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## Land, Law and People in Medieval Scotland

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Dauvit Broun

*Land, Law and People in Medieval Scotland* is best viewed as six self-contained studies under two broad headings: 'Land and law' and 'Land and people'. In the first part Professor Neville discusses the existence and functioning of baronial courts, the development of the process of perambulation (a particularly prominent aspect of the work of sheriff courts and their predecessors in the extant sources), and the adoption of charters and seals in the 12th and 13th centuries. The second part consists of studies of a cross-border family, peasant un-freedom, and the role of friendship, particularly in the context of lordship. The most cogent common factor is the predominance of charter evidence in the treatment of all these subjects. Professor Neville brings an impressive knowledge of this material to bear on these themes, including much that is unpublished. There are nuggets of new information here as well as new insights. As such the book is not just for historians of Scotland, but potentially of greater significance: it offers much food for thought about the riches that charter-evidence can provide, even if this is largely a matter of quarrying their textual content rather than mining their formal aspects. At the same time, this means that the book should not be regarded as an attempt to provide a rounded picture of 'law, land and people', even if charters and similar formal documents are far and away the principal source for these topics in a Scottish context. There are other texts, as well as non-written material, that have been brought to bear on these issues by other Scottish historians, but which get only limited mention here.

Some of the themes (particularly the adoption of charters) build on Professor Neville's earlier work in relation to Lennox and Strathearn, culminating in her *Native Lordship in Medieval Scotland*.<sup>(1)</sup> The most original contributions are the final two chapters, on un-freedom and on friendship. The lot of peasants in Scotland in the 12th and 13th centuries has not been explored with any thoroughness since Archie Duncan's magisterial *Scotland: the Making of the Kingdom*.<sup>(2)</sup> Neville's discussion does not aim to supersede Duncan's. She has, at the very least, put the subject of peasant un-freedom back on the agenda. The problem is that the kind of material that makes this such an absorbing topic for research in relation to parts of England is simply not available for any part of Scotland. The charter evidence is almost all there is: the earliest rental is from the very end of the 13th century. The usual documentary diet is otherwise broken only by the depositions of witnesses relating to the Kirkton of Arbuthnott from the case between the bishop of St Andrews and Donnchadh of Arbuthnott, which was settled (remarkably) at a synod of the diocese of St Andrews at Perth in 1206. The chapter on friendship is the most innovative. Here her reading of this issue in other periods, places and contexts fuses with her intimate knowledge of the documentary material to produce a fresh and very valuable contribution to our understanding of the range of social interactions that underpinned the exercise of lordship. Another important discussion of lordship is in the fourth chapter, where the focus narrows onto the complex history of the Muschamp lords of Wooler in Northumberland and their connections with Scotland. This is a compelling and thought-provoking case study. They found support from the earls of Dunbar, in whose orbit was also the earl of Strathearn; this led to the marriage between Mael Ísu II, earl of Strathearn, and the heiress of the Muschamp inheritance, and eventually Mael Ísu's acquisition of his wife's estates on her death. Professor Neville deftly traces the development of this family in the context of the challenges and opportunities arising from Mael Ísu's four marriages; having weathered the uncertainty of Alexander III's minority, the cross-border links were eventually severed by the wars of independence, but only after the success of Robert Bruce and uncompromising attitude of Edward II made it impossible to maintain meaningful cross-border connections.

Questions can, however, be raised about the conceptual framework which is used to give cohesion to the book. In the main, this is not simply of Professor Neville's making, but reflect wider challenges for the historiography of Scotland in the 12th and 13th centuries, challenges which arise from the way the subject has been tackled by generations of scholars. The 12th and 13th centuries saw the infrastructure of modern Scotland take shape: sheriffs and counties, common law and parliament, burghs and parishes, castles and aristocracy, and the use of writing in the arena of landholding and government. These were modelled to a significant degree on English practice, and knights, clerics and merchants from England played a crucial role in establishing and sustaining these developments. By the end of this period, Gaelic was in decline or dead in the areas where these changes had come together and become part of the fabric of society. This transformation has typically been explained within a framework of ethnic opposites, with 'Celt' or 'Gael' representing what is old and conservative, whereas change and progress is identified as 'English' or (usually) 'Anglo-Norman'. In a groundbreaking article, Matthew Hammond has shown how this framework is rooted in 19th-century assumptions that a people ('race', indeed) by definition had its unique culture, customs and character.<sup>(3)</sup> The most pervasive legacy is this sense of people as culturally and socially distinct. This, of course, is no longer consonant with our understanding of these issues in the 21st century, which is about 180 degrees away from what it was when the founding fathers of Scottish history as a scholarly discipline were writing in the 19th century. The explanatory force of the paradigm of ethnic polarity could also be questioned looking at more recent work on the 12th and 13th centuries. The changes were initiated and largely controlled by the most powerful members of secular society, for their benefit: the earls (*mormaír*) and, above all, the king. Although there is evidence in particular contexts of antipathy to the Gaels and their culture (for example, as part of the Cistercian vision of establishing a properly Christian society), this does not mean that English-inspired innovations were *ipso facto* anti-Gaelic. As Hammond emphasises, we are talking here (at least in David Carpenter's 'Scotland of the sheriffs?') of the development of a single society 'at local and regional level in particular' without any indication that, among those sectors of society visible in the documentary record, ethnic differences became allied to distinctions in law, social status or political opportunity. A narrative framework grounded in ethnic opposites sits uneasily in this context. It might be protested that the distinction between the English origins of the innovations and

immigrants and 'native' people and social structures remains relevant wherever and whenever any of the processes of change began. It is certainly part of the story. What is in dispute is the usefulness of this contrast, and of the ethnic labels that go with it, in explaining the changes that occurred. Other dynamics seem to hold more explanatory potential, such as the desire of those with any social or political standing to sustain and improve their position.

