The Community of the College of Justice

Edinburgh and the Court of Session, 1687–1808

John Finlay

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Acknowledgements should probably be kept short, even if the list of intellectual debts is long.

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I ought to confess that one of the sources I have used, my own edition of the Admission Register of Notaries Public in Scotland 1700–1799, is still in preparation and has not yet been published. Although this is unusual, I felt it would be more useful to refer to this text than directly to the manuscript registers, and I apologise if readers, pending publication of the text by the Scottish Record Society, should find this inconvenient.

Finally I would like to dedicate this book to my parents and also to my dear friend, Ilenia Ruggiu.

John Finlay
Stair Building, Glasgow
1 December 2011
Abbreviations and References

DEPOSITORIES

AL Advocates Library
BL British Library
DAC Dumfries Archive Centre
ECA Edinburgh City Archives
EUL Edinburgh University Library
GCA Glasgow City Archives
GUA Glasgow University Archives
GUL Glasgow University Library
NLS National Library of Scotland
NRS National Records of Scotland (formerly National Archives of Scotland)
PKCA Perth and Kinross Council Archive
SCA Stirling Council Archives
Spec. Coll. Special Collections Department (EUL, GUL)
TCM Edinburgh town council minutes (held in ECA)

SECONDARY SOURCES

ARNP Finlay, ed., Admission Register of Notaries Public in Scotland, 1700–1799
JR Juridical Review
SHR Scottish Historical Review
TDGNHA Transactions of the Dumfriesshire and Galloway Natural History & Antiquarian Society

MANUSCRIPT COLLECTIONS AND OTHER RECORDS

ALSP Advocates Library, Session Papers
CS1 Court of Session, books of sederunt
FR Faculty Records, Faculty of Advocates
GD220 Montrose papers
GD495 Papers of the WS Society
HMC Historical Manuscripts Commission
Min. Bk Minute Books of the Faculty of Advocates (Stair Society)
RPS Records of the Parliament of Scotland to 1707
SLSP Signet Library, Session Papers

OFFICE HOLDERS

Adv. Advocate
AFC Advocate’s first clerk
BEx(S) Baron of Exchequer in Scotland
CBEx(S) Chief Baron of Exchequer in Scotland
DCS Depute clerk of session
HMA Lord Advocate
JP Justice of the peace
LJC Lord Justice Clerk
LP Lord President
NP Notary public
PCS Principal Clerk of Session
SCJ Senator of the College of Justice (Lord of Council and Session)
SG Solicitor general
WS Writer to the signet
Introduction

The union of any number of persons occupied in one employment constitutes a College. Such are the College of Cardinals, or sacred college,—*Le College des Avocats*,—*Le College de Secretaires du Roi* in France,—The College of Heralds, &c in England,—Colleges of Literature everywhere.—The selection of Judges and Lawyers, made at this period in Scotland for the constant determination of the civil affairs of the kingdom, was with much propriety termed *The College of Justice*.¹

The following study aims to identify and examine the lives and activities of those who made up the community of the College of Justice in Edinburgh between 1687 and 1808. Since the College was founded in 1532 as Scotland’s central civil court, and can trace its institutional structure back to the early fifteenth century, it may be asked why those particular start and end dates were selected.² The answer is that they reflect two important events. The first was an act of sederunt in 1687 by which the judges (properly known as lords of council and session or senators of the College of Justice) provided an authoritative definition of its membership, one which expanded significantly on the situation in May 1532.³ The second was legislation in 1808 which saw the restructuring of the court into two divisions, a form still recognisable today.⁴ Between these events the surviving historical sources are relatively plentiful, at least compared to the period prior to the Restoration, and allow us to gain a good appreciation of the day-to-day environment of the College.

