

William David Hamilton Sellar, MVO, BA, LLB, LLD, FRHistS, FSAScot: a memoir

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ABSTRACT

This paper is a personal memoir of the late David Sellar (1941-2019), written by his first doctoral student who subsequently became a long-standing colleague, collaborator and friend. It reflects in particular on his academic contribution as a very distinguished legal and Highland historian, antiquarian and genealogist. Those who knew his work in one or other of these capacities did not always realise how much he had contributed in his other fields of interest. The paper surveys David's published output, highlighting the findings of his pioneering researches in Highland clan and Scottish legal history. His combination of history and law found perfect expression in his 2008 appointment as Lord Lyon King of Arms, the ancient office that he held with great distinction until retirement in 2014. A Vice-President of the Society from 1999 to 2002, David was an antiquarian in the fullest sense of the word, taking a serious interest in the physical as well as the documentary evidence of the past. He will take an honoured place in the annals of the Society.

David Sellar, who died on 26 January 2019 at the age of 77 after a period of increasing ill-health, was a Vice-President of the Society of Antiquaries of Scotland from 1999 to 2002 and a long-serving member of the Faculty (later School) of Law in Edinburgh University. He was also Lord Lyon King of Arms from 2008 to 2014, having been a herald as Bute Pursuivant since 2001. It was for his service in the ancient heraldic role of Lyon that, in anticipation of his final retirement from it, he was awarded the Membership of the Royal Victorian Order in the New Year Honours List for 2014. The MVO is a dynastic order of knighthood awarded at the monarch's sole discretion for distinguished personal service to her. David's distinction in office has been well written about elsewhere (obituaries, *The Scotsman*, 11 February 2019; *The Times* (Scottish edition), 2 March 2019; *The Herald*, 12 March 2019). Therefore, this short memoir focuses most upon his academic contribution, as a

very distinguished legal and Highland historian, antiquarian and genealogist.

David was born on 27 February 1941 and brought up in south Lanarkshire, near Glasgow. He was educated first at Kelvinside Academy in Glasgow and then (as a boarder) at Fettes College in Edinburgh. His first degree was in history at Oxford, where he was a student in St Edmund's Hall ('Teddy Hall', as he called it). His tutor there was H E J Cowdrey, on his way to becoming a prolific and eminent historian of the Papacy, the Crusades and monasticism in the eleventh century (see Dunbabin 2011). David then took the two-year LLB for graduates at Edinburgh before completing an apprenticeship as a solicitor with the well-known firm of Shepherd & Wedderburn WS (then based in Charlotte Square). It was during this time that he first encountered the Lord Lyon, in the person of Sir Thomas Innes of Learney (Lyon 1945–1969). David always enjoyed relating how when you phoned the then

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DAVID SELLAR AT PARLIAMENT HOUSE IN EDINBURGH ON 10 APRIL 2008, THE DAY HE WAS INAUGURATED AS LORD LYON.
(COURTESY OF THE AUTHOR)

reception-less Lyon Court you got Sir Thomas's rather squeaky-voiced greeting: 'Lyon here!'

Much as David relished his apprenticeship, once qualified as a solicitor, he joined the Scottish Land Court in 1967 as one of its legal assessors. The Court was established in 1911 to deal with issues relating to crofts and agricultural smallholdings. When David joined, the Court was, under the leadership of Lord Birsay, undertaking its recovery from a long, troubled period when Lord Gibson was its chair (1941–65).¹ Its appeal to David, however, lay in the opportunity

its business gave to spend time in the Highlands and Islands, gaining all sorts of knowledge about the history, traditions and geography of the areas where the Court found itself working. Indeed, he could see still surviving in the present day customs that reached far back into the past. The experience also provided him with a ready fund of stories with which he would later entertain friends, colleagues and students.

In 1969, however, David decided to take up an appointment as a lecturer in the Department of Scots (later Private) Law at the University

of Edinburgh, then headed by the charismatic Professor T B Smith (who was also a personal friend of Lord Birsay). David always said that Smith wanted him to be the legal historian in the department, and this promise sometimes led to frictions with subsequent departmental heads after Smith left the university in 1972 to become a full-time Law Commissioner. But David's teaching in general private law, in areas such as succession and unjustified enrichment, actually fed into his legal-historical scholarship, while his historical approach produced significant contributions to the study of contemporary Scots private law.

