

TEACHING CRIMINAL LAW IN EARLY EIGHTEENTH-CENTURY SCOTLAND: *COLLEGIA* AND *COMPENDIA*

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In November 1987, the Edinburgh Roman Law Group hosted a meeting with the Forum Romanum of the University of Amsterdam and the Filips van Leyden Society of the University of Leiden. It was at this meeting that I first met Laurens Winkel. For me, this joint meeting of the three societies was to prove very important, as at it I met many Dutch legal historians, including Laurens, who have become lasting friends.

A theme of my research over the succeeding three decades has been the impact of the Scots experience of legal education in the Netherlands on the development of the Scottish law faculties in the early eighteenth century. It is accordingly appropriate to examine an aspect of these links in a volume in Laurens's honour; after all, he is a graduate of the Universities of Amsterdam and Edinburgh whose kindness and hospitality have done much to support me over a quarter century of friendship.

This offering to Laurens focuses on the history of the teaching of criminal law in Scotland, roughly from 1700 to 1740. Criminal law is not often associated with the studies of the Scots who travelled abroad for their education; consequently it has traditionally been seen as unlikely to have been influenced by Roman law. But this is mistaken. Olivia Robinson's recent edition of Sir George Mackenzie's *Matters Criminal* of 1678 brings out the significance for the treatise of Civilian and Canonist brocards and literature.¹ Further, Scots understood their criminal law through the prism of the law of nature and nations, and, as David Hume, Professor of Scots Law in Edinburgh 1786-1822, pointed out, once "it was not uncommon to call in aid ... 'the *common law*, baith civil and cannon' in contradistinction to the peculiar and municipal practice of Scotland" in developing

1 Mackenzie *The Laws and Customs of Scotland in Matters Criminal* ed Robinson (2012) 422-453.

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** Quotations from and citations of manuscript and archival material is courtesy of Edinburgh City Archives, the Trustees of the National Library of Scotland, the Keeper of the Advocates Library, the Librarian of Edinburgh University Library, and the Keeper of the Records of Scotland. All dates are given as if the year began on 1 January as was Scottish practice.

legal argument.² This meant, for example, that in the period with which we are here concerned, the famous treatise *De criminibus* (a commentary on the *libri terribiles* of the *Digest*) by the Utrecht professor, Antonius Matthaeus II, was regularly cited in Scots criminal courts, and described by one Lord Advocate as an “approved work”.³

Scots had studied the Civil and Canon laws abroad since the middle ages.⁴ France was once especially popular.⁵ Through the seventeenth century, however, they started to favour the universities of the Northern Low Countries, particularly after the Revocation of the Edict of Nantes made study in France difficult. Scots attendance at the Dutch universities was at its height in the period from around 1680 to 1730.⁶

It was in this era that the practice of teaching Roman law using *compendia* became popular in the Dutch universities.⁷ This meant that, rather than teaching directly from the Roman texts, professors used a specially written textbook that followed the structure of the *Institutes* or the *Digest*. Introduction of the *methodus compendiaria* into the United Provinces has traditionally been associated with the German professor JF Böckelmann, who taught at Leiden.⁸ This was probably because his *Compendium institutionum Justiniani sive elementa juris civilis in brevem et facilem ordinem redacta*, first published in Leiden in 1679, was a great success.⁹