It appears that Professor Neville's response to Hammond's analysis (although this is not articulated as such) has been to attempt to reframe the paradigm of ethnic polarity so that change is no longer represented as 'Anglo-Norman' or 'English'. Inspired, presumably, by Robert Bartlett's idea of the 'Europeanising of Europe', Neville has placed 'Europeanisation' rather than 'Anglicisation' in the foreground. The Gaels, however, remain as a category, now contrasted with 'Europeans'. The chapter on friendship, we are told, offers another approach to understanding the 'cultural encounter that took place between Gaels and Europeans' (p. 8); the 13th century in Scotia (Scotland north of the Forth) was 'a period of accommodation between the institutions of the Gaelic past and those of the contemporary European world' (p. 21). If this is an attempt to maintain the old explanatory framework in a new guise, it has (as far as this reviewer is concerned) had the opposite effect, ushering it towards oblivion. The most immediate problem is that it makes Gaels appear to be non-Europeans. Do Europeanised Gaels cease, by definition, to be Gaels? Is the inevitable association with the encounter between 'Europeans' and 'natives' elsewhere in the world in more modern times intentional? Asking these questions is not to deny the force of Robert Bartlett's classic account of the 'Europeanisation of Europe', but to query the usefulness of applying it in this way. Is this intended as a way of dealing with the 'Englishness' of Scotland that emerges in this pivotal period? Certainly, there are occasions where it seems that 'European' has been used to limit, or even erase, references to 'English' or 'Anglo-Norman': for example, knights' feus are 'new, European-style tenures' (p. 20); castles are 'European-style strongholds' (ibid.); and reference is made to 'the written deeds that European newcomers had made popular in the kingdom in the twelfth century' (p. 27). True, the newcomers, strongholds and tenures were not exclusively English, but they were predominantly, if not essentially, English or Anglo-Norman.

This is not only about the best choice of words. It suggests that the basic framework of ethnic opposites seems to be so deeply embedded in Professor Neville's thinking (and, it must be emphasised, this is true to a significant extent for all of her and my generation) that it gives extra momentum to statements and ideas that fit the paradigm, a momentum that is not always warranted by the evidence. The part of the paradigm where this false momentum is most apparent is in her presentation of Gaels as conservative, even backward (a portrayal that has clear echoes with older historiography, of course). This is revealed particularly clearly in her discussion of the development of written documents and seals. We are told, for example, that Gaelic magnates were 'much slower than most of their Anglo-Norman and European contemporaries to incorporate the technology of writing fully and firmly into the business associated with lordship' (p. 81). This is supported by evidence that Gaels in the Lennox had a 'simplistic understanding of written instruments' (p. 82), and 'continued to privilege the oral testimony of eye-witnesses and of local men with deep roots in the community' (p. 83): 'so, too, must countless other landholders living elsewhere in Gaelic Scotland' (p. 83). In support of this, attention is drawn to instances where Gaelic lords, when making a significant endowment to a monastery, stipulated that their bodies were to be buried in that house. This is taken to mean that they 'used their own bodies as pledges of the commitments they undertook', betraying 'a deep-seated belief in the power of their physical presence' and therefore a less sophisticated or complete trust in documents (p. 82). But the association of an endowment with the donor's burial is not peculiarly Gaelic. In Scotland it can be found across the spectrum of landholders in the south and east: in the first half of the 13th century this includes Waltheof of Strachan, Adam son of Cospatric of Little Reston, Thomas Gordon, Thomas of Lundie and Robert Shotton (a Northumberland landholder with cross-border interests). There is also Donnchadh (Duncan), earl of Mar who, like Thomas of Lundie, owed his position to ancestry from Gaels, and was almost certainly a Gaelic-speaker: both, however, were thoroughly 'Europeanised'. It also seems curious to regard stipulations in a charter about the donor's burial as evidence of a simplistic understanding of written instruments, when we only know about it because it was recorded in such an instrument. The example cited of privileging oral testimony ahead of the written word is a charter of 1277 which Neville presents as the

product of the beneficiary's (the bishop of Glasgow's) insistence that a gift by 'the representative of a very old native Lennox family' (p. 83) of access to timber for building the cathedral's bell-tower and treasury be committed to writing. It was surely in the beneficiary's interests, rather than the donor's, to do so, and therefore tells us little or nothing about the donor's attitude to documents.