As I can attest from personal experience, David's honours class in History of Scots Law was a wonderfully colourful exploration of his central interests, ranging from Celtic law through canon law to specific topics in marriage, divorce, delict and criminal law. Once heard, his account of the 'salmon leap' with which the Celtic groom proved his virility on his wedding night could never be forgotten – if not emulated. Counting the severed heads on Sueno's Stone, near Forres, was another memorable experience, although perhaps their full historical significance escaped at least one student at the time (see further Sellar 1993a). Another part of the course involving counting was about the forbidden degrees of marriage and the crime of incest; the latter also involved the invocation of the book of Leviticus in the Old Testament by an Act of the Scottish Parliament in 1567, not long after the Reformation. David's publications on this subject (Sellar 1977, 1978a) helped shape the then current Marriage (Scotland) Bill's provisions on the first matter and contributed to the eventual reform of incest law in 1986.²

David was promoted to senior lecturer in 1975. In 1987, with John Cairns and myself, he set up another innovative course in legal history, entitled Scots Law and the Western Legal Tradition. But by 1995 he had become disillusioned with what he perceived as the ever more managerial and bureaucratic culture of the university system, and took early retirement in order to carry on exploring the subjects closest to his heart in his own way. That included

teaching at the Institute for Northern Studies in the University of the Highlands and Islands. In 1997, however, he re-engaged with the Faculty of Law as an Honorary Fellow, and continued to be much involved in its life and work for the rest of his time, even after he became Lord Lyon. Many in the School of Law today still have fond memories of the slightly old-fashioned courtesy and congeniality with which, on their first introduction into Old College, he helped ease them socially into the company of other colleagues.

David was also a very effective and engaged supervisor of PhD students. At least three of those who studied legal history in depth under his guidance – Professors John Finlay and Mark Godfrey, who hold their chairs in Glasgow, and myself – have gone on to hold chairs in law in Scottish universities and make substantial contributions to the history of Scots law. The Dutch legal historian Remco van Rhee (now a professor at Maastricht) was another who, as a regular visitor to Edinburgh as a postgraduate researcher in the 1990s, came under David's wing and maintained academic and social contact ever after. It is also rare indeed to find first articles on Scottish legal history published by others in the 1970s and 1980s in which David's help and guidance are not acknowledged by the writer. He was generous with his knowledge, his time and his encouragement – and, in my own case, in steering me so as not to swim out of my depth in matters of Celtic law, genealogy and succession. David also led occasionally doubting colleagues in the foundation of the Centre of Legal History in Edinburgh in 1991, a venture which flourishes to this day. But he was receptive to others' ideas and suggestions on his own material, and was as generous in his acknowledgement of those as he was in giving out his own (see eg Sellar 1984a).

The contributions David himself made in his various fields of interest were legion. Law Faculty colleagues did not perhaps always fully realise the path-breaking and field-leading quality of his scholarship in medieval Highland history and genealogy. His very first article, on 'The origins and ancestry of Somerled', published in the *Scottish Historical Review* just as he completed his apprenticeship at Shepherd & Wedderburn,

was seen for 40 years as the definitive discussion of its particular subject (the 12th-century ruler of Argyll and progenitor of the Clan Donald, who was killed in battle at Renfrew in 1164 while leading a rising against the king of Scots) (Sellar 1966). The argument, that Somerled was descended from an ancient Gaelic princely family long settled in Argyll and with Scandinavian connections, was only displaced by the uncovering of fresh evidence on the matter (Woolf 2005). The 1966 article also brought David into the company of Celticists at Edinburgh University, notably John Bannerman and Ted Cowan, and later on Ronnie Black; they formed what was in effect a discussion group on things Celtic in the University's Staff Club in Chambers Street, the debate helped along by the flow of drams from the Club's famous collection of malts.

