes to science and to the Scriptures because of Charles Darwin's new theories or the discoveries of some geologists. He took a keen interest in scientific issues and in natural history. In Moncreiff's novel, one of the characters almost certainly echoes its author's views that ¹²"late researches proved more clearly than ever .. first, that man is a very recent inhabitant in this planet, and secondly, that man has not been produced by any process of selection or development". James Moncreiff, like many other Victorians, considered deeply the meaning of Darwin's and Huxley's work. He retained his belief in the Divine Revelation of Scripture and, with his keen understanding of the importance of popular education, he did not wish the populace to be lured into rejecting the

Bible by reading garbled "popularised" versions of scientific discovery. Indeed, his concern for popular education was a major factor in his undertaking so many lecturing commitments.

When he spoke in 1867 to a Y.M.C.A. his address on "The Relation of Recent Scientific Inquiries to the Received Teaching of Scripture"¹³ showed "the extent of his reading and knowledge"¹⁴ and of his lawyer's approach to an extra-legal issue. He was, from his early years, familiar with works such as Sir Charles Lyell's "Principles of Geology", published in 1830-5, and Thomas Chalmers's sermons on science. Almost certainly, as a member of the Philosophical Society of Edinburgh, he heard or read Thomas Huxley's lectures on 'The Relation of Man to the lower Animals' delivered to the Society. In his own lecture, Moncreiff attempted to apply "the rules which govern evidence"¹⁵. As his novel, which he was writing at the time, also implies, "his antagonist was not the scientist but the man who assaults the truth of the Bible with weapons said to be in the scientist's armoury". Indeed he believed that Mr. Darwin's work "rightly considered, has rendered a great service to human knowledge". His reflections ranged widely, always showing firm grasp of Scripture and an educated layman's knowledge of scientific findings. Much of his lecture would be acceptable to Christians in the 20th century, while his attitudes to science were reasonable, in the light of imperfect knowledge at the time. For example, on the Creation of the world in six days, he applies careful reasoning to show that "day" may mean any length of time "as applied to an act of miraculous creation", since 'as the sun, moon and stars do not (appear) until the

fourth of these periods, the word day could not have been intended to denote one revolution of the earth on its axis".¹⁶ Of "the order and progress of nature" described in Genesis Chapter one "the graduation is exactly that which (Mr. Darwin's) theory of natural science indicates". But on the theory of "survival of the fittest", Moncreiff assumes a mock-serious style which is remarkably similar in style, if not substance, to the essays of G.K. Chesterton. "The weaker would go to the wall."¹⁷ ...When a pig was on his way to become an elephant, there would be a creature half-pig and half-elephant; but the elephant would exterminate his half-brother. Nor is he ~~understood~~^{inclined} to believe that Man remained "in a state of rude barbarism for thousands of years ...where are his remains? A dubious tooth here, (and) still more acropryphal skull there" are poor evidence for "misty conclusions".

If Moncreiff's flippant tone here was welcomed by his young audiences, he made the mistake of criticising one writer's views without reading his work. Pressure of work and of invitations to speak or write were bound on occasions to lead to such an error. Characteristically, however, Moncreiff admitted ~~only~~ that "he had formed his opinions of Bishop Colenso's theories by reading reviews, extracts, and letters in the newspapers".¹⁸ Such a confession did not pacify the Bishop of Natal, who had expressed in a book some doubts about the Inspired nature of the Pentateuch. Later, however, Moncreiff scored a palpable hit in a year-long debate when the Bishop read some extracts from his adversary's letter and complained to "The Times". "Perhaps", noted Moncreiff, "you wished to redress the

balance of complaint by answering my letter before receiving it".¹⁹ If this disputation lacked the depth and fame of the debate between Cardinal Newman and Charles Kingsley, it was conducted with no less spirit and the "Scotsman" at least believed the Lord Advocate "had the best of the argument".²⁰ Omond, however, regarded it as "a drawn battle", both combatants of course retaining their original position", and, since the newspaper generally supported Moncreiff, Omond is probably closer to the mark.

In his lecture, Moncreiff wisely made an attempt to separate what was central to the Christian faith from what was peripheral. "The exact chronology ... of man's antiquity is not essential. But that the events recorded in the Bible did really occur is important and ~~not~~ material".²¹ Even if the theory of natural selection were proved true, "the creation of a primitive form, with the capacity of being developed through all these transitions into a man, is as miraculous an act as anything recorded in the Scriptures". His Christian faith was founded sure and, despite "The Bailie's" claim that "he retained his fear that the progress of science may injure religion",²² in fact he did not wish to impede that progress. "Let science pursue her triumphs; the more diligently nature is studied, the more will it appear that the needle points ... to the sanctity of Revelation".²³ As was evident in her efforts to encourage education throughout the country, Moncreiff did not fear the effects of greater knowledge — and inquiry.

THE FRANCHISE AND A SECRET BALLOT

An equally controversial matter, on which he often spoke in the 1850s and 1860s, was the representation of the people. Although he had introduced Parliamentary

Representation (Scotland) Bills in 1852, 1860 and 1866 in line with Liberal attempts "to extend the right of voting, none had succeeded. As he stated in an address in Edinburgh's Music Hall (1866),²⁴ "the work of 1832 was a Reformation - a cleansing of the stables to render them fit for habitation and efficient for their purpose. What is now wanted is enlargement and extension merely. No doubt constitutional anomalies still adhere - some inequality in distribution of seats, some disparities in electoral members - which will not square to line and plummet. But these are exceptional details ... The best plan of representation is that which shall bring into activity the greatest number of independent voters".²⁵ He stated quite candidly that he did not believe in manhood suffrage - "I know no right that any man has to political power; it is vested in the community and not in the individual". Nor did he wish for a secret ballot. "The sooner it is discarded from the Liberal creed the better".²⁵

In this he was not alone. John Bright recognised in a letter to Granville in 1871 that to almost all Conservatives and many Whigs, "The Ballot has always been offensive, and, only recently, regarded with horror".²⁶ Four years after the Ballot Act, "The Bailie" recalled of Moncreiff that it was "an especial object of his Whiggish detestation".²⁷ The Ballot, however, was a subject which he developed more fully in articles than in speeches. In the "Edinburgh Review" of July 1860,²⁸ he studied the question in detail. He pointed out that a secret ballot would not by itself end corruption - and, as Donald Southgate shows, this proved to be correct. "Electoral manners and methods did not change overnight. An effective Corrupt Practices Act in 1883 was required".²⁹

Moncreiff believed that, in a characteristic reference to the Greek myths,³⁰ "the golden shower will find a path ... An election is at hand. One by one the tenants receive a visit from the bailiff. They are told which of the candidates has the good wishes of the Tory squire!" In this Moncreiff shows an element of bias - such corruption could be practiced by employer, landowner, or politician of any party. Even after the Ballot Act, it was a major task for principled men to avoid accusations of undue influence, as Trollope illustrated in "Phineas Redux" when the Liberal Duke of Omnium is unjustly accused of using such influence in the Borough of Silverbridge.

As for the argument that there is "no security that the promise will be kept", Moncreiff does not answer the basic point that no one can check on the ballot cast by a voter. He merely claims, "the truth will come out" and has to agree that the ballot "would certainly make intimidation more difficult, more expensive, and more inconvenient".³¹ Nor does the contention that "if the box is out of order, or its keepers out of honesty, we are helpless" suggest faith in the honesty or efficiency of those who organise elections.³²

Although the lawyer in James Moncreiff searched for rational arguments and chinks in his opponents' case, in his heart he felt, emotionally, that secret voting was unBritish and unmanly, a slur against those who wished not only to "vote in the dark" but cry aloud their allegiance.³³ "We are not dealing merely with knaves, with frowning thanes and crouching serfs, We are required to submit to ... concealment merely to expiate the sins of a very small minority".

This significant article illustrates that although Moncreiff pressed for reform in many aspects of society, he could never support the Radical wing of Liberalism. "The Whig party of which I profess to be a follower attaches more importance to the unseen tradition which mingles our political with our social constitution than to the line and plummet of hard logic".³⁴

JAMES MONCREIFF'S "REVIEW" ARTICLES

This particular article bears some signs of haste, and emotional rather than reasoned writing. Omond recalled that³⁵ he had fits of procrastination, especially in the matter of writing. Sometimes, intending to review some work that interested him, he would make notes, jot down his ideas, and put off beginning until it ended with his not writing a line". Projects never carried out included a Life of Lord Cockburn and an historical romance set in the 1690s, including the Master of Stair, while his own Memorials remained incomplete. What we do have of his writings, however, indicate that he was almost as prolific and versatile as his younger colleague, the 8th Duke of Argyll. These comprise articles for the short-lived "Presbyterian Review", the "Edinburgh Review" and the "North British Review", as well as a novel "A Visit to My Discontented Cousin," first published in "Fraser's Magazine", a book of poetry, and a memorial of Jeffrey and his circle in "Craigcrook".³⁶ Because of anonymity, the precise number of his reviews is in some doubt. Omond stated that he wrote³⁶ "in all ten articles to the "Edinburgh Review" but the "Wellesley Index", using detailed account books, gives him as the author of 20 articles from 1849 to 1891 and this appears to be

accurate.³⁷ More difficult is the question of "North British" articles, but he probably wrote ten or eleven for this "Liberal, Christian" periodical, almost all in 1844 to 1850, before being established as a Member of Parliament and a consistent contributor to the "Edinburgh".