- 2 Cairns “Hamesucken and the Major Premiss in the Libel, 1672-1770: Criminal Law in the Age of Enlightenment” in: Hunter (ed) *Justice and Crime Essays in Honour of the Right Honourable the Lord Emslie* (1993) 138-179 at 142-145.
- 3 *Idem* 156; Ahsmann *Bibliografie van hoogleraren in de rechten aan de Utrechtse Universiteit tot 1811* (1993) 86-89.
- 4 Mitchell “Scottish Law Students in Italy in the Later Middle Ages” 1937 *Juridical Review* 19-24; Steuart “The Scottish ‘Nation’ at the University of Padua” 1905 *Scottish Historical Review* 53-62; Lyall “Scottish Students and Masters at the Universities of Cologne and Louvain in the Fifteenth Century” 1985 *Innes Review* 55-73; Baxter “Scottish Students at Louvain University, 1425-1484” 1928 *Scottish Historical Review* 327-334.
- 5 Cameron (later Dunlop) “Scottish Students at Paris University, 1466-1492” 1936 *Juridical Review* 228-255; McNeill “Scottish Entries in the *Acta Rectoria Universitatis Parisiensis* 1519 to c. 1633” 1964 *Scottish Historical Review* 66-86; Kirkpatrick “The Scottish Nation in the University of Orleans, 1336-1538” in: *Miscellany of the Scottish History Society. Second Volume* (1904) 47-102; Durkan “The French Connection in the Sixteenth and Early Seventeenth Centuries” in: Smout (ed) *Scotland and Europe, 1250-1850* (1986) 19-44; Tucker *Maitres et étudiants écossais à la Faculté de Droit de l’Université de Bourges (1480-1703)* (2001).
- 6 Mijers “News from the Republic of Letters” *Scottish Students, Charles Mackie and the United Provinces, 1650-1750* (2012) 41-43; Feenstra “Scottish-Dutch Legal Relations in the Seventeenth and Eighteenth Centuries: Academic Relations between the Low Countries and the British Isles” in: Feenstra *Legal Scholarship and Doctrines of Private Law, 13th-18th Centuries* (1996) XVI.
- 7 Hewett *Ulric Huber (1636-1694) De ratione juris docendi & discendi diatribe per modum dialogi nonnullis aucta IAPAIITOMENOIΣ* (Academisch Proefschrift) (2010) 75-78.
- 8 Feenstra “Johann Friedrich Böckelmann (1632-1681): Een markant Leids hoogleraar in de rechten” in: Groenveld, Mout and Schöffers (eds) *Bestuurders en geleerden opstellen over onderwerpen uit de Nederlandse geschiedenis van de zestiende, zeventiende en achttiende eeuw, aangeboden aan Prof. Dr. J.J. Wolter bij zijn afscheid als hoogleraar van de Rijksuniversiteit te Leiden* (1985) 137-150.
- 9 Ahsmann and Feenstra *Bibliografie van hoogleraren in de rechten aan de Leidse Universiteit tot 1811* (1984) 61-64.

Of course, like all innovations, the method had its critics. One of the most notable was the distinguished professor, Gerard Noodt, who attacked it under the stock theme *de causis corruptae jurisprudentiae*.¹⁰ This brought out a defence by the famous professor at Franeker, Ulric Huber, in the form of a dialogue.¹¹ It is easy to see the advantages of *compendia*: it was possible to teach a course on the *Institutes* of Justinian introducing other matter in a structured way; it was possible to cover at least the bones of the entire *Digest* in one course; and it was possible to emphasise more modern concerns such as the law of nature and nations in teaching Roman law.

At the same time as teaching by means of *compendia* became popular, Dutch law professors seem to have largely given up instruction through traditional lectures following the *ordo legum*, and instead focused more on private *collegia*. These were small, often specialised, classes that professors commonly taught in their own homes.¹² One advantage from the point of view of the teacher was that he could charge for them. The intellectual significance of *collegia* was that they allowed the modernisation of the curriculum and allowed the professors to be responsive to student needs and demands. Professors could offer *collegia* on the laws of nature and nations, on public law, on the *ius hodiernum*, and on criminal law, as well as on Justinian's *Institutes* and *Digest*.¹³ *Compendia* were particularly well-suited for use in such *collegia*.

This was the type of legal education that Scots students experienced in the United Provinces; and it was this experience that provided the models that Scots professors and universities drew on to develop legal education in Scotland.¹⁴ The development of teaching in *collegia* and the use of *compendia* were to prove particularly important.

For complex political and institutional reasons, it took a while for chairs in law to be established in the Scottish universities; this meant that, from 1699, private teachers filled the space left by the lack of more formal provision.¹⁵ The two most important of them were John Spotswood and John Cuninghame: both had studied law in Leiden, and both offered classes on Scots law and Civil law.¹⁶ They established a pattern for legal

10 Van den Bergh *The Life and Work of Gerard Noodt (1647-1725) Dutch Legal Scholarship between Humanism and Enlightenment* (1988) 161-166.