Many of David's later articles in the field of Highland history and genealogy were also pioneering works of scholarship on particular topics, a number in particular appearing in the *Notes and Queries of the Society of West Highland and Island Historical Research* (Sellar 1978b, 1981d, 1982, 1983a, 1984b, 1986a, 1986b, 1991c, 1991d). Perhaps their overall theme is best epitomised by the title of one that appeared in the proceedings of an Inverness Field Club conference on the medieval Highlands: 'Highland family origins: pedigree making and pedigree faking' (Sellar 1981a). A strong thread already evident in the Somerled article was the Scandinavian presence in the early medieval Western Isles and Argyll (including Knapdale and Cowal), and the consequent interplay of Norse and Gaelic blood in clan origins and descents. To the Gael, however, the Western Isles were *Innse Gall* – the isles of the foreigners, that is the Norse. Among the families whose medieval and earlier history was explored by David, the Clan Donald Lords of the Isles and the other descendants of Somerled (the MacDougalls and the MacRuairis) held a particular fascination (eg Sellar 1986a, 1986b, 2000a, 2005a). But numerous other clan genealogies were illuminated by his studies: for example, those of the MacLeods, MacSweens, Lamonts, MacNeills, and many others (Sellar 1971, 2000b, 2017).

David was also fascinated by the mix in the Lennox area around Loch Lomond, which had once been part of the British kingdom of Strathclyde and in which were to be found, he argued, the origins of the Campbells and the connected clan of MacArthur of Darleith in Bonhill, Dunbartonshire. Of particular significance to this argument was the Campbell fondness for the forename Arthur, otherwise uncommon in medieval Scotland and harking back to the legendary king of the Britons (Sellar 1973, 1974).

The most comprehensive account of any clan produced by David was, however, a commissioned one, a history of the Clan MacNichol, Nicolsons of Scorrybreac in Skye. 'The Nicolson claim to high Norse descent', wrote David, 'is wholly credible' (Sellar 1999: 5). David liked to refer affectionately to one of the book's commissioners as 'the Coca-Cola baron', because his father had been President and Chairman of the Coca-Cola company, the son and his brother had also followed business careers in that organisation, and the first son had in 1994 acquired the ancient barony and castle of Balvenie in Banffshire. The commission's end result is a handsomely produced and copiously illustrated volume. David's contribution is a *tour de force*.

Much of this (and, indeed, much more) found its way in summary form into David's numerous contributions to such publications as the *Oxford Dictionary of National Biography* (Sellar 2004c), the *Atlas of Scottish History to 1707* (Sellar 1996a), the *Companion to Gaelic Scotland* (Sellar 1983b) and the *Historical Atlas of Scotland 400–1600* (Sellar 1975). David's research drew extensively on comparisons with Ireland in particular, and also with Wales. Towards the end of his career he became very interested in the possibility that DNA evidence could throw new light on historical genealogical questions (Sellar 2011a: 92–5; 2017).³ Sometimes genealogical links took David into more lowland territory: it was a Campbell connection, for example, which led to a study of the genealogy and the heraldry of the family of Spens of Lathallan (Angus). Heraldry provided crucial evidence of genealogy: in the Spens case, for example, the arms included a Campbell gyronny quartered, pointing

to the marriage of a Spens with a Campbell heir-ess which could then be corroborated with documentary evidence (Sellar 1983a, 2005b).

It was particularly appropriate for David himself to become armigerous as a way of marking his appointment as Lyon. His arms are published on the title page of the pamphlet in which this memoir first appeared in 2020. The ensigns armorial take the form of an escutcheon (shield), *Azure, on a chevron argent between in chief two open cups Or in base and a blacksmith's hammer Proper shafted, of the Third an open book Proper binding and fore-edges gules*. The two cups (with their presumed content) offer a punning play on David's surname, with the book representing his learning and the hammer his own descent ultimately from generations of blacksmiths in Banffshire. The motto is 'DOCENDO DISCES' (teach and learn).⁴