The subjects of his contributions contain few surprises - they include "Scottish lawyers and English critics", discussion of "the late Ministry and the state of Europe" and reviews of histories such as those of Carlyle and Macaulay. His 3 articles on Macaulay's "History of England" were among his best work - the first pleased Macaulay so much that he wrote to "a friend, Mr. Simpson", "I should like Moncreiff to know how much pleasure he has given to me".³⁸ While many historians would not agree that Macaulay was right to do so, Moncreiff grasped that what was new was "his masterly adaptation of known facts to a connected and systematic view of the history they compose - and the bearings of the history on the future fortunes of the country".³⁹ Yet he could criticize the great man's style - and his "difficulty in saying a simple thing simply; sometimes he loads a fact with more inferences than it can sustain". He went to great trouble to belittle those "Lilliputian ...striplings" who criticized Macaulay on details, and he even quoted from John Tzetzes' "Scholia on Hestod's Works and Days" to support the historian⁴⁰ "one tiny point."

A leitmotif of his reviews is his distaste for the 18th century, a time "incredulous of faith and intolerant of earnestness". The Autobiography of the Rev. Dr. Alexander Carlyle⁴¹ "is a melancholy picture of one phase: clever, shallow, polished, subservient (to) England, ashamed of the honest creed and manly

realities" of the 16th and 17th centuries. To him the "real-history of Scotland begins at the Reformation ... is it rational to forget with unmanly whinings the brave contest which Knox waged for the people against kingly and courtly power?" He considered the Scottish Presbyterians the strongest bulwark against the arbitrary power of the Stuarts, whom he condemned more harshly than any ~~other persons~~ in his reviews. James VI, for example, he called "a rash without manliness, a vacillating and hollow monarch". He was particularly grateful to Whig historians such as Macaulay for dispelling the "expensive delirium" created by Walter Scott's "worship of rank and power".

While, except for the Macaulay reviews, "Edinburgh" articles are mainly those of the politically mature man, Moncreiff's contributions to the "North British Review" are clearly the work of a younger man - in his thirties. His review of the "Life of Lord Chancellor Eldon," written when he was 33, may be compared with comments about Eldon when Moncreiff was 58. He "passed through a career of unbroken influence, without doing one good deed for his country, not a measure of humanity".⁴³ (1844-7). By 1870, although he still abhorred the trials for sedition in the 1790s, he was stating that "more allowance should be made for the Tory Ministers. In self-defence the gravity of the peril was great and it remains a question of whether, under any circumstances or any Government, we could have kept terms with France".⁴⁴ The quarter-century (1844-70) has been largely spent by Moncreiff in Government, and his long experience in Parliament encouraged him to take a broader and more tolerant view of the opposing party, especially when he had knowledge of the problems and vicissitudes

of ruling the country.

EXPRESSIONS OF HIS WHIG PRINCIPLES.

Yet his Whig principles did not fundamentally alter - and the influences of his youth remained strong. In 1844 he firmly believed that it was Charles James Fox who "kept alive the flame - the impersonation of broad, manly intellect - England's greatest statesman" of his day.⁴⁵ In his novel, written two decades later, one character described the great man in no less glowing terms. "Half the security we now enjoy may be traced to that great statesman's sagacity. He lived in evil times, but the seed of popular principles which he flung broadcast on stony ground bore its fruit ...in the next generation".⁴⁶ It was the memory of Fox, and of the Edinburgh Whigs - Jeffrey, Cockburn, and his own father and grandfather which James Moncreiff held dear, throughout his life. "Against this hydra-headed monster (of Illiberalism) in 1790 to 1805 did these adventurous striplings unfold the defying banner of the Edinburgh Review and they held it aloft against many a hurricane. Jeffrey year by year tried to undermine that corrupt and autocratic principle".⁴⁷ In 1857, soon after Lord Cockburn's death, he spoke of how Cockburn's junior friends "always had the impression that he was on their side against despotic authority; he loved freedom and nature" and Moncreiff pictured the congenial circle in Edinburgh with his father "relaxing for an hour his intellectual energy ...Jeffrey, all brilliance and animation, but mellowed in his later years with the wise philosophy of experience".⁴⁸

HIS NOVEL: "A VISIT TO MY DISCONTENTED COUSIN".

Since his main concerns in the reviews were political, historical, and religious, it might appear

surprising that Moncreiff ever wrote a novel, especially when one considers his remarks as a young man about "recent novels" - "Reviewing ephemeral⁴⁹ works of fiction is not our principal object, any more than reading them is our usual occupation ... too little has been done in the way of censorship over this very populous branch of the literary family ... while our publications bespeak a better tone of principle than at many former periods, yet the flood of nonsense, childishness, false morals and infidelity ... surely deserves to be stemmed with more vigour". Yet there is a touch of mock seriousness about even these remarks - "One or two examples, hung up for the benefit of others, might have a wholesome effect". Chosen to be one of the first contributors to a new, serious review, anxious to convince legal colleagues who knew that he was writing such contributions that he was a man of gravitas (he suppressed even a brief book of poems until 1846), Moncreiff could afford only an occasional gleam of humour, and little enthusiasm for novels. Yet the gently ironic tone of "A Visit to my Discontented Cousin", published in the late 1860s confirms Omond's view of his friend as a man who enjoyed life - and was rarely solemn for long.

This light, episodic tale resembles Jerome K. Jerome's "Three Men in a Boat", and is based on the attempts of the City lawyer Pemberton to amuse Dagentree, a cynical and blasé country-dweller. It is a telling touch that a lawyer should cheer up a landed gentleman. The tenuous plot rambles through various stories - of a doctor in Bath, a Civil War epic, a disaster in Cabul. An Admiral discloses how a cipher was betrayed to the Napoleonic navy by a clerk purporting to write love

letters, while a doctor tells of "a mysterious student" in Edinburgh, an innocent lad who had to rely on his twin to provide an alibi for murder.

Although it would be unwise to identify the author's views with his characters' statements, there are certain themes which may echo Moncreiff's own experience and enthusiasms. One chapter is devoted to trout, with a long description of Loch Laggan and "the rapture and the fame of landing the spotted Triton, the beauty of his bright and shining side on the emerald sward".⁵⁰ There is no mistaking the follower of Isaac Walton, and Omond recalled that Moncreiff was quite happy with two or three small catches.

In his "Educational Retrospect", he bemoaned that⁵¹ "scholars often never tried to learn a note of music" and this is a major topic in the book. Pemberton described music as "that great refiner of our homes, purifier of domestic hours, sweet inward solace which bursts out in song" and there is one very detailed account of a concert which the author may have attended - Jenny Lind's second appearance in London. "The opera was Robert le Diable. When she appeared ... there was a measured critical cordiality in her reception. But she was firm and brave, and though her voice quivered a little in the first verses, she gave it with great sweetness and power. Certainly no sounds I ever heard from human lips ever roused me to such a pitch of ecstacy".⁵²

Moncreiff put his powers of observation to good use in his novel. Since much of his time was spent on trains between Edinburgh and London, he recorded what he saw. "The Southern Counties exhibit

the perfection of verdure and foliage alongside of civilisation and railways. Never-ending vistas of woodland landscape ...chequer the blazing sunlight above, and cheer the eye". Inside the carriage there is "the possessive traveller with his 'Saturday Review' and 'Punch' next the farthest windows with (his) back to the engine".⁵³

The novel, as well as his reviews and speeches, indicate that he did not consider a work complete without a garnish of allusions - there are references to Walton, Pope, Byron, and Horace. He read unconventional texts - such as Captain Burt's letters to which Macaulay refers in his first volume. "The worthy captain was quartered with General Wade at the base of Ben Nevis in 1719".⁵⁴ There are indications, one would think, that Moncreiff was a lover of book bindings as well as content. Certainly Pemberton is as knowledgeable as Lord Peter Wimsey about "the true Ebenezer Virgil with the red letters ... the Baskerville classics, unstained, in sumptuous Morocco".⁵⁵ But in an address to the University of Edinburgh in 1869 Moncreiff stated firmly, "the inside of a book is more important than the outside".⁵⁶

"The Bailie" described the work as "pleasant enough reading" while Omond called it "not so much a novel as a brightly written causerie on men and manners".⁵⁷ One surprising point about the book is its absence of all reference to religion, except for one remark about John Milton on page 174. Yet in all respects "A visit" fits the description which Moncreiff applied to a novel in 1844 - "It is an eminently gentlemanlike book. It wants nothing of fancy or incident ...but it does so in perfect consistency with

propriety".⁵⁸

"MORNING" AND OTHER POEMS.

