REVIEW

A. M. Godfrey, *Civil Justice in Renaissance Scotland: The Origins of a Central Court*. Medieval Law and Practice volume 4. Leiden: Brill, 2009. Pp. xv + 486. ISBN 978-90-04-17466-5. US\$225.00; £158.00.

On 27 May 1532, before King James V, the Scottish College of Justice was formally instituted. The act officially incorporated those members of the king's council who could serve as members of the court of session, Scotland's highest civil law tribunal. What in fact had happened? What did this event mean for Scottish jurisprudence and for realm's legal and political culture? In his *The College of Justice* (1933) and related essays, R. K. Hannay had long provided the authoritative answer: not much. 1532 had largely proven a non-event. Members of the Scottish curia regis had developed increasingly specialized responsibilities during the course of the fifteenth century. The Scots parliament had moved away from its medieval function as a court (except for treason) by the 1490s; the decisive events shaping the session had occurred during the reigns of James III and IV. The very idea of a college had proven a foreign import from the papal court, and was both alien and marginal to Scottish notions of legal procedure. James intended to mulct the church on behalf of his Council, and succeeded in shaking down a vulnerable papacy terrified by his schismatic uncle. The court evolved slowly over the course of the fifteenth and sixteenth centuries.

Hannay's scholarship had been meticulous, impeccable, unassailable, and, despite the occasional query from such scholars as Hector MacQueen and W.C. Dickinson, his analysis thereafter became normative to

the point of reflexive within Scottish historiography. Serious challenge to Hannay's reading eventually surfaced during the 1980s with the work of David Sellar, J. W. Cairns, and A. L. Murray, yet only now with the present volume has a thoroughgoing reassessment of the court emerged. For the most part Godfrey does not question Hannay's research, but instead looks to other sources, outstandingly the session's manuscript Acts and Decrees, and thereby the jurisdiction, function, and, with it, the new corporate identity of this structure within the king's Council. His examination of the "practick" of the court leads Godfrey emphatically to the conclusion that 1532 proved a decisive beginning (if not exactly a "turning point") in the rise of the court and the construction of Scottish jurisprudence. Beginning in 1426 when a conciliar "session" occurs that first sounds like the later court, the events of the fifteenth century formed an era of ad hoc experimentation that ran in many directions, responded to various contingencies, and offered the promise of multiple institutional options. Only in the sixteenth century and especially after 1513 does it become clear that the Session comprised the court of final resort, the ultimate authority in civil law. Only then do challenges to the court's competence in favor of local authority consistently fail and subsequently disappear altogether. This creation of the College crystalized this development, marking off the Session as distinct and autonomous from the Council. Collegiate organization, Godfrey adds, was completely commonplace in Scotland, as well as in Western Europe generally, as familiar to Pope Clement as to the burghers of Edinburgh. Nothing underscored the court's growing competence more than its assumption of cases concerned with fee and heritage, matters that had lain beyond the purview of the medieval royal Council. This new authority was achieved not by overturning traditional legal practice, but by creating new remedies (specifically the reduction of infestment). Along the same lines, the court supplanted Scots common

law *brieve* (*writ*) and *inquest* with Romano-canonical procedures.

Nowhere was the new status of the court more evident or more widely felt than in its integration of informal private justice within the parameters of public jurisdiction and formal law. Godfrey is positively effusive about Jenny Wormald's revisionist studies of the blood feud (all of it published during the 1980s). Wormald had sought to show that traditional Scottish society was far less violent and primitive than commonly believed today (and as commonly portrayed by Protestant reformers). Informal agreements between kindreds that provided for compensation, she suggested, had proven an effective means of conflict resolution. Godfrey agrees, but adds that with increasing frequency the court authenticated, adjudicated, contained, or decided such arrangements through *assythment*. The court co-opted private justice in civil cases rather than competing with it (which unlike criminal law did not necessarily invite notions of culpability, wrong-doing, and individual responsibility). The court thus provided multiple routes away from kin violence, getting the blood feud to work by making it other than the blood feud. Similarly, Godfrey applauds Keith Brown's *Bloodfeud in Scotland, 1573-1625* (1986), but rejects the claim that judges and legal procedures were simply interwoven into kin commitments and kin conflict. Quite the reverse, Godfrey sees the penetration of legal culture into Scottish social life beginning in the earlier sixteenth century.

For this reason, Godfrey insists, the Court arose from the press of business rather than the centralizing demands of royal authority, pressure from the political elites rather than the crown. Public justice may have triumphed at the end of the century, but its origins had been well launched in the first decades, and decisively with the College of Justice.

We may well wonder whether James was so passive a figure as Godfrey implies. When the king

claimed to be “maist desyrous to have ane permanent ordour of justice,” he spoke at a time of exceptional national self-confidence (p. 270). At just that moment royal ideology took shape in powerful ways (not least with the translations at royal command of Hector Boece’s *Scotorum Historia*). The creation of the College was surely a part of it.

Nevertheless, Godfrey has written a useful book. Many will find it slow going, less because of the intricacies of Scots law than from its painfully ponderous style. But it will prove worth the effort. Gordon Donaldson once remarked that his idea of heaven was reading through the Acts and Decrees. For those with a similar notion of the heavenly, this will be their book.

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