As the Spens example well demonstrated, heraldry is also a way of linking names: 'one of the most cherished rules of Scottish heraldry [is] that all those of the same surname, related or not, should have arms which are recognisably linked' (Sellar 2005b: 10). David also enjoyed speculative discussions about the possible significance of first names occurring across successive generations of families and as, perhaps, reflections of a name-holder's parentage in either or both of the male and female lines of descent. The Campbell fondness for the name Arthur, already mentioned, is a possible example. But I am aware of only two, relatively short, published studies by David of first names in their own right (although note also Sellar 1999: 13–14). The first dealt with the significance to be attached to the use of Scandinavian personal names such as Gofraid, Rognvald and Harald in the Northern and Western Isles (including Man), and their transmogrification, first into Gaelic, then English (Sellar 2005c).⁵ The other article considered the variety of puzzling forms of the first name of the Countess of Atholl found in mid-13th-century documents. David pinned the name down as the Gaelic Forbflaith, carrying the meaning of 'overlordship' or 'sovereignty', denoting the Countess's high aristocratic status and descent (Sellar 2004a).

All historians are conscious of the intellectual debts they owe their predecessors. David acknowledged his to William Forbes Skene (1809–92) as a historian of Highland Scotland in a Rhind Lecture given to the Society of Antiquaries of Scotland (Sellar 2001a). This was a remarkably interesting account of Skene's life and work, not only as a historian and editor of key documents, but also as a practising lawyer, antiquarian, administrator of Highland famine relief between 1846 and 1850, and churchman. David naturally provided a genealogy of the Skene family back to the 15th century, and also one of the family of Forbes of Pitsligo (from which Skene's mother came), giving rise to a number of important business and antiquarian connections in his career. There is also a thoughtful account of the controversies about Gaelic history to which Skene's work gave rise. Finally, and reflecting yet another of David's many interests, Skene's contribution to Arthurian studies is assessed.

Discussions of genealogy and descent inevitably involve consideration of the social and legal worlds in which the subjects lived, and David's earliest published works on legal history are visibly connected to his genealogical and Highland interests. Following his own motto, they also reflect themes that he had initially developed through his honours course at Edinburgh in the 1970s. 'Marriage, divorce and concubinage in Gaelic Scotland', first delivered as a lecture to the Gaelic Society of Inverness, explored the subject of what, following Kenneth Nicholls (1972), he termed 'Celtic secular marriage', the rules of which were quite distinct from those of medieval canon law. This explained many otherwise puzzling successions in the clan genealogies to quite a late period (Sellar 1981b). A notable review article on Dr Alfred Smyth's 1984 volume on early Scotland tackled the topic of matrilineal succession among the Picts, on which Smyth had espoused doubts that in David's view were untenable (Smyth 1984; Sellar 1985). In 1985 he delivered an O'Donnell Lecture in Edinburgh, entitled 'Celtic law and Scots law: survival and integration', in which he set out a mass of evidence for the survival of originally Celtic law and custom into, again, a much later period than

hitherto assumed (including estate accounts from his own time at Shepherd & Wedderburn showing ‘cane’ (ie Gaelic *cáin*) as a column heading for renders made by tenants) (Sellar 1989). (See also Sellar 2001b.)

Another theme of David’s honours course was ‘continuity’, by which he countered the previously prevailing orthodoxy of Scottish legal history as, in Lord President Cooper’s words, ‘a series of false starts and rejected experiments’. A good sense of the way the content of the honours course challenged the Cooper thesis is to be found in David’s contribution (Sellar 1991a) to a joint publication by the Saltire and Stair Societies, *The Scottish Legal Tradition* (which also includes Lord Cooper’s original Saltire Society pamphlet of the same title (1949), whence the ‘false starts and rejected experiments’ quotation). The survival and integration of Celtic into general Scots law was the first example of how wrong this characterisation was. Another, David argued, was the influence, from the 12th century onwards, of the developing English common law. The Wars of Independence between the 1290s and the 1330s did not bring this influence to an end, as Cooper had suggested. David contended in 1981 that this continuing English influence could be detected in Stair’s *Institutions of the Law of Scotland* (1681; 2nd edition 1693), in particular in the law of succession to land, and in Stair’s use of court decisions as recent custom and a source of law (Sellar 1981c). The theme was developed even more strongly in a paper entitled ‘The common law of Scotland and the common law of England’ (Sellar 1988). Only in the 16th century had the two systems begun to move significantly apart, with the establishment of the Court of Session as a College of Justice in 1532 being a critical event in that process.