If, interpreted with a certain caution, the book yields some information about Moncreiff's interests and attitudes, as well as pleasant hours' reading, the same is true of his book of poems published in 1846 but written some years before.⁵⁹ One poem, "Morning", of 800 lines⁶⁰, covers various allusions to its subject - the light, morning woods, the Resurrection morning, the morning of life (and education of the young). One section resembles part of Gray's "Elegy" -

"How many Helens there have lived unsung," while he adjures parents to consider their children's souls -

"Let not the body be your only care"⁶¹

Nor even th' intelligent mind, though that deserves
More culture, as being nobler, more eterne,

Th' immortal soul your chiefest thought demands".

Other poems include "The fable of Tithonis and Aurora", "Eros", "Anteros", "Fame and the Muse", and "Lines for the gate of the churchyard of Stratford-on-Avon".⁶²

"The prince of all the bards lies here ...

Nothing he touched shall ever fade".

The impression given by these poems is of a young man, imbued with the Classics and with the lines of Thomas Gray in his mind. Some images are memorable indeed, such as

"The hem of sunset's purple vest"⁶³

and one particularly moving passage from "Morning" describes his old grandfather Sir Harry Moncreiff Wellwood, from whom he learned to love the scriptures and who leaned on James as a stick as they walked through the new Town.

"One of this sort I knew; 'twas years ago,
Thence leading me to love the increate -"⁶⁴

Well I recall that last delightful morn,
We sat within a natural bower, and spoke
Of thousand pleasant things, and of the love

of God to man" ...

"His life seemed Charity itself".

James Moncreiff was not a Scott or Gray or Macaulay in his literary efforts, but he offered in his novel and poems a pleasing and light reading, and some didactic intentions sketched with a deft pencil. His contributions to the "Reviews" mellowed and matured with the years and these, especially his studies of Macaulay, Cockburn, Jeffrey, Russell and other men whom he knew well, are important contributions to our knowledge of the men and their times. If some speeches were written swiftly, his major articles bear only the marks of wide reading, considered thought and clear expression.

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CHAPTER FOURTEEN

Baron Moncreiff in his Final Years.

"My Lords, the very atmosphere of your House is filled with shadows of constitutional principles."

(James Moncreiff, 1876).

After receiving high honours in the years 1869 to 1874 (he was created a privy councillor in 1869 and a baronet in his own right in 1871, as well as becoming Lord Justice-Clerk) he entered the House of Lords as the first Baron Moncreiff of Tulliebole. Unlike his active Commons career, however, his time in the Upper House was exceptionally quiet and free of controversy. His position as Lord Justice-Clerk required that he should not speak on contentious subjects and most of his time was in any case spent in the Court of Session; instead, he restricted himself to speeches on legal matters in the Lords. Questions of judicature and appeal in Scotland, Court of Session reform, procedure for electing representative Scottish peers - on those subjects alone did he speak in the Upper House, although it is likely that he put his experience and advice at the disposal of political friends in a more informal manner. The man whom Parliament had known for so long as Lord Advocate and *who* had been consulted by the Lord Chancellor on appointment of magistrates in England ("Will you kindly give me your opinion ... and your judgment as to the men proposed?")¹ could provide unique help on legal issues. No Scot had in his day combined so much experience of political and legal matters. In a speech

on proposed changes for the Supreme Court of Judicature, he referred to "his long experience of the manner in which the Scotch appeals had been dealt with".² He strongly supported the retention of the House of Lords as the final court of appeal for Scottish cases - and here he noted "that the opinion of the Scotch Judges was in favour" of that view.³ Reminding his audience that the Scottish and English systems of law were different but "only in form" he ended with a memorable phrase. "My Lords, the very atmosphere of your House is filled with phantoms and shadows of important constitutional principles".⁴

He was naturally consulted by the Lord Chancellor when the Court of Session Bill was prepared in 1881. The problem arose over whether Parliament should set the number of judges in the Court by statute. "He was for seven years President of one of the Divisions of the Inner House, with four judges and for five years with only three judges". From 1876 no new appointment was made. "He thought that three was the best number for expedition, and four was the safest and the surest". In fact, hostility to the measure (probably because it was felt Parliament should not interfere with the Court in this way) and lack of time for debate caused the measure to lapse, although Moncreiff was in favour of the change. (Hansard, volume 259/1629/March 22, 1881).⁵

Lord Moncreiff's final remarks in the Upper House were in his capacity as Chairman of a Committee which investigated the election of representative Scottish peers. Speaking on a Bill introduced to alter the election procedure, he said, "The Peers of Scotland were put exactly on the same footing as those of England,

with the exception of not having a seat in the House of Lords. They were restricted to certain Representatives, elected by themselves. But there was an anomaly. The Peers of Scotland (had) no tribunal before whom it was necessary to go to prove their right ...There were two things to be done" said Moncreiff, ever the man for action whenever it was practicable, "The first was to make up the Roll, and the Roll could only be made up by disposing of the list of protests made to the existing Peers. The second was to decide how the names of successors ~~who~~ were to be placed upon the Roll in future".⁶

With these words and the Report he helped to prepare, Moncreiff ended his Parliamentary career.

Six years later, full of years and honours, he retired as Lord Justice-Clerk. His had been a particularly active life, although he had seldom travelled abroad. As Lord Advocate, he lost a good deal of money which he could have earned as a leading barrister without political duties, but "the office ...fascinated him. The alternation was pleasant betwixt the cosmopolitan life of London and forensic employment in Scotland, with its periodical revival of memories and friendships".⁷ Omond recalled his timetable in the 1850s and 1860s. "He usually went up to London⁸ in the middle of February, and remained there till the end of July, except for a short time at Easter. But ... he was constantly travelling between England and Scotland. After a busy day in the Parliament House, he would rush home to 15, Great Stuart Street, where he sometimes had to work till it was time to drive off to the Waverley Station in order to catch the night express for London. Reaching King's Cross in the grey dawn, he had a long morning in the Lord

Advocate's office in Spring Gardens. Later in the day there might be a meeting with some deputation from Scotland. or an appeal case, till it was time for the House of Commons". If he was not required on the front Bench, "there was Brooks's, or the Reform, or Grillion's, and the usual dinners of a London season".

As Lord Justice-Clerk, he had been more constantly in Edinburgh, and less often in London, but he still alternated between the two capitals, if at rather more leisurely pace. Duty still called imperiously in the 1870s and 1880s. From 1888, however, there was time for memories. In 1886 he had opened a new Board School in Glasgow with a speech entitled "An Educational Retrospect", he contributed an essay on Lord Chancellor Westbury to the volumes published on his former colleague in 1888, he wrote an elegaic study of Jeffrey of Craigcrook and his circle in 1892, and continued to write for the "Edinburgh Review" until 1891. For years he had written reminiscences, probably with the intention of producing a series of Memoirs,"but when he reached the period of contemporaries who were still alive, he found it difficult to continue. So they were never finished".⁹ By the late 1880s, the companions of youth were leaving him. Lady Moncreiff died in December 1881, his brother Sir Henry in 1883. The "vigorous health", which had been his greatest asset, was faltering, although there are differing versions of his illness. The "Scotsman" obituary claimed that¹⁰ "only gout disturbed his health", but his friend Omond was probably more accurate, "He was turning deaf, his voice, once so strong, was now that of an old man; and he retired into private life"... (In) the Spring of 1895, he was troubled by alarming fits of

breathlessness ...and on the 27th of April the end came" with his family at his bedside.¹¹