11 Hewett (n 7) Part II and 121-129.

12 Ahsmann "Teaching in *Collegia*: The Organization of Disputationes at Universities in the Netherlands and in Germany during the 16th and 17th Centuries" in: Romano (ed) *Università in Europa Le istituzioni universitarie dal Medio Evo ai nostri giorni strutture, organizzazione, funzionamento* (1995) 99-114 at 106-114. For the background in detail, see Ahsmann *Collegium und Kolleg Der juristische Unterricht an der Universität Leiden 1575-1630 unter besonderer Berücksichtigung der Disputationen* (2000).

13 Van Strien and Ahsmann "Scottish Law Students in Leiden at the End of the Seventeenth Century: The Correspondence of John Clerk, 1694-1697" 1992 *Lias* 271-330 and 1993 *Lias* 1-65 at 287-294.

14 Cairns "Importing Our Lawyers from Holland: Netherlands' Influences on Scots Law and Lawyers in the Eighteenth Century" in: Simpson (ed) *Scotland and the Low Countries, 1124-1994* (1996) 136-153.

15 Cairns "John Spotswood, Professor of Law: A Preliminary Sketch" in: Gordon (ed) *Miscellany Three* Stair Society vol 39 (1992) 131-159 at 133-134.

16 Cairns (n 14) 147.

education that continued once chairs were established in the universities. This was based on the model of the Dutch private *collegium*, which suited them well.

The first modern chair in law in a Scots university was created in 1707, when the Regius Chair in Public Law and the Law of Nations was established in Edinburgh.¹⁷ This was followed in 1710 by a chair in Civil law, to which James Craig, then one of the private teachers competing for students in Civil law, was appointed.¹⁸ Craig had been educated in law at Franeker.¹⁹ In 1713, a Regius Chair of Civil Law was founded in Glasgow; filled in 1714, its first occupant, William Forbes, seems also to have taught Scots law, at least for a while.²⁰ Finally, a chair in Scots law was erected in Edinburgh in 1722 for Alexander Bayne, who had studied Scots and Civil law with Spotswood in Edinburgh, before studying law in Leiden.²¹ Thus, by the early 1720s both Edinburgh and Glasgow had provision for legal education in their universities.²² This was to create a measure of creative rivalry. Where we have information, these men can be shown to have taught following the model of the Dutch *collegium*.²³ They also seem to have preferred to teach using *compendia*.²⁴

Teachers of Scots law had available an excellent short compend in Sir George Mackenzie's *Institutions of the Law of Scotland*. First published in 1684, with a second edition in 1688, this work was closely modelled on Justinian's *Institutes*. Because it was used in teaching, it went through several editions, the last in 1758, though by this year it was becoming rather outdated. William Forbes contributed notes to one edition, while John Spotswood edited and annotated another, as did Alexander Bayne.²⁵ In a resounding endorsement of both the *methodus compendiaria* and Mackenzie's work, Spotswood told his students that "Laws are commonly taught by way of Institutions (or Intituts) which are ane Epitome or abridgement of the Cheif [*sic*] heads & generall terms & principles of Law extracted out of the Law Books of the learned Jurists". Mackenzie's *Institutions* provided an example as "a Collectione of the most generall and easy terms

17 Cairns "The Origins of the Edinburgh Law School: The Union of 1707 and the Regius Chair" 2007 *Edinburgh Law Review* 300-348.

18 Cairns (n 14) 149.

19 *Album Studiosorum Academiae Franekerensis (1585-1811, 1816-1844)* ed by Fockema Andreae and Meijer (1968) 268; *Disputatio juridica de matrimonio feminarum provincialium illicito cum praefectis militum, veraque interpretatione L. 63 ff. De Ritu Nuptiarum, secunda ... quam publice defendet Jacobus Craig, Scotus* (1697). Craig was not listed as author. His was "second", because the same topic was also defended by Livius Jensma and Egbert Arent.

20 Cairns "The Origins of the Glasgow Law School: The Professors of Civil Law, 1714-61" in: Birks (ed) *The Life of the Law Proceedings of the Tenth British Legal History Conference Oxford 1991* (1993) 151-194.

21 Cairns (n 14) 150.

22 On Aberdeen see Cairns "Lawyers, Law Professors, and Localities: The Universities of Aberdeen, 1680-1750" (1995) *Northern Ireland Legal Quarterly* 304-331.

23 Cairns (n 14) 149-150.

24 *Idem* 147-151.