An example mentioned in this paper as worthy of fuller study, the law of homicide, received that study in a British Legal History Conference paper in 1989 in ‘Forethocht felony, malice aforethought and the classification of homicide’, later published in the conference proceedings (Sellar 1991b). Here, however, the importance of continuing canon law influences alongside those of English common law was highlighted. This

study remains the point of departure for current discussions of the subject (Grant 2007, 2014), with David himself returning to it to show its importance in understanding contemporary perceptions of Robert Bruce’s killing of his rival John Comyn of Badenoch at Dumfries in 1306 and King James II’s assassination of the 8th Earl of Douglas in Stirling Castle in 1452 (Sellar 2005d).

All these publications presented a challenge, not only to Lord Cooper’s false starts and rejected experiments, but also to the widely held view that by 1707 Scots law was essentially a civilian system of law which began to be overlaid with English law only as a result of the Anglo-Scottish Union. David took the view that much of the *ius commune* influence in pre-Union Scots law was the result of the significance of canon rather than Roman law within the overall legal system in Scotland after as well as before the Reformation of 1560. This view emerges particularly clearly in a study of marriage by cohabitation with habit and repute (MCHR) published in a volume honouring the recently deceased Sir Thomas (T B) Smith. David argued that historically MCHR derived from canon law, in which it had been merely evidence of the parties’ exchange of consent, the sole basis for Christian marriage. MCHR was not therefore an independent form of constituting marriage (Sellar 1992; see further Sellar 1995).

In a further paper, contributing to the quinquenary celebrations of the University of Aberdeen in 1995, David argued for the resilience of the medieval Scottish common law, drawing in particular on the writings of Thomas Craig around 1600 (which, like those of Stair and also Lord Kames, he greatly admired) to suggest that in the hierarchy of legal sources at that time Roman law ranked after canon law, with native written and customary law ranking above both (Sellar 1997a; see too Sellar 2001b). As hinted in some of the other contributions to the volume in which David advanced these arguments, his case may have been over-stated; but it is important to realise that he was at least in part reacting to previous over-statements in the opposite direction. David certainly opened the way towards the much more nuanced understandings of these matters which

now prevail. A carefully balanced contribution on these themes from David himself came in his 1997 Stair Society Lecture (Sellar 2000c). His most powerful example of the combination of English and canon law influence was always the law of succession, on which he produced a final contribution in a collection of comparative and historical studies. There he concluded that the most important influence on the Scots law of succession to heritage was the English common law, while moveable succession rules resulted from a blending of customary law and Christian practice rather than canon law as such. Roman law influence was more terminological than substantive (Sellar 2007a).

In the early 1990s David began an almost two-decades-long collaboration with me that ultimately produced contributions to each of three volumes in the Gerda Henkel Stiftung series of Comparative Studies in Continental and Anglo-American Legal History, as well as developing individual and joint contributions to *A History of Private Law in Scotland*, published in 2000. The subjects of the collaboration were the doctrinal histories of unjust (as David preferred to call it) enrichment, negligence, and promise and *jus quaesitum tertio* (Sellar and MacQueen 1995, 2000, 2001, 2008; see also Sellar 2000d and MacQueen 2000). Together we enjoyed and gained a great deal from extensive interactions over several years with English and Continental European legal historians under the leadership of Professor Eltjo Schrage of Amsterdam.⁶ David would go on to edit (with Professor Richard Helmholz) and contribute to another volume in the Gerda Henkel Stiftung series, this time on the law of presumptions (Sellar 2009). He and Martin Hogg became the Scottish contributing team for an unjust enrichment volume in the series *Ius Commune Casebooks for the Common Law of Europe* (Sellar 2003a).