The "Scotsman" paid him a tribute in almost two full pages on the 29th April. In June the "Scottish Law Review", in a long article, was equally generous. Perhaps other newspapers and journals - such as the "Glasgow Herald" which accorded his passing only a few lines - felt that he was a figure of a past age. Yet some remembered. At a general meeting of the Merchant Company of Edinburgh in April 1895, there were references to "the interest which his Lordship had taken in the subject of hospital reform".¹² It was education and legal reform that most recalled. The "Scotsman" believed that "Scotland's elementary school system of today was made practical by reason of his unwearied labours in the cause of educational reform. In and out of Parliament in the 1850s and 60s he attacked the citadel of custom and privilege in education and though he only made breaches in the walls, he cleared the way for the bolder assaults of his successors".¹³ J.C. Watt believed "He had contributed more than any other man to the legislation under which Scotland has made strides in educational and economic advancement".¹⁴ G.W.T. Omond recalled that "few periods have been so fruitful of progress in Scotland, as that of 1840-1870, and Lord Moncreiff took a great part in all the transactions of those years ...he made no rash experiments, and all his measures were consistent with that reverence for justice, for toleration and for liberty and property on which was founded the creed of the Whig party he so faithfully served".¹⁵

Advocate, judge, orator, lecturer, reviewer, politician and, on a more modest scale,

theologian, novelist, and poet - James Moncreiff had been all these in a distinguished career. He had been friend and colleague of great men in Church and State. He had, as he admitted, his "own professional prepossessions and prejudices"¹⁶ but his "Educational Retrospect" indicated in a brief compass what he had worked for - a harmonious, peaceful, orderly and industrious society. "Rosy-cheeked boys and tidy girls in healthy contentment with themselves and each other, speaking well for the employments of the past day with countenances ...expressive of fresh air and sound mental occupation".¹⁷ The tribute which he paid in 1886 to the Glasgow School Board might suggest the epitaph which he would have wished.

"Here is here the stamp of enthusiasm - of (a man) who feels the nobility and grandeur of his mission, and whose heart is in his work".¹⁸

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	<u>Volume and date</u>	<u>Pages</u>
8. The Scottish Marriage Bill	8, February 1848	465-90
9. Lord Jeffrey	9, May 1850	273-84
10. Dr. Carlyle's Autobiography	34, February 1861	239-54
11. The late John Richardson	41, November 1864	463-501

"Edinburgh Review"

(The "Wellesley Index", drawing on the Longmans Green account books 1847-1900, which give details of contributions and exact payments).

	<u>Volume and date</u>	<u>Pages</u>
1. The Duke of Argyll: Presbytery Examined	89, April 1849	462-98
2. Macaulay's History of England	90, July 1849	249-92
3. Ditto.	105, January 1857	142-81
4. Ditto.	114, October 1861	279-317
5. Scottish Lawyers & English Critics	105, January 1857	218-42
6. The late Ministry & the State of Europe	110, July 1859	264-86
7. Secret voting & Parliamentary Reform	112, July 1860	266-93
8. Extension of the Franchise	123, January 1866	263-96
9. The Expiring Parliament	128, October 1868	539-76
10. Mr. Bright's Speeches.	129, January 1869	269-302
11. Earl Russell's Speeches.	131, April 1870	567-82
12. Letters & Discoveries of Sir Charles Bell	135, April 1872	394-429
13. The Geneva Arbitration	136, January 1873	264-293
14. Journal of Henry Cockburn	140, July 1874	259-86
15. The Journal of Mr. Charles Greville.	140, October 1874	515-49
16. Life of Thomas Graham, Lord Lynedoch	152, October 1880	303-44

	<u>Volume and Date</u>	<u>Pages</u>
17. The Red Book of Menteith	156, July 1882	110-36
18. Henry Erskine & his times	157, January 1883	228-63
19. The Haddington Memorials	172, July 1890	1-33
20. The Melville & Leven Memoirs	174, July 1891	246-70

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- 1854: "A Speech on the Bill for the education of the people in Scotland" (published version of speech in the House of Commons, 23 February 1854) (London)
- 1857: "Roman Catholic Endowment" (Correspondence with J. Harper of Leith, published by request of Harper) (Edinburgh)
- 1859: "The influence of Knox and the Scottish Reformation on the Reformation in England" (Edinburgh)
- 1860: "Address on the Art of Pleading" (London)
- 1860: "Address on Jurisprudence and the amendment of Law" (Edinburgh)
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- 1863: "An introductory chapter to a history of Scotland, 1600-1660" (Glasgow)
- 1863: "Inaugural address to The Associated Societies of the University of Edinburgh" (Edinburgh)
- 1865: "Address on Law Reform and Bankruptcy Laws" (to the Scotch Trade Protection Society) (Edinburgh)
- 1866: "Address on the Right of Search-to the Sheffield Foreign Affairs Committee" (Edinburgh)
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- 1867: "Extension of the Suffrage" (Edinburgh)
- 1868: "Speech to the General Council, University of Glasgow" (Glasgow)
- 1869: "Address on installation as Rector of the University of Edinburgh" (Edinburgh)
- 1870: "Legal Education - an address" (Edinburgh)
- 1875: "Address to the Inaugural Meeting of the Cockburn Association" (Edinburgh)
- 1878: "Church and State" (Edinburgh)
- 1886: "An Educational Retrospect" (Glasgow)
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His reminiscences (incomplete and in manuscript)
(reference in Omond, page 259)

His legal disputation for the bar examination in Latin
(March, 1833, Edinburgh)

Confidential Memoranda for the Cabinet (printed but not published): (Lord Advocate's Papers, Boxes 15-16, reclassified as 47-1 and 47-
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"An early effort was an attack upon Dr. Chalmers in a pamphlet before the Disruption".

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(These works, mentioned in "Scottish Law Review", June 1895, page 171, the present writer has been unable to trace)

(2) Manuscript Sources

(a) The Lord Advocate's Papers, Scottish Record Office:

Box 15 (1854-6) and 16 (1856-69) are especially relevant, including: (*now reclassified as Boxes 47-1 and 47-2*).

Memorials, pamphlets, and letters to James Moncreiff,

as Lord Advocate, from representatives of:

The Church of Scotland

The Free Church of Scotland

The United Presbyterian Communion

The Episcopal Church of Scotland

The Roman Catholic Church

The Educational Institute of Scotland

Parochial School Teachers

Public School Teachers

Heritors

Town and Burgh Councils

County Councils

Members of Parliament, including Cabinet Ministers

The Committee of Council on Education

and other groups and deputations.

and also including:

The confidential Memoranda which he wrote for the Cabinet

(b) The Tulliebole Castle Papers - see Appendix (d)

(3) Other Primary Sources

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Scottish Schools

17 & 18 Vict, c 74. An Act to render Reformatory and Industrial Schools in Scotland more available for the Benefit of Vagrant Children (7 Aug 1854)

17 & 18 Vict. c 86. An Act for the better Care and Reformation of Youthful Offenders in Great Britain (10 Aug 1854)

17 & 18 Vict, c 98 An Act to regulate the Salaries of the Parochial Schoolmasters of Scotland (10 Aug (M) 1854)

18 & 19 Vict, c 87 An Act to amend the Act for the better care and Reformation of Youthful Offenders, and the Act to render Reformatory and Industrial Schools(M) in Scotland more available for the Benefit of Vagrant Children (14 Aug 1855)

19 & 20 Vict, c 109 An Act to amend the Mode of Committing Criminal and Vagrant Children to (M) Reformatory and Industrial Schools (29 July 1856)

24 & 25 Vict, C 107 An Act to alter and amend the Law relating to Parochial and Burgh Schools, and to (M) the Test required to be taken by Schoolmasters in Scotland (6 Aug 1861)

29 & 30 Vict, c 117 The Reformatory Schools Act, 1866. An Act to consolidate and amend the Acts relating to Reformatory Schools in Great Britain (10 Aug 1866)

29 & 30 Vict, C 118 The Industrial Schools Act,
1866. An Act to consolidate and amend the Acts
relating to Industrial Schools in Great Britain.
(10 Aug 1866)

32 & 33 Vict, C 39 Endowed Institutions (Scotland)
Act, 1869. An Act to make provision for the better
Government and Administration of Hospitals and other (M)
Endowed Institutions in Scotland (26 July 1869)

35 & 36 Vict c 62. The Education (Scotland) Act,
1872. An Act to amend and extend the provisions
of the Law of Scotland on the subject of Education
(6 Aug 1872) (Introduced by George Young)

Scottish Universities

16 & 17 Vict, c 89 An Act to regulate the
Admission of Professors to the Lay Chairs in the (M)
Universities of Scotland (20 Aug 1853)

21 & 22 Vict, C 83 An Act to make provision for
the better Government and Discipline of the
Universities of Scotland, and improving and
regulating the Course of Study therein, and for
the Union of the two Universities and Colleges
of Aberdeen (2 Aug 1858) (Introduced by John Inglis)

(b) Parliamentary Bills (A Select List)