25 Cairns "The Moveable Text of Mackenzie: Bibliographical Problems for the Scottish Concept of Institutional Writing" in Cairns and Robinson (eds) *Critical Studies in Ancient Law, Comparative Law and Legal History Essays in Honour of Alan Watson* (2001) 235-248 at 237-238.

and principles upon which the Law is founded. The name is of a verry antient Originall ... and is the most generall and easy way of teaching any art Science or language".²⁶ In turn John Cuninghame described the *Institutions* as "a Book which very succinctly and methodically delivers the Principles of our Law, and comprehends all the most material things to be known in it".²⁷

If Mackenzie's *Institutions* provided an excellent compend for a *collegium privatum* devoted to the *ius hodiernum* of Scotland, it did have some deficiencies. Thus, Mackenzie's close dependence on Justinian's *Institutes* meant that he dealt with criminal law in very short compass in the final title, "Of Crimes", in his fourth book. This was the merest sketch, as indeed was his treatment of actions, while there were no titles at all on parent and child or master and servant.

For only two of the private teachers, Spotswood and Cuninghame, is there any evidence of their classes on Scots law. Three sets of student notes survive. One is from Cuninghame's class and is dated 1709 and is incomplete. The student who took the notes was Andrew Fletcher, the future Lord Milton. The notes are relatively detailed, so it may be Cuninghame intended a thorough treatment of crime, but we cannot tell.²⁸ This set of notes was always incomplete, as Cuninghame died on 1 May 1710, halfway through his course for 1709-1710. The second set of notes consists of Cuninghame's lectures on the first two books of the *Institutions*, followed by Spotswood's lectures on the last two books. These were copied out in 1717, presumably from actual notes made over 1709-1710. The hybrid nature of the notes is explained by Spotswood's advertisement that, following Cuninghame's death, he would take over his class.²⁹ This set must derive from the notes of a student who continued with Spotswood after the other teacher's death. Spotswood had proposed in his lectures on Mackenzie to add such titles as were missing.³⁰ The third set of notes, a full set entirely derived from his class, shows that he included some, if slight, material on the relationships of parent and child and master and servant after discussion of the title on guardianship.³¹ However, he simply dictated some notes on Mackenzie's title on crimes, providing a very sketchy account indeed.³²

William Forbes was the first teacher to offer classes in Scots law from a University chair. In September 1714, he advertised classes on "the Civil and Scottish Laws". He stated that he would explain "in his Colleges the Harmony, Analogy, and differences betwixt the Roman law, and the law of Scotland; and also how far either of these Laws do agree with, and differ from the Law of England". It is uncertain whether he was teaching two separate courses or a single comparative course.³³ In the next session he advertised

26 National Library of Scotland [NLS] MS 3412, f. iv verso, p 1 (eccentric apostrophes deleted).

27 *A Discourse by Mr. John Cuninghame Advocate, at the Beginning of his Lessons upon the Scots Law* (1705) 5.

28 Edinburgh University Library [EUL] MS Gen 1735 (at one time there was an associated second notebook, of which I have seen a photocopy).

29 NLS MS 3413; *Scots Courant* 1/3 May 1710.

30 Cairns (n 15) 144.

31 NLS MS 3412, 132-133.

32 NLS MS 3412, 474; NLS MS 3413, 383.

33 *Scots Courant* 8/10 Sep 1714.

classes on Civil and Scots law.³⁴ Again there is no information on them. The following academic year he only offered a class on Civil law.³⁵ It is unknown if Forbes ever taught Scots law again. But he published the first volume of a compend on Scots law, entitled *Institutes of the Law of Scotland* in 1722. It was described as “Comprehending the Private Law”. The second volume only appeared in 1730; it was described as “Comprehending the Criminal Law”. He thus produced what was essentially a compend on Scots criminal law. On its own it greatly exceeds the length of Mackenzie’s entire *Institutions*. Whether it was ever the basis of a *collegium* taught by Forbes is unknown;³⁶ there is no evidence that any other teacher ever used it.