This book is concerned with the idea of ‘community’, but this word also needs explanation and this chapter will investigate its meanings. The community of the College was quite separate from the community of Edinburgh in which the College, a national institution, was situated. Yet, in another sense, it formed an important part of that community. In modern terms, the European institutions in Brussels and Strasbourg, or the United Nations in New York, share this same quality of particular communities with special privileges temporarily living within a wider community with whom they share the same social space. At the same time, the College itself
THE COMMUNITY OF THE COLLEGE OF JUSTICE

contained more than one community and more than one type of community. It consisted of lawyers, judges, clerks and ancillary office-holders. Some of these were joined together in their own professional societies and some developed less formal bonds of self-interest linking them to fellow office-holders or, simply, to those who shared the same writing chamber. At all levels within the College there were also family, financial, and political networks that created relationships and communities of different kinds.

THE COMPOSITION OF THE COLLEGE

The business of the College of Justice was the delivery of justice to the king’s subjects. The judicial function was paramount and all the members of the College, and many of those they employed, were subservient to it. It might be said, therefore, that the community itself existed only to meet the needs of the lords of session. Some members did this in a way that is immediately obvious, such as the advocates who presented detailed arguments on points of law for the judges to consider, or the house-keepers who ensured that order was kept in precincts of the court. Others had roles that were less immediate and their work is less obvious. That being the case, it is helpful to give a short formal statement of the membership of the College. The following, which dates from 1761 but is based on the act of sederunt of 23 February 1687, is one of the shortest complete definitions:

The College of Justice was instituted in the reign of James the 5th Anno 1532. The Members of this College are very Numerous, such as – 1st The Judges, who are called Lords of Session or Senators of the College of Justice, 2dly The Advocates 3dly The Clerks of Session, 4thly The Writers to the Signet, 5thly The Director of the Chancery, his Deputy & two clerks 6thly The Writer to the Privy Seal & his Deputy 7thly The Clerks to the General Register of Hornings, Sasing &c 8th The Macers 9thly The Keeper of the Minute Book 10thly The Keepers of the Rolls 11thly The Extracters of Decrees 12th One Clerk belonging to each of the Judges 13th One Clerk belonging to each of the Lawyers 14th Two Clerks appointed by the Lord Clerk Register for Keeping the Public Records 15th The Keepers of the Session House, & Lastly The Keeper of the Advocates Library.

There had not always been sixteen categories of office-holder. Hannay, in his classic study of the early College, refers to the ‘inclusive tendencies’ of those who held privileges which caused them to extend those privileges to others. The judges, who had acknowledged to Queen Anne in 1708 that the privileges of the College had been ‘confirmed & often augmented’ by the crown in every reign since 1532, were themselves willing to innovate.
1687, for the first time, they as College members had one servant each for themselves, one for each advocate, and also the keeper of the Advocates Library, an institution not yet imagined in 1532 and still not yet formally opened. Similar privileges, albeit not actual membership of the College, were granted to members of the justiciary court in 1692 and then to members of the Court of Exchequer when it was created in 1708.

The growth of the College sparked tension with the local town council. It is true that being the seat of justice attracted many litigants to Edinburgh and boosted the local economy, as did the spending power of College members and, increasingly, the incidental benefits which the law brought to the printing and other trades. Among their privileges, however, College members claimed freedom from local taxation and, as the number of members increased, this represented a growing loss of revenue for the town. As the dean and Faculty of Advocates liked to point out, when parliament taxed the ‘inhabitants’ or ‘burgesses’ of Edinburgh, the judges never construed this to mean College members, since they were ‘looked upon to be only temporary residenters for the Service of the ledges during the sittings of the Courts’. For generations, the council had tried to have this tax exemption removed. In 1637, for example, the advocates had responded to one such threat by seeking to defend their ‘ancient priviledges and immunities’ with a supplication to parliament. Stressing the high status of advocates in Rome, particularly in the time of the Emperors Theodosius and Valentinian, they based their claims upon the recognition of similar privileges which were agreeable to the customs ‘of all peoples and kingdoms in all ages’ and, not least, in contemporary France where the noble status of the avocat had been recognised by the king. The Scottish parliament, they claimed, would have no wish to discourage those ‘free and lairned spirits’, the next generation of advocates, from following their vocation and, indeed, had defended their privileges on several occasions.