Scottish Schools

13 Vict. School Establishment (Scotland). A
Bill to reform and extend the School Establishment
of Scotland. (1 May 1850) PP, 1850, viii, 296
(Introduced by Viscount Melgund)

14 Vict. School Establishment (Scotland). A
Bill to reform and extend the School Establishment
of Scotland. (24 Feb 1851) PP, 1851, vi, 77
(Introduced by Viscount Melgund)

17 Vict. Education (Scotland). A Bill to make further Provision for the Education of the People in Scotland, and to amend the Laws relating thereto. (3 Mar 1854) PP, 1854, ii, 37 (M)

18 Vict. Schools (Scotland). A Bill to amend the Laws relating to the Parish Schools in Scotland. (9 Feb 1855) PP, 1854/5, vi, 22 (M)

18 Vict. Education (Scotland). A Bill to provide for the Education of the People in Scotland. (28 Mar 1855) PP, 1854/5, ii, 69, 211 (M)

19 Vict. Education (Scotland). A Bill to make Provision for Education within Burghs in Scotland (9 Apr 1856) PP, 1856, iii, 94 (M)

19 Vict. Parochial Schools (Scotland). A Bill to regulate and make further Provision for Parochial Schools in Scotland. (9 Apr 1856) PP, 1856, v, 95, 203, 257 (M)

25 Vict. Education (Scotland). A Bill to make further Provision for Education of the People in Scotland. (21 Mar 1862) PP, 1862, ii, 56 (M)

32 Vict. Parochial Schools (Scotland). A Bill, entitled, An Act to extend and improve the Parochial Schools of Scotland, and to make further Provision for the Education of the People of Scotland. (14 June 1869) PP, 1868/9, iv, 164, 215, 265. (Introduced by the Duke of Argyll)

34 Vict. Education (Scotland). A Bill to amend and extend the Provisions of the Law of Scotland on the Subject of Education (Apr 1871) PP, 1871, i, 17, 205 (Introduced by George Young)

Scottish Universities

15 Vict. Universities of Scotland. A Bill to regulate Admission to the Lay or Secular Chairs in the Universities of Scotland. (19 Feb 1852) PP, 1852, iv, 88 (M)

(c) Reports of Parliamentary Commissions

Scottish Schools

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(Chairman: Duke of Argyll) PP 1865, XVII (3483)
Second Report, 1867.
PP 1867, XXV (3845)
Third Report, 1868
PP 1867/8 XXIX (4011)

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(Chairman: James Moncreiff) First Report, 1880
PP 1880, XXIV (c2493)
Report, 1881 PP 1881,
XXXVI (c2768)
Second Report, 1881
PP 1881, XXXVI (c2790)
Third Report, 1881
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Report on the Union of
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Scottish Universities Commission, 1876

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(d) Newspapers and Journals

Aberdeen Free Press

Aberdeen Herald

(d) Newspapers and Journals

Arbroath Guide
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(e) Pamphlets and Speeches

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(b) Secondary Sources

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Average struck in 1828 to 1855.
 I. The Salaries of the said Schoolmasters shall continue and be paid, according to the said average Amount of the Fairs Prices of Oatmeal so struck in the Year One thousand eight hundred and twenty-eight, from the Term of *Martinnas* One thousand eight hundred and fifty-three till the Term of *Martinnas* One thousand eight hundred and fifty-five, both inclusive, as if such Average had not expired at the Term of *Martinnas* One thousand eight hundred and fifty-three, but had endured to the Term of *Martinnas* One thousand eight hundred and fifty-five, and such Schoolmasters shall have all such Rights and Remedies in respect of such Salaries as they had prior to the said Term of *Martinnas* One thousand eight hundred and fifty-three.

Recited Act continued.
 II. So far as not inconsistent with this Act, the said recited Act shall continue in full Force and Effect: Provided always, that the Rights conferred on such Schoolmasters by this Act shall not be diminished or affected by any Meetings or Resolutions of Heritors held or passed since the said Term of *Martinnas* One thousand eight hundred and fifty-three.



ANNO VICESIMO QUARTO & VICESIMO QUINTO
 VICTORIÆ REGINÆ.

CAP. CVII.

An Act to alter and amend the Law relating to Parochial and Burgh Schools, and to the Test required to be taken by Schoolmasters in Scotland. — [6th August 1861.]

WHILEAS an Act was passed in the Forty-third Year of the Reign of His Majesty George the Third, Chapter Fifty-four, intituled *An Act for making better Provision for the Parochial Schoolmasters, and for making further Regulations for the better Government of the Parish Schools in Scotland*: And whereas it is expedient to amend the said Act, and to make further and other Provisions for the Maintenance and Government of the said Schoolmasters and Schools, and to abolish the Test imposed by Law on Schoolmasters in *Scotland*: He it enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, as follows:

I. Where not inconsistent with the Context, the following Interpretations shall have the Meaning herein-after assigned them; that is to say,

The Expression "Parochial School" shall mean and include every School established or to be established or provided for under the said recited Act:
 The Expression "Burgh School" shall mean and include every

every Burgh, Grammar, or other public School, not being a Parochial School.

II. From and after the Term of *Michaelmas* next after the passing of this Act the Salary of every Schoolmaster of any Parochial School shall not be less than the Sum of Thirty-five Pounds nor more than the Sum of Seventy Pounds *per Annum*: Provided always, that where Two or more Schools have been or shall be established in any Parish in Terms of the said Act the total Amount of the Salary payable to the Schoolmasters therein shall not be less than Fifty Pounds nor more than Eighty Pounds *per Annum*, to be apportioned among the said Schoolmasters as the Heritors shall determine, in the Manner provided by the said Act; and the Salaries herein provided shall be in lieu of the Salaries payable under the Provisions of the said Act: Provided also, that it shall be lawful for the Heritors, if they shall think fit, to make any Addition granted by them to the Salary of any Schoolmaster beyond the minimum Amount hereby fixed to be dependent upon the Number of Scholars receiving Instruction in his School, under such Regulations as they may deem expedient.

III. The Minister of every Parish in which there is a Parochial School shall, within Three Months from and after the passing of this Act, and on every Occasion of a Vacancy in the Office of Schoolmaster within Six Weeks after such Vacancy shall have taken place, call a Meeting of the Heritors together with the said Minister, in the Manner prescribed in the said recited Act, for the Purpose of fixing the Salary of the Schoolmaster under this Act, subject always to the Appeal provided in the said recited Act; and the Salary to be so fixed shall be payable in Sterling Money, at the same Terms and under the same Conditions, Provisions, and Regulations as are at present in use; and in case in regard to any Parish such Meeting shall not have been held or the Salary shall not have been fixed in manner and within the Period herein prescribed, the Salary shall, until such Meeting shall have been held and such Salary so fixed, be held as fixed at the Amount of Fifty Pounds *per Annum*, which Amount shall be payable to the Schoolmaster in manner herein-before prescribed; and where Two or more Schools have been established in any One Parish, the said Sum of Fifty Pounds shall be payable to the several Schoolmasters thereof, in the same Proportion according to which their several Salaries were payable before the passing of this Act: Provided always, that where any Parish shall be vacant at the Time of the passing of this Act, or become vacant before any such Meeting shall be called, or where any Minister shall decline or delay calling such Meeting, after having been required so to do by any Heritor or Heritors

Heritors holding not less than One Third of the Valuation of the Parish, it shall be competent for such Heritor or Heritors to call, by Notice affixed to the Door of the Parish Church, and either a Circular sent to each Heritor, or an Advertisement published in a Newspaper of general Circulation in the District, a Meeting for the Purpose of fixing the Salary of the Schoolmaster under this Act, and the Salary fixed at such Meeting within the Limits specified in this Act shall be the Salary of the Schoolmaster or Schoolmasters.

IV. At the Meeting aforesaid it shall be lawful for the Heritors and Minister to resolve to discontinue, from and after a Date to be fixed by them, any subsisting Side School in the Parish: Provided always, that if such Side School is not vacant at the Date of such Meeting they shall provide to the Schoolmaster thereof during his Life, from and after its Discontinuance, an annual Payment equal in Amount to the full Salary to which at the Date of the passing of this Act he had Right by Law, under the Provisions of the said recited Act, together with the annual Value of any Dwelling House to which he may have been entitled as such Schoolmaster, as the same is or shall be valued by the Assessor for the County, which Amount shall be assessed, levied, and paid over and above the Salaries payable under this Act, and in like Manner as such Salaries are hereby directed to be assessed, levied, and paid.