On 26 November 1722, Alexander Bayne advertised to “the Gentlemen who are either qualifying themselves for the Bar, or who otherwise consider the Knowledge of the Law of their own Country as an useful Accomplishment” that he intended “to give a College on the law of Scotland, to commence upon the 3d of January ensuing”.³⁷ The next day, in wording almost identical to the advertisement, he petitioned the Town Council of Edinburgh, as Patrons of the University, to appoint him “Professour of the Law of Scotland”, stating that the bench and the Faculty of Advocates considered a chair in Scots law much needed. The majority of the judges of the Court of Session had signed the petition in his support. The following day the Council duly appointed him.³⁸ He held the chair until his death in 1737.³⁹

Bayne was evidently a success. Many sets of student notes of his lectures survive (not always recognised as such in archives and libraries).⁴⁰ Part of the reason for his success was surely his diligence. He used Mackenzie’s *Institutions* as his textbook, described as “wrote very much in the Spirit and Manner of a Text Book, short and concise, and full of Matter”.⁴¹ Perhaps with an implicit criticism of Forbes in Glasgow, he commented:

When I entered upon the Profession of the *Municipal Law*, I thought it became me rather to take *Sir George Mackenzie’s Institutions* for my *Text-book*, than to give one of my own, for this obvious Reason, That it was a Book of Authority, universally esteemed, and infinitely superior to any I could give.⁴²

But Bayne recognised the work’s deficiencies, and in 1731 he published *Notes for the Use of the Students of the Municipal Law in the University of Edinburgh, Being a Supplement to Sir George Mackenzie’s Institutions*. This contained the substance of his lectures

34 *Scots Courant* 7/9 Dec 1715.

35 *Scots Courant* 12/15 Oct 1716.

36 Cairns (n 20) 177-179.

37 *Caledonian Mercury* 26 Nov 1722.

38 Edinburgh City Archives, McLeod Bundle 9, Shelf 36, Bay C.

39 Menzies “Alexander Bayne of Rires, Advocate” (1924) *Juridical Review* 60-70.

40 There are some complexities relating to them that I shall not deal with here.

41 Bayne *A Discourse on the Rise and Progress of the Law of Scotland, and the Method of Studying it ... For the Use of the Students of the Municipal Law* (1726) 168. This was published at the end of Hope *Minor Practicks* (1726), with continuous pagination though a separate title page.

42 Bayne *Notes for the Use of the Students of the Municipal Law in the University of Edinburgh, Being a Supplement to Sir George Mackenzie’s Institutions* (1731) i.

hitherto; but his lectures thereafter were to be on the *Notes* as well as the *Institutions*.⁴³ He also, at least twice, in the summer session organised an “Examinatory College” (no doubt modelled on Dutch *collegia examinatoria*) to assist his students with their learning.⁴⁴ Again he sometimes started the year with special, public, introductory discourses.⁴⁵ It was common for students to attend the same course of lectures more than once. Bayne proposed extra provision for them, in the form of a set of lectures on Stair’s *Institutions of the Law of Scotland*.⁴⁶

At one time, Bayne had a home in Niddry’s Wynd, and from 1725 he taught his classes in the Hall of the Incorporation of Mary’s Chapel (the joint Incorporation of the Wrights and the Masons) that was located there.⁴⁷ In 1735, he advertised that he would begin “his Colleges ... at his Chamber in the College of Edinburgh”.⁴⁸ This change of classroom probably reflected his move that year to live in the suburb of Sciennes, from which the University’s buildings were more accessible than the Hall in Niddry’s Wynd.⁴⁹

The same concern with the quality of his instruction led him to try to remedy the problem in teaching criminal law created by the use of Mackenzie’s *Institutions* as the teaching compend for Scots law. He basically ignored Mackenzie’s title “Of Crimes”. Some of the manuscripts of his lectures contain a brief treatise on criminal law that he dictated to his class. One of these explains:

Our Author having now finished his Institutes of the private Law Gives in the Conclusion one title of publick law and of that part of it which we are most concerned to know, namely of Crimes. But that Subject our Author Treats here very superficially and gives us hardly any more than a short Definition of the Crimes and barely names the punishments which respectively attends them ... Our Author’s title of crimes will not so much serve me for a Text so that I have Chused prepare some few discourses to you on the Subject of Crimes without being tyed down to a method and order of a Text which can give us no assistance by which I do not Imagine you are very much to be instructed because to treat of that Subject (as it ought) would require a Separate College.⁵⁰

In other words, he effectively made up for the deficiency in Mackenzie’s compend by producing a new textbook to dictate to them.