David's European reputation as a legal historian, perhaps first manifested in an invited contribution to the *Zeitschrift für Neuere Rechtsgeschichte* (Sellar 1987a), was further confirmed by his participation during the 1990s in three projects of the Société Jean Bodin pour L'Histoire Comparative des Institutions: the first

on custom in Scots law (Sellar 1990); the second on *actes à cause de mort*, again reflecting David's interest in the law of succession (Sellar 1993b); the last on *l'assistance dans la résolution des conflits*, where he briefly explored kin- and clan-based justice, arbitration, regular judicial process and the customary institution of the 'birlawmen'. The last, he suggested, was, etymologically at least, of Old Norse origin (Sellar 1997b). As will be seen below, he would return to this last topic later in his career.

All these European projects led to a deeper appreciation of the complex contexts for and influences in the development of Scots law. In particular, David gained a great deal for the work he was doing at the same time on the modern law of unjust enrichment for volume 15 of the *Laws of Scotland: Stair Memorial Encyclopaedia* (Sellar 1996b). Essentially finished before the great case of *Morgan Guaranty v Lothian Regional Council* 1995 SC 151 began a process of re-orienting Scots enrichment law completely, David's article is in many ways a final and definitive statement of what is now seen as the old law of the three Rs (restitution, repetition and recompense), together with an analysis of its many difficulties and uncertainties. It still repays study as a discussion of the pre-*Morgan* cases, even though the law finally took off in a different direction in *Shilliday v Smith* 1998 SC 725. David remained critical of *Shilliday's* recasting of the three Rs as remedies rather than actions (Sellar 2001c), but he refrained from any further contribution on what is still a vexed subject.

Another interest of David's from early in his academic career was custom as a source of law. 'In a sense,' he wrote, 'the story of custom as a source is the story of the common law of Scotland itself' (Sellar 1987b: para 355). This is a quotation from a substantial article on the subject for the *Stair Memorial Encyclopaedia* in which he was also fully alert to custom's role in a more local fashion. Three years later he epitomised the article in the first of his contributions to the projects of the Société Jean Bodin pour L'Histoire Comparative des Institutions (Sellar 1990). His general interests made it inevitable that he would also wish to engage with the survival of Norse

or Udal law in Orkney and Shetland, a topic that had formed a significant part of David's honours course on the History of Scots Law in the later 1970s (Sellar 1987b: paras 387–8). The subject had also been one of intense interest to T B Smith, General Editor of the *Encyclopaedia*. At Smith's insistence, David was already an informal historical consultant on all *Encyclopaedia* articles that had relevant content. When Smith died in 1988, David took over editorial responsibility for the *Encyclopaedia* article on the subject, although when published, Smith's previously written 'editorial excursus' on Norse law and Scots law and on issues of sovereignty in the Northern Isles was retained to follow the other contribution (Ryder 1989; Smith 1989).

This work on Udal law led later to David's involvement in a research project on landscape, law and justice led by Professor Michael Jones (Trondheim), within which David's principal output was an article in the *Norsk Geografisk Tidsskrift* on the Land Reform (Scotland) Act 2003 (Sellar 2006; see also Sellar 2003b, 2004b, 2005b). But the project also stimulated David's most original investigation of customary law, into the already mentioned subject of birlaw courts and birleymen. In this he was greatly helped by working with Scandinavian scholars. Birlaw courts and birleymen in Scotland enjoyed a highly localised jurisdiction over economic matters and 'good neighbourhood' issues, and vestiges of their work can still be identified today: another example of survival and integration. David's initial hypothesis, already referred to, was that the institution was of Scandinavian origin. His detailed paper on the subject, first advanced at the British Legal History Conference in Dublin in 2003, then further developed as a contribution to the Stair Society's seventh Miscellany volume published in 2015, confirmed that hypothesis with a wealth of detail (Sellar 2005e, 2015). The immediate origin for Scotland was the Danelaw of the 11th century in northern and eastern England; whether the birlaw customs there came from Scandinavia or were, perhaps, born of specifically Danelaw conditions from which the customs could then

spread, not only to Scotland, but also back to Scandinavia, was a question David chose to leave open.