V. It shall be lawful for the Heritors and Minister, at the Meeting aforesaid, or at any subsequent Meeting duly called for that Purpose, to resolve that a Female Teacher shall be established, to give Instruction in such Branches of Female Industrial and Household Training, as well as of Elementary Education, as they shall then or from Time to Time prescribe, and to provide, over and above the Salary herein-before mentioned, a yearly Sum not exceeding Thirty Pounds as a Salary for such Female Teacher, which yearly Sum shall be assessed, levied, and paid in like Manner as such herein-before mentioned Salary is hereby directed to be assessed, levied and paid; and it shall be lawful for the said Heritors and Minister to engage and appoint such Female Teacher for such Period of Time and on such Terms and Conditions as shall be agreed on.

VI. It shall be lawful for the Heritors and Minister, at such Meeting as aforesaid, to resolve to require the Teacher of any Side School in the Parish, on a Notice of not less than Three Months, to resign his Office, on their providing to him during his Life an annual Payment equal in Amount to the full Salary to which at the Date of the passing of this Act he had Right by Law, under the Provisions of the said recited Act, together with the annual Value of any Dwelling House to which he may have been entitled as such Teacher, which annual Payment shall be assessed, levied, and paid in like Manner as such herein-before mentioned Salary is hereby directed to be assessed, levied and paid; and it shall be lawful for the said Heritors and Minister to engage and appoint such Female Teacher for such Period of Time and on such Terms and Conditions as shall be agreed on.

been entitled as such Schoolmaster, as the same is or shall be valued by the Assessor of the County, which Amount shall be assessed, levied, and paid over and above the Salaries payable under this Act, and in like Manner as such Salaries are hereby directed to be assessed, levied, and paid; and at the Expiry of Three Months from Notice as aforesaid, if such Teacher shall not previously have given in his Resignation, the Heritors and Minister having made Provision for such annual Payment as aforesaid, the Right of such Teacher to his Office shall cease and determine.

VII. If in any Parish the Salary shall have been fixed at a yearly Sum less than the maximum Amount herein-before specified, it shall be lawful to the Heritors and Minister, at any Meeting to be called and held in the Manner before prescribed, from Time to Time to increase the Amount of such Salary, provided the same shall not exceed the said maximum Amount, and on any Vacancy in the Office of Schoolmaster from Time to Time to reduce the Salary, so that it shall not be less than the minimum Salary herein-before specified; provided that it shall be the Duty of the Minister to call such Meeting only on the Requisition of any Heritor or Heritors being Proprietors of not less than One Fourth Part of the whole Lands and Heritages situate within the Parish.

VIII. In case the Heritors shall, previously to the passing of this Act, have entered into any Agreement with the Schoolmaster of any Parish for his Retirement from the Performance of the Duties of his Office, on Payment to him of a retiring Allowance or otherwise, it shall be lawful to the Heritors, at any Meeting to be called and held as aforesaid, to declare the Office of Schoolmaster of such Parish vacant, and to proceed to elect another Schoolmaster, and to grant such retiring Allowance or other Terms to such retiring Schoolmaster as may have been agreed upon as aforesaid, payable during the Remainder of his Life, which retiring Allowance shall be payable in all respects in like Manner with the Salary of the Schoolmaster.

IX. The Sixteenth Section of the said recited Act shall be and is hereby repealed; and in place of the Examination by the Presbytery therein prescribed it is hereby enacted as follows; viz,

(1.) It shall be the Duty of the University Court of each University in *Scotland*, as soon as conveniently may be, and in no Case later than Two Months after the passing of this Act, and thereafter from Time to Time, to appoint Six Persons to be Examiners of Parochial Schoolmasters, Three of such Persons being Professors in the Faculty of Arts, and Three of such Persons being

being Professors in the Faculty of Divinity of the University.

(2.) The Persons so appointed shall continue to be Examiners during Two Years from and after the Date of their respective Appointments, and until other Persons shall have been in like Manner appointed in their Room; provided that it shall be lawful to the University Court to re-appoint all or any of the same Persons to be such Examiners, and to fill up from Time to Time any Vacancy which may occur by the Death, Resignation, or Disqualification of any of the Examiners; and it shall be lawful to each of the Persons so appointed to nominate as his Deputy, with Power to act as his Substitute in case of his Absence at any Meeting of the Examiners, any Person who may have become a Graduate in Arts of the University not later than Three Years prior to such Nomination; provided that such Nomination shall be approved by the University Court, and also provided that the Persons nominated by such Examiners as are Professors in the Faculty of Divinity shall be Ministers or Licentiates of the Church of *Scotland*:

(3.) It shall be lawful to the Examiners to make, on or before the Eleventh Day of *November* One thousand eight hundred and sixty-one, and thereafter from Time to Time, such Regulations as they shall see fit in regard to the Time and Manner of Examinations, and as to the Subjects to which the same shall extend, and to regulate the Notice to be given thereof, regard being always had in the framing of these Regulations to the Circumstances of each particular District; provided that such Regulations shall be approved of by the University Court; and the said Regulations, when so approved, shall be published by Advertisement in such Manner as the University Court shall direct; and the Examiners may appoint One of their own Number, or any One of their Substitutes, to act as their Secretary; and such Examinations shall be held within the Buildings of the University, and at such Time and Place as shall be fixed by the University Court:

(4.) For the Purposes of the Examination of Parochial Schoolmasters the Parochial Schools in *Scotland* shall be and are hereby distributed into Four Districts, Four Districts each in connexion with One of the Universities, as set forth in the Schedule (A.) hereto annexed:

(5.) Every

for him during Life.

Salaries where not fixed at the maximum Amount may be increased.

Office of Schoolmaster may be declared vacant where retiring Salary has already been agreed upon between Heritors and Schoolmaster.

Examination by Examiners appointed by the University to come in the Place of the Examination by the Presbytery.

Examiners to hold the Office for Two Years, but may be re-appointed; and Vacancies to be filled up.

Examiners to make and publish Regulations in regard to Examinations, and as to the Subjects to which the same shall extend, and to regulate the Notice to be given thereof, regard being always had in the framing of these Regulations to the Circumstances of each particular District; provided that such Regulations shall be approved of by the University Court.

Scotland to be divided into Four Districts, as set forth in the Schedule (A.)

(5.) Every Person elected to be a Parochial Schoolmaster under the Provisions of this and the said recited Act, and every Person elected to be a Schoolmaster under the Provisions of the Act of the First and Second Years of the Reign of Her Majesty, Chapter Eighty-seven, shall, before his Admission to the said Office, and as a Condition thereof, submit himself to the Trial and Examination of the Examiners for the District to which the Parish for which he has been elected appertains, as to his Fitness and Qualifications for the Duties of the said Office; and being found qualified, the said Examiners shall furnish to him a Certificate to that Effect subscribed by them or by a Majority of their Number, which Certificate shall be conclusive Evidence that he has passed the requisite Examination, and been found qualified for the said Office, and the Examiners shall have Power, with Consent of the Committee of the Privy Council on Education, to require the Attendance at any such Examination, for the Purpose of assisting therein, of One of Her Majesty's Inspectors of Schools.

X. It shall be lawful for the Persons entitled to elect any Burgh or Parochial Schoolmaster, if they shall see fit, instead of electing some One Person to the vacant Office, to choose and nominate Two Persons or Three Persons to be tried by the Examiners, whose Duty it shall be to make Trial of the comparative Fitness and Qualifications of the Persons so chosen and nominated, and to determine which of them is the best qualified and most fit for the School with reference to which they have been so chosen, and to give the Person so preferred by them a Certificate to that Effect, and such Certificate, along with the Minute of Nomination by the Persons entitled to elect, and also, in the Case of a Parochial Schoolmaster, the Certificate of his having emitted the Declaration herein-after set forth, shall complete the Right of the Person so preferred to the Office of Schoolmaster: Provided always, that if the Examiners shall not be satisfied of the Fitness and Qualifications of any of the Persons nominated as aforesaid, they may decline to grant a Certificate to any of them, of which Declination they shall forthwith cause Intimation to be made to the Persons having the Right of Election; and provided further, that in the event of Two or more Candidates for the Office of Schoolmaster being remitted by the Heritors and Minister to the Examiners for competitive Examination, the Heritors shall pay to each of the Examiners a Fee of Ten Shillings for each additional Candidate

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so examined; and in the event of the Magistrates of any Burgh remitting any Candidate for Examination to the Examiners, they shall pay to each of the Examiners a Fee of One Pound One Shilling if there be only One, and a Fee of Ten Shillings for each additional Candidate.