He next decided to fulfil the need he had identified for “a separate college”, again by using the summer session. In May 1729, he advertised that “upon Wednesday the 4th

43 *Idem* ii.

44 Alexander Bayne, *Professor of the Municipal Law, to the Gentlemen Who Have Attended his College of Prelections* (1725); *Edinburgh Evening Courant* 5/9 May 1726.

45 EUL MS Dc.3.57 (Latin *Oratio inauguralis*, 1724; this is close, but by no means identical, to his printed, English-language *Discourse* (n 41) of 1726); *Caledonian Mercury* 4 Oct 1725 (this is stated as “a Continuation of the former, on the Title of *Conjugal Obligations*”).

46 Bayne *To the Students of the Municipal Law in the University of Edinburgh* (nd).

47 *Edinburgh Evening Courant* 30 Sep/4 Oct 1725; for his residence, see the advert concerning the sale of Aiton in Fife in *Caledonian Mercury* 25 Mar 1723.

48 *Caledonian Mercury* 14 Oct 1735.

49 Cant *Sciennes and the Grange* (1990) 43; he still lived there at the time of his death: National Records of Scotland [NRS] CC8/8/99.

50 NLS Adv MS 22.7.34, f. 109.

of June next, he is to begin his Prelections on the Criminal Law, at the Hour of Three in the Afternoon, in the Hall on Niddry's Wynd where he uses to teach".⁵¹ He repeated this the following year; but he also advertised that "for the Use of the Students who design to attend" the lectures, there would be published by 1 June, *Institutions of the Criminal Law*. This textbook has a close relationship to the notes he formerly dictated at the end of his regular course, and in the address "To the Reader" at the start of the book, Bayne stated that the "following Sheets contain the chief Heads of Discourse, which are treated at large in my Lectures upon the Criminal Law". He added: "Hitherto they were dictated to the Students to serve in place of a Text-book, and therefore delivered with all Brevity and proper References."⁵² To avoid this necessity, they were now printed. Bayne, however, had prepared extensive new notes for his special college in the summer session on criminal law, and his holograph manuscript of the lectures survives. It is extensive, consisting of nearly 1,000 closely written folio pages, originally bound in three volumes.⁵³

In the autumn of 1730, however, Bayne changed this developing pattern. He now advertised on that, as usual, he would begin his "College upon Sir George Mackenzie's Institutions on Monday the 9th of November, at the usual place and hour". But he added that, "sometime in the week following", he would begin "his College on the Criminal Law, at a proper hour in the evening".⁵⁴ There is no information for the autumn of 1731; but the next year he again advertised both classes for the coming autumn. This time he specified that the "college on the *Criminal Law*" would begin on Tuesday at 5 p m., continuing at the same time on Tuesdays and Thursdays and at 11 a m. on Saturdays.⁵⁵ Whether he continued this practice in 1733-1734 is unclear.⁵⁶

In 1734, however, he seems to have revised his practice. In a lengthy advertisement, he mentions his college on Mackenzie's *Institutions* and his own supplemental text book. He asked that those starting a second year with him should wait behind after the "Preliminary Discourse", to agree with him two days in the week which he will set apart for giving "to them, in particular, Discourses on *Stiles*, and some of the more noted *Titles of the Law*, Civil and Criminal, after a Manner suited to the Advances they had made in the Course of their first Year's Study". This was obviously to be without charge, as he remarked that this was for the "greater Benefit of his Students of the second Year; but for himself, nothing beyond the Reputation of doing the best he can, to deserve his Ordinary Appointments".⁵⁷ It may be that this marks the end of his special college on criminal law. His advertisement for 1735 is unspecific;⁵⁸ that for 1736-1737 mentions only "his College upon *Sir George Mackenzies Institutions*".⁵⁹

51 *Caledonian Mercury* 12 May 1729.

52 Bayne *Institutions of the Criminal Law of Scotland* (1730) [3]; cf NLS Adv MS 22.7.34, ff. 109 et seq.

53 NLS Adv MS 25.3.12.

54 *Edinburgh Evening Courant* 15/19 Oct 1730.