Other shorter pieces on legal history by David abound: for example, articles on lawyers from the 17th to the 19th centuries in the *Oxford Dictionary of National Biography* (Sellar 2004c), on the statutory abolition of feudalism (Sellar 2001d), and more general pieces on Scots law and legal writers in the *Edinburgh History of Scottish Literature* (Sellar 2007b), the *Oxford Companion to Scottish History* (Sellar 2001b), and (revising contributions originally drafted by T B Smith) the *New Companion to Scottish Culture* (Sellar 1993c). He also contributed a piece on law, courts and people to a handsomely illustrated collection on medieval Glasgow (Sellar 2007c).

Re-reading half a century of scholarly work reminds me not only of David's considerable intellectual powers, but also of his ability to write with ease and fluency on the most rebarbative of subjects, including a gift for adding into the mix telling stories from his many encounters in the field from his time in the Scottish Land Court onwards. He was an incisive, yet always kindly, reviewer of others' work; criticism was almost invariably tempered with praise.⁷ He was also very active in the Scottish Legal History Group from its foundation in 1981, when it was set up to add something to the study of the subject beyond what was offered at the time by the possibly somewhat staid approach of the Stair Society. David was the Group's secretary from 1990 to 1996 (innovating the now traditional pre-lunch sherry at its annual meetings), and its chair from 2006 to 2012.

The trust and confidence which he inspired in others in his special fields is apparent from the many other positions of responsibility additional to the already mentioned Vice-Presidency of the Antiquaries to which he was appointed or elected before he became Lyon: secretary of the Company of Scottish History Ltd (publishers of the *Scottish Historical Review*) 1972–77; Literary Director of the Stair Society 1979–84, Vice-President 2013–17; President of the Scottish Society for Northern Studies 1984–7; Chairman of Council

in the Scottish History Society 1998–2001; Chairman, Conference of Scottish Medievalists 2000–3; Honorary President, Scottish Genealogy Society, from 2009; and member of the Ancient Monuments Board 1991–7.

Although David liked to joke that he had begun his professional life in a court for crofters and was finishing it in a court for chiefs, appointment as Lord Lyon did not quite bring his scholarly career to an end. Issues arose in the Lyon Court which brought his legal-historical scholarship into play. For example, in 2010 Lyon Sellar refused the petition of Willi Ernst Sturzenegger of Arran to be recognised as ‘Feudal Earl of Arran’ (given that there is already an Earl of Arran, one of the subsidiary titles of the Duke of Hamilton). The Lyon’s Note in explanation of his decision discussed the history of the Scottish peerage styles and the meaning of ‘baron’ and ‘barony’ in Scots law, to draw the conclusion that pre-fixing those or any other title of dignity with words like ‘feudal’ or ‘territorial’ was legally meaningless (*Sturzenegger Petitioner (No 2)* 2015 SLT (Lyon Ct) 2, also available on the Lyon Court website: https://www.courtofthelordlyon.scot/index_htm_files/ARRAN.PDF). David also investigated the early history of the Lyon in a lecture to the Heraldry Society of Scotland (Sellar 2011b). There he supported with fresh evidence the belief of his predecessor Sir Thomas Innes of Learney that the office descended from that of the *seannachie* of the kings of Scots, who recited a new king’s pedigree as a key part of the royal inauguration ceremony, perhaps from as far back as the 9th century. Much else of his research and writing over the years – ranging from King Arthur to the dynasties he identified among the early modern Scottish bench, bar and jurists – lay still unpublished at his death. Perhaps most unfortunately for us, he was never one to rush into print.