XI. It shall be lawful to the Commissioners of Her Majesty's Commissioners of the Treasury to pay out of any Monies which may be voted by Parliament for that Purpose the Sum of One Pound One Shilling to each of the said Examiners for and in respect of every Person examined by them under the Provisions of this Act, and also the Sum of Fifteen Shillings for each such Examination to the Secretary of the Examiners, out of which Sum he shall defray the Expense of the Advertisements required by this Act and other incidental Expenses.

XII. From and after the passing of this Act, it shall not be necessary for any Schoolmaster, or for any Person elected a Schoolmaster, of any Parochial School, or of any School under the Provisions of the Act of the First and Second Years of the Reign of Her Majesty, Chapter Eighty-seven, to profess or subscribe the Confession of Faith, or the Formula of the Church of Scotland, or to profess that he will submit himself to the Government and Discipline thereof: Provided always, that every Person elected a Schoolmaster of any such School, shall, as a Condition of the Office, and before Admission thereto, produce before the Principal, or, in case of his Absence or Inability to act, before One or other of the Professors in the Faculty of Divinity of the University in which he has been examined, an Extract or certified Copy of the Minutes of his Election, together with the said Certificate by the Examiners, and shall in the Presence of the Principal or Professor emit and subscribe a Declaration in the following Terms; that is to say,

I, *A.B.* do solemnly and sincerely, in the Presence of God, profess, testify, and declare, That as Schoolmaster of the

Parochial School at _____ in the Parish of _____, and in the Discharge of the said Office,

I will never endeavour, directly or indirectly, to teach or inculcate any Opinions opposed to the Divine Authority of the Holy Scriptures, or to the Doctrines contained in the Shorter Catechism agreed upon by the Assembly of Divines at Westminster, and approved by the General Assembly of the Church of Scotland, in the Year One thousand six hundred and forty-eight; and that I will faithfully conform thereto in my teaching of the said School, and that I will not exercise in any Functions of the said Office to the Prejudice or Subversion of the Church of Scotland as by Law established, or the Doctrines and Privileges thereof.

And

And the Person elected to be Schoolmaster, having made such Productions and Declaration, shall be furnished with an Attestation to that Effect subscribed by the said Principal or Professor, which Attestation shall complete his Right to the Emoluments provided by this Act.

XIII. It shall be competent for the Presbytery of the Bounds, or for the Heritors, whensoever they shall see Cause for instituting Proceedings against the Schoolmaster of any Parish, for Contravention of the said Declaration, to present a Complaint to One of Her Majesty's Principal Secretaries of State against such Schoolmaster; and it shall be lawful to the Secretary of State thereupon to appoint a Commission to inquire into the said Charge, and to censure, suspend, or deprive such Schoolmaster, as they shall find to be just; provided that no such Sentence shall take effect until it has been confirmed and approved of by the Secretary of State.

XIV. So much of the Twenty-first Section of the said recited Act as provides that the Presbytery shall take cognizance of, and, if they see Cause, proceed by Libel against any Schoolmaster in respect of any Complaint charging him with immoral Conduct, or cruel and improper Treatment of the Scholars under his Charge, is hereby repealed; and in lieu thereof it is hereby enacted, That it shall be lawful to the Heritors and Ministers, or the Clerk of the Presbytery of the Bounds, by the Authority of the said Presbytery, given on the Application of the Heritors and Minister, or of any Six Heads of Families in the Parish whose Children are attending the School, to make a Complaint in Writing to the Sheriff of the County in which the School is situate, charging the Schoolmaster with immoral Conduct, or cruel and improper Treatment of the Scholars under his Charge, and specifying in such Complaint the particular Acts in respect of which the Complaint is made; and a Copy of such Complaint, shall be served upon the Schoolmaster, who shall be required, on an Inducive of Fourteen Days, to appear before the Sheriff, by himself or his Agent, to answer to the said Complaint; and the Schoolmaster accused shall, if he deny the Charge, if he think fit, answer the Particulars of the Complaint, such Answer to be in Writing, and to be lodged within the said Fourteen Days, or may, when the Cause comes to be tried, state his Plea to be Not Guilty; and the Sheriff shall thereafter proceed to the Trial of the Complaint, and take the Evidence in the same Way as and under the same Rules as those which are in force in the Sheriff Court in regard to Process in Civil Causes; and in the event that he shall find such Complaint or any material and relevant Part thereof to be proved, the Sheriff shall give Judgment accordingly, and shall pass such Sentence of Censure,

Presbytery of the Bounds may present a Complaint to Secretary of State against Schoolmaster.

Jurisdiction of the Presbytery in Cases of immoral Conduct or Cruelty transferred to the Sheriff.

Censure, Suspension, or Deprivation, as in his Opinion the Case requires, which Sentence shall be final and not subject to Review, and shall have all the Effects consequent before the passing of this Act on any similar Sentence of any Presbytery under the Provisions of the last recited Section of the said Act, and no Sentence of Censure, Suspension, or Deprivation otherwise pronounced on such Charges shall be valid or effectual: Provided always, that where Sentence of Suspension shall be pronounced the Salary of the Schoolmaster in respect of his Office shall cease and determine from the Date of such Sentence until the next Term of *Whitsunday* or *Martinmas* following the Expiration of the Term of Suspension specified in such Sentence, and the Salary accruing during the said Period shall be applied by the Heritors and Minister towards providing a Substitute for such Schoolmaster during the Period of the Suspension.

XV. The Sheriff shall by his Decerniture ascertain and specify the Amount of the Expenses properly incurred by the Complainers in the Proceedings connected with any Complaint against the Schoolmaster of any Parochial School; and the Complainers shall be entitled to recover the Amount so ascertained from the Collector, and out of the readiest Proceeds of the Assessments commonly called the Rogue Money levied for the County within which the School is situate, under the Provisions of an Act passed in the Eleventh Year of the Reign of His Majesty *George* the First, Chapter Twenty-six; and the Receipt of the Agent of the Complainers shall be a sufficient Discharge to the said Collector for any Payments so made by him out of the said Rogue Money or Assessments.

XVI. So much of the Second Section of the said recited Act as provides that where the Salaries of Parochial Schoolmasters had been before the passing thereof payable in Grain or Meal such Salary in Grain or Meal should continue to be paid, and also the Third, Fourth, and Sixth Sections of the said recited Act, shall be and are hereby repealed; and it is hereby declared and provided, that the Right of electing a Parochial Schoolmaster, *pro devoluto*, conferred by the Fifteenth Section of the said recited Act on the Commissioners of Supply of the County, shall after the Expiration of Four Months from the Time when the Vacancy in any Parochial School shall have taken place, shall not arise or accrue to the Commissioners of Supply until the Expiration of Six Months from the Time of such Vacancy.

XVII. Where in any Parish it shall be necessary to provide a House for the Parochial Schoolmaster, in Terms of the recited Act, and of an Act passed in the First and Second Years of the Reign of Her present Majesty, intitled *An Act to facilitate the Foundation and Endowment of additional Schools in Scotland*,

Repeal of Causes of the recited Act requiring an Estimate of the Value of the same to be made at successive Periods.

land, or either of them, such House shall consist of at least Three Apartments besides the Kitchen.

XXVIII. Nothing in this Act shall be held to interfere with any Arrangement which may have been concluded between the Heritors and Schoolmaster of any Parish for the Retirement of such Schoolmaster, except as regards the House and Garden, and Premises attached thereto, which shall in every Case be made over at the Term of *Whitsunday* next after the passing of this Act to the Person actually discharging the Duties of Schoolmaster, and where the Use of such Premises may have formed Part of a retiring Allowance the Heritors shall make reasonable Compensation to the Ex-Schoolmaster.

XIX. In case it shall be found, on a Report by One of Her Majesty's Inspectors of Schools, made on the Application of the Heritors of the Parish, and concurred in by the Presbytery of the Bounds, that the Schoolmaster of any Parish is disqualified because of Infirmary or Old Age for the due Performance of the Duties of his Office, or that from Negligence or Inattention he has failed efficiently to discharge such Duties, it shall be lawful to the Heritors and Minister, at any Meeting called and held as aforesaid, to permit or require such Schoolmaster to resign his said Office, and in case of his refusal so to do to dismiss or suspend such Schoolmaster, and when necessary to declare the School vacant; and in every Case of such Resignation the Heritors and Minister may grant to such Schoolmaster a retiring Allowance payable during the Remainder of his Life; provided that where such Resignation shall not be occasioned by any Fault on the Part of the Schoolmaster the Heritors shall grant a retiring Allowance the Amount whereof shall not be less than Two Third Parts of the Amount of the Salary pertaining to said Office at the Date of such Resignation thereof, and shall not exceed the gross Amount of such Salary, which retiring Allowance shall be payable in all respects in like Manner with the Salary of the Schoolmaster; provided also, that no Schoolmaster shall be suspended for a longer Period than Three Months, or be dismissed for Neglect of Duty, excepting under the above Provisions.