When it comes to the discussion of when Gaels began to use seals, suspicions grow deeper that the argument has not been generated chiefly from the raw evidence itself. We are told that, 'notably absent from the first group of extant seals are examples belonging to the Gaelic magnates who were such prominent members of the ruling aristocracy of the period?', with one exception (Donnchadh of Carrick). Neville goes on to explain that 'seal usage among the great territorial lords who lived north of the Forth was, in fact, highly unusual?', with the earliest examples in some earldoms in the 1220s and 1230s, while others (Mar, Menteith and Sutherland) are not found until the 14th century (p. 86). She notes that the loss of seals is undeniable: 'nevertheless', she continues, 'the impression that Gaelic magnates were slow to adopt waxen seals as valid expressions of their authority and identity is noteworthy?', so much so that 'the exceptions to this general rule' (such as the extant seals of Donnchadh II earl of Fife and his son, Mael Coluim, in the late 12th century) are deemed to be significant, suggesting that 'exposure to the royal court' was a factor (p. 87). But can the chronology of surviving seals support any of these inferences? Only if it is assumed that the earliest charters of earls north and west of the Forth 'there are surviving examples during the reign of William I (1165-1214) of charters of earls of Angus, Atholl, Buchan, Caithness (who was also earl of Orkney), Lennox, Mar and Strathearn, as well as Fife 'were not authenticated by the earl's seal without any mention in the charter itself of a substitute. This (as Professor Neville would instantly recognise, I have no doubt) would be an astounding state of affairs. The charters, on the contrary, are *prima facie* evidence that these earls had seals: the chronology of extant examples 'dependent not only on the survival of original single sheets, but also the preservation of tongues and seal-tags, never mind the wax itself 'is irrelevant, except for studying the vicissitudes of survival.

There are other places where deeply embedded assumptions about Gaels seem to have influenced the reading of the evidence. Some of this is more clear-cut than others. I find it difficult, for example, to see how the perambulation of the boundary between Kinblethmont and a neighbouring estate in Angus, in 1219, was conducted by 'Gaelic worthies from Kinblethmont' (p. 23), described elsewhere as 'a group of seven Gaelic tenants living in Kinblethmont' (p. 54). Two are brothers of leading men in Angus, and a third is the grandson of another. The emphasis seems to be on youth, and the men treading the bounds have been drawn from the lowest rung of landowning or managerial society in the region, rather than locals dwelling in Kinblethmont itself. (This would not be the only case in which this is apparent: the perambulation of Balfeith in the Mearns is another example.) They are, however, likely to have been Gaelic speakers. Her depiction of Gaels in perambulations as the inhabitants of the estate in question seems also to contribute to a wider assumption that Gaels were predominantly associated with *nativi* 'the peasantry tied to an estate. This, presumably, lies behind her conviction that 'in Scotland, as in Ireland, the medieval peasant experience was shaped as much by ethnic and racial, as by social mores' (p. 169). If (as I think it must) be conceded that, as late as the 1220s, Gaels were not infrequently numbered among the local and regional leaders in Angus and the Mearns, however, it becomes difficult to see how Gaelic and *nativi* would have been regarded as linked in most of this period.

At the end of the day this book seems to be most successful when it leaves ethnicity as an explanatory framework out of the reckoning and responds more directly to the source material. In those parts 'particularly chapters four (on managing cross-border interests) and chapter six (on friendship in the context of lordship) 'the ability of the evidence to provoke unexpected detail and new insights is most apparent. Where the age-old paradigm of Gaels as 'behind the times' comes into play, however, the momentum seems to rest too often on assumptions generated from the paradigm itself, and runs the risk of missing opportunities provided by the evidence to challenge these assumptions. The attempt to refashion the old polarity of conservative Gaels/Celts transformed by English/Anglo-Norman influence and incomers into a contrast between Gaels and Europeans seems only to bring this framework into deeper waters as a meaningful interpretative tool. On the evidence of this book, no makeover of the old ways of thinking is

likely to be convincing; equally, it is apparent in some parts of this book that it is possible to discuss important and captivating aspects of this period of Scottish history without recourse to the old paradigm. Once the narrative framework of ethnic polarity is set aside as a prop to guide us through this period, it should be much easier to understand how this society, on the ground of local and regional experience, managed to change so fundamentally. It will then be easier to recognise that those aspects we can readily identify as traceable from English practice or rooted in earlier patterns of lordship and social identity were very far from being 'opposites', not least because they grew together into the rhythm and fabric of an increasingly unified political and legal entity: the kingdom of the Scots.

## Notes

1. Cynthia Neville, *Native Lordship in Medieval Scotland: The Earldoms of Strathearn and Lennox* (Dublin, 2005).[Back to \(1\)](#)
2. Archie Duncan, *Scotland: the Making of the Kingdom* (Edinburgh, 1975).[Back to \(2\)](#)
3. Matthew Hammond, 'Ethnicity and the writing of medieval Scottish history', *Scottish Historical Review*, 85 (2006), 1-29.[Back to \(3\)](#)

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[1] <http://www.history.ac.uk/reviews/item/5548>