55 *Caledonian Mercury* 16 Oct 1732.

56 *Caledonian Mercury* 16 Oct 1733 talks of him beginning "his Colleges" without being more specific.

57 *Caledonian Mercury* 28 Oct 1734.

58 *Caledonian Mercury* 14 Oct 1735.

59 *Caledonian Mercury* 12 Oct 1736.

Bayne became ill in the summer of 1735. In March 1736, he described himself as suffering from “the dispiriting symptoms of a nervous illness commonly called vapours, or lowness of spirits”.⁶⁰ By January 1737, his health was causing greater concern.⁶¹ To recuperate, he left to take the waters in Bath, dying on the way at Alnwick on 22 April 1737.⁶² It may have been the progressive breakdown of his health that led Bayne to give up the special college on criminal law.

The career of Bayne indicates the importance of the choices made for appointments to chairs when legal education in Scotland was undeveloped and weak institutionally. Bayne was energetic. He wanted to succeed. He tried to help his students learn. He seems always to have recruited students.⁶³ He was later criticised by Lord Kames with the judge’s typical waspishness;⁶⁴ in contrast Lord Braxfield was impressed by Bayne’s work, and, as often, his judgment seems the more reliable.⁶⁵

The contrast with Forbes is interesting. Forbes does not seem to have been successful in acquiring a class in Scots law.⁶⁶ One never gets the impression of energetic activity on his part – indeed, rather the opposite. Robert Wodrow described him in 1726 as not teaching, “save on exorbitant fees”.⁶⁷ At this remove, without a great deal of further analysis, it is difficult to judge the quality of his elementary compend; what one can say is that it was never reprinted. This contrasts with the fate of Bayne’s publications. The *Institutions of Criminal Law* was reprinted in 1748 and the *Notes on Mackenzie* in 1749. They were seen as having a continuing value. Indeed, one suspects that it was Bayne’s energy and success that ended any prospects Forbes may have had of having a class in Scots law. Emulation and rivalry are further suggested by the fact that both published a student textbook on criminal law in 1730. We do not know if Forbes ever acquired a copy of Bayne’s *Institutions of the Criminal Law of Scotland*; but it is interesting to note that Bayne may have owned two copies of Forbes’s volume on criminal law.⁶⁸

Dutch *collegia* provided the Scots with a flexible and adaptable model for teaching a subject. And it was a model also familiar to Scottish students. Thus Kenneth Mackenzie, who had studied at Leiden, recognised Bayne’s class as a “Private College”.⁶⁹ Together with the *methodus compendiaria*, Bayne was able to use the model creatively to remedy problems in traditional coverage of *ius hodiernum*, and to provide more generally for

60 Bayne to Duncombe, Mar 1736 in: *Letters by Several Eminent Persons Deceased. Including the Correspondence of John Hughes, Esq. ... and Several of his Friends, Published from the Originals* (1772) vol 1, 223-227.

61 Gordon to Mackie, 22 Jan 1737, EUL MS La II 91 C 66.

62 NRS CC8/8/99.

63 Mackenzie to Mackenzie, 28 Nov 1723, NLS MS 1209, f. 55.

64 *Boswell in Extremes, 1776-1778* ed Weis and Pottle (1971) 213.

65 *Boswell, Laird of Auchinleck, 1778-1782* ed Reed and Pottle (1977) 239-240.

66 Cairns (n 20) 177-179.

67 Wodrow *Analecta Or, Materials for a History of Remarkable Providences* (1842-43) vol 3, 333.

68 *Catalogue of Curious and Valuable Books, Being Chiefly the Library of the Late Mr. Alexander Bane Professor of Scots Law in the University of Edinburgh* (1749) 12. It is always possible one copy was added by the auctioneer.

69 Mackenzie to Mackenzie, 28 Nov 1723, NLS MS 1209, f. 55.

what he saw as the educational needs of his students. It is clear that other Scots did likewise, both outwith and within the universities.

Abstract

Many Scots students studied law in the United Provinces of the Netherlands in the late seventeenth and early eighteenth centuries. There they were often taught in private classes or *collegia* using *compendia*. These practices in teaching were adopted in Scotland when the Scottish law schools were created in the early eighteenth century. This paper examines the impact of these practices on the teaching of criminal law in Scotland in this era.