XX. In all Cases in which the Minister and Heritors are by this Act empowered to provide a retiring Allowance for a Schoolmaster who shall resign or shall be removed from his Office, it shall be lawful for them, if they see fit, to provide for such Schoolmaster, in addition to such Allowance, and in like Manner, a further yearly Sum, equal in Amount to the annual Value of any Dwelling House and Garden to which he may be entitled as such Schoolmaster, as the same shall be valued by the Assessor for the County.

Minister and Heritors may grant annual Allowance to Schoolmaster, in addition to retiring Allowance.

XXI. The

XXI. The whole Provisions of an Act passed in the Twentieth and Twenty-first Years of the Reign of Her present Majesty, Chapter Fifty-nine, intituled *An Act concerning the Parochial Schoolmasters in Scotland*, shall be and are hereby repealed.

XXII. From and after the passing of this Act, it shall not be necessary for any Person elected to be a Schoolmaster of any Burgh School to profess or subscribe the Confession of Faith, or the Formula of the Church of Scotland, or to profess that he will submit himself to the Government and Discipline thereof, nor shall any such Schoolmaster be subject to the Trial, Judgment, or Censure of the Presbytery of the Bounds for his Sufficiency, Qualifications, or Deportment in his Office, any Statute to the contrary notwithstanding; and this Enactment shall be a sufficient Defence in answer to any Proceedings against any Schoolmaster of any Burgh School in respect that he has not made such Profession or Subscription.

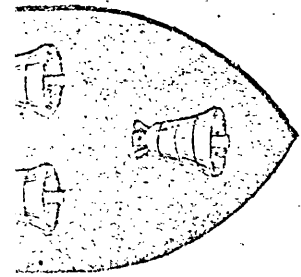
XXIII. Nothing herein contained shall repeal, alter, or affect the Provisions of the recited Act, or of any other Act relating to Parochial Schools or Schoolmasters in Scotland, excepting in so far only as shall be necessary to give Effect to the Provisions of this Act.

XXIV. This Act may be quoted in all Proceedings as "The Short Parochial and Burgh Schoolmasters (Scotland) Act, 1861."

SCHEDULE

XXI. The

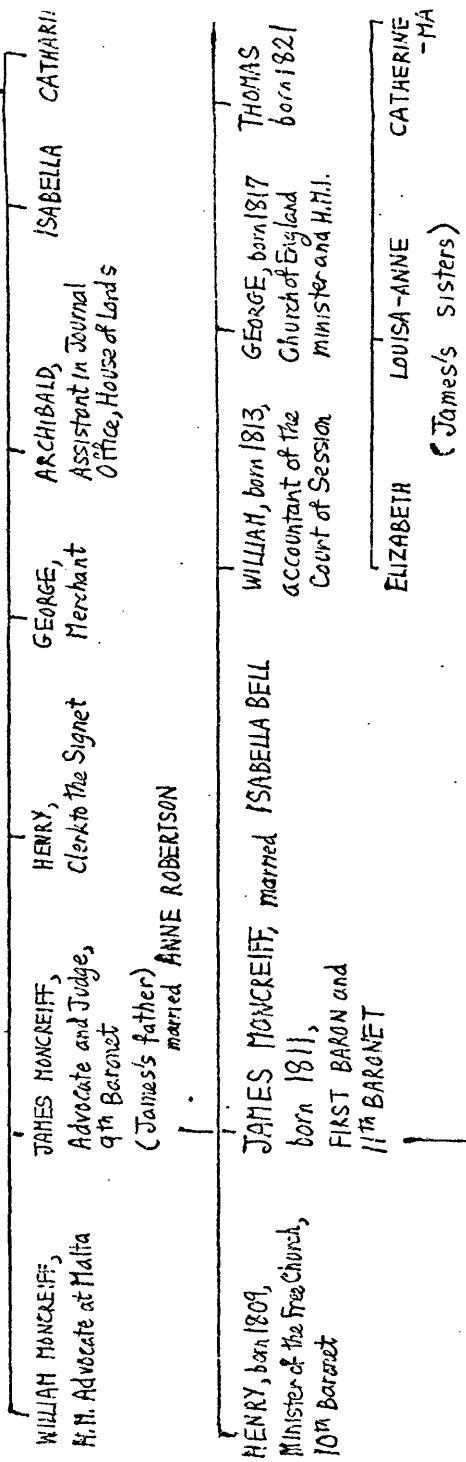
JAMES MONCREIFF, THE 1ST BARON'S
COAT OF ARMS.



THE MONCREIFFS OF TULLIEBOLE, 1775 - 1909.

SIR HENRY MONCREIFF-WELLWOOD,
minister of St Cuthbert's Edinburgh,
8th Baronet
(James's grandfather)

married SUSAN BARCLAY of KEVILLE



HON. HENRY-JAMES, born 1840, elevated to the Bench as LORD WELLWOOD, Second BARON

HON. ROBERT CHICHESTER, born 1843, Vicar of TANNORTH

HON. JAMES-WILLIAM, born 1845

HON. FREDERICK-CHARLES, born 1847, Barrister-at-law

HON. FRANCIS-JEFFREY, born 1849

ELEANORA-JANE

MARIAN-ELIZ

ELIZABETH

LOUISA-ANNE (James's sisters)

CATHERINE -MA

THE MONCREIFFS OF TULLIEBOLE : PAPERS AT TULLIEBOLE CASTLE

BOX 21 : Despatch case stamped "Lord Moncreiff", containing 6 envelopes.

ENVELOPE 1 includes letters -

- a. from Lord Palmerston (14 June 1859) congratulating Moncreiff on again becoming Lord Advocate.
- b. from W.E. Gladstone (1 August 1869 and 1 May 1883) on matters of patronage apparently in the latter case after Moncreiff had asked for a post for one of his sons in the Church.
- c. from W.E. Gladstone (31 August 1869) on Moncreiff's appointment as Lord Justice-Clerk.
- d. from W.E. Gladstone (11 October 1873) offering Moncreiff a peerage.
- e. from Lord Coleridge (25 November 1879) referring to Gladstone ("I hope our old chief is safe - what a grand old warhorse he is").
- f. from M.R. Shaw-Stewart (8 February 1881) on the proposed appointment of Moncreiff's son as Sheriff of Renfrewshire.
- g. from Lord Salisbury (29 September 1888) Thanking Moncreiff on his retiral for his "long and distinguished judicial career".

ENVELOPE 2 - marked "official", includes a few letters to Moncreiff while Lord Advocate and cuttings from newspapers 1879-1895. These include letters -

- a. from George Deas (18 February 1852) suggesting amendments to the Scotch Reform Bill introduced to Moncreiff to reform the franchise.
- b. inviting Moncreiff (1856) to stand for the Marischal College rectorship.
- c. from the Duke of Richmond (1861) regarding a date for the "close time" proposed in the Salmon Fisheries Bill.
- d. from Edward Cardwell (1868) expressing hopes that if Moncreiff accepted a "judgeship" from Lord Derby's government, this should not prejudice any future claims to future preferment from Gladstone; and also:-
- e. Warrant of his admission to the Privy Council (1869)
- f. His Commission as a Colonel in the Volunteer Forces (1873)
- g. A formal letter from the Faculty of Advocates expressing their appreciation on his retirement (1888).

ENVELOPE 3 - contains mainly family correspondence, including:

- a. an anonymous poem congratulating Moncreiff (15 July 1852) on his election.
- b. a mock theatrical bill (not dated) for "A Midsummer Night's Dream" with the members of Faculty of Advocates in various roles, including a musical finale "The Silk Gowns or, Who Shall Have Them?".
- c. letter from W.E. Gladstone (23 September 1869) referring to Lord Glenalmond's suicide.

ENVELOPE 4 - contains Mrs Moncreiff's personal correspondence, including letters from Andrew Rutherford and Lord Cockburn, for example one dated 26 July 1849 referring to Moncreiff : "You must take care of him. He is looking thin and exhausted. Long sleeps - substantial breakfasts - moderate exercise - little wine - great idleness - and no thought : these are the vacation medicine for fee-worn men".

There is also a notebook containing patterns for mittens, bedsocks etc. (1871-2) and photographs of the family, with locks of hair also kept.

ENVELOPE 5 - A few genealogical papers from the late 19th century, relating to the "Lewis" (American) ancestry of Moncreiff's mother, Ann Robertson Moncreiff.

ENVELOPE 6 marked "congratulations", includes letters congratulating Moncreiff on his elevation to the bench (1869) and to the peerage (1873-4).