Tall, always fair-haired, and heavily bearded from the mid-1970s on, David cut a fine figure in his Lyon’s tabard of office, worn for State occasions. The portrait of him presented to the Lyon Office in 2015, painted by Guy Kinder and commissioned by Alexander McCall Smith (a friend

who had been a colleague in the Edinburgh Law Faculty from the early 1970s), shows him in the tabard together with his baton and collar of office. A memorable photograph of Lyon Sellar shows him stiffly on guard with Garter King of Arms on the steps of St Paul’s Cathedral in London during the National Service of Thanksgiving for the Queen’s Diamond Jubilee on 5 June 2012. Apparently both gentlemen felt that they stood stock still on their heels on a narrow step above a steep drop for what seemed like an eternity. One consolation was that David became the first Lyon to be represented in a Peter Brookes cartoon in the *Times* newspaper (5 June 2014). A physically less demanding occasion, which nonetheless involved the donning of another colourful robe and hood, was the award of an honorary Doctorate of Laws by the University of Glasgow in June 2016, with a fine laureation being given on that occasion by David’s former student, Professor Mark Godfrey (2016).

David had known family tragedy before his marriage and bore its long-term consequences with great dignity and fortitude.⁸ Marriage with Sue at St Columba’s by the Castle in Edinburgh in 1981 brought him much personal happiness, a stepson (Andrew) and, in due course, three sons (Duncan, Niall and Gavin). He took huge pride and pleasure in them all and was further delighted by the eventual arrival of five grandchildren (most of them, as the genealogist no doubt noted, girls). The attendance at his funeral in Warriston Crematorium on 23 February 2019 made manifest how widespread was the affection and admiration for David; the University flag at half-mast over Old College that day symbolised its grateful respect for one of its own.

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NOTES

- 1 See the collection of essays marking the centenary of the Scottish Land Court (2012), particularly the contributions of Lord McGhie ('The Gibson Years'), Walter Mercer ('The Post-Gibson Chairmen', especially at pp 79–83, where Lord Birsay's time is covered: one can readily see from this why David admired and empathised with Birsay both personally and politically), and Isabel Steel ('Circuit Life – from Horse to Helicopter', from which an impression of the typical experiences of a legal assessor in the Court can be gained). See also Sellar 2004b.
- 2 See the Marriage (Scotland) Act 1977 s 2 and Schedule 1 (as first enacted); Incest and Related Offences (Scotland) Act 1986 (repealed by the Criminal Justice and Licensing (Scotland) Act 2010 Sch 7 para 15; the law is now contained in the Criminal Law (Consolidation) (Scotland) Act 1995 ss 1, 2 and 4).
- 3 David was particularly influenced by the work of the Professor of Human Genetics at Oxford University, Bryan Sykes (2001, 2003 (especially chapter 16) and 2006 (especially chapters 10–12)). Sykes was an invited speaker at a conference of the Scottish Medievalists when David was its Chairman from 2000 to 2003.
- 4 The grant of arms, which narrates David's paternal ancestry back to the late 19th century, is registered at the 128th page of the 86th volume of the Lyon's Public Register of All Arms and Bearings in Scotland. At David's funeral his widow Sue told the mourners that David's school nickname had been 'Salt'. Black (1946) thinks that the origin of the surname Sellar is more likely to be Middle English *seler*, a saddler, than Anglo-French *seler*, *celier*, from Old French *celier*, a cellarer. The surname is attested in north-east Scotland from the late 13th century on, but had become common in Glasgow by the 16th century. David never admitted to any relationship with the notorious Patrick Sellar of Highland Clearances infamy, or to any connection with Patrick's descendant, W

C Sellar, of *1066 and All That* fame (despite the latter Sellar's strong Fettes College connection).

- 5 This includes the suggestion that 'Hector', falsely derived from Gaelic 'Eachann/Eachunn', is ultimately Norse 'Hakon'. The name is rendered as 'Hercules' in Shetland.
- 6 An enduring memory of this period is of a boat trip on the canals of Amsterdam and the great interest shown by many distinguished legal historians as well as me in the canal-bank activities as we passed through the city's well-known 'red light' district.
- 7 See e.g. (1981) *Notes and Queries of the Society of West Highland and Island Historical Research* 16: 3–6; (1987) *Scottish Historical Review* 66: 200–3; (1998) *American Journal of Legal History* 42: 105–6; (2005) *Edinburgh Law Review* 9: 340–1.
- 8 See *Sellar's Curator Bonis v Glasgow Victoria and Leverndale Hospitals* 1973 SLT (Notes) 3.

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