THE SETTLEMENT OF 1687

In 1686 parliament passed an act for cleansing the streets of Edinburgh. This imposed liability on the magistrates collectively, for a fine of £1,000 payable to the lords of session, should they fail, through negligence, to clean the streets and purge them of beggars. They were to report any proposals they had for doing so to the lords of session who were empowered to impose, with the consent of the magistrates, ‘such taxes upon all the inhabitants, burgesses and others within the said town … as they shall find just and necessary for purging and cleansing the said town’.

College members, disturbed to find that the legislation neglected to mention their traditional privileges, set out to defend them. In terms of
realpolitik, they were in a reasonably strong position to do so. The dean of
the Faculty of Advocates, Sir George Mackenzie of Rosehaugh, removed as
lord advocate in May 1686, was perfectly free to lend his weight to their
arguments.\textsuperscript{15} He was also a recent creditor to the town council.\textsuperscript{16} In fact,
many College members, including the lords of session, regularly lent money
to the council which, only in June 1686, had borrowed 12,000 merks from
Roderick Mackenzie PCS.\textsuperscript{17}

The result of this dispute has the appearance of a compromise. College
members, including the lords of session, the advocates, clerks and writers to
the signet, voluntarily agreed to contribute ‘their respective proportions’ of
an annual £500 tax (or ‘stent’) which the lords ordered to be imposed for
three years on the inhabitants of Edinburgh and its suburbs.\textsuperscript{18} ‘This was not
to prejudice their ‘privileedge of being free from all stents and impositions
within the towne of Edinburgh’. In fact, this was a victory for College
members in two respects. First, they had brought an action of declarator
inviting the judges to define their privileges in detail, and this they
proceeded to do in a decreet on 23 February. To ensure fairness, the judges
in their decision also made arrangements for an advocate and a writer to the
signet from each quarter of the town to oversee the collection of any tax
imposed by parliamentary authority on College members. Secondly, the
decreet provided the new, more extensive, definition of College membership
that was described earlier, and the legal action had clearly been an oppor-
tunity to appeal to the ‘inclusive tendencies’ of the judges. It prompted
advocates’ servants to persuade the dean and Faculty of Advocates to raise
an argument for College privileges to be extended to them so that they may
be ‘the more incouraged and capacitat to wait upon their employment’.\textsuperscript{19}

The 1687 compromise did not completely bring an end to complaints. In
1718, for instance, there is reference to the ‘great abuses’ of advocates who
were accused of unwarrantably extended the privilege by, among other things,
 FALSELY granting certificates naming men as their principal servants when
they were not.\textsuperscript{20} Though sporadic and continuing, however, complaints did
not mask the inherent pride of the town council in playing host to the
College, nor the usefulness to the town of being Scotland’s legal centre. As
the lord provost wrote to the town’s MP in 1784, Edinburgh’s greatest claim
upon the British public was the building and maintenance of Parliament
House, because it was unique ‘in Brittain that a Corporation should build
& uphold a house for the reception of the supreme Courts of a Kingdom’.\textsuperscript{21}

THE PRIVILEGES OF COLLEGE MEMBERS

By the time of the foundation of the College of Justice, the idea of a college
of judges or lawyers had a long medieval pedigree across Europe. These
ranged from institutions such as the College of Capitoline Notaries in late medieval Rome or the Collegio dei Guidici that were instituted in Italian city states, to the College of Advocates, better known as Doctors’ Commons, in London.\textsuperscript{22} A university college had its own privileges and statutes, and the wider concept of a legal privilege, also familiar within the *jus commune*, would have been well recognised in sixteenth-century Scotland. In canon law, the twelfth-century *Decretum* of Gratian notably recognised privileges as ordinances made for the benefit of private individuals; in effect, exempting them in some particular ways from the general law.\textsuperscript{23} Ultimately, however, they were made for the wider benefit of the res publica.\textsuperscript{24}

For members of Scotland’s College of Justice, two types of privilege existed: those unique to a particular group and those general to all groups. The general privileges were four in number. First, College members had the right to have any legal action concerning them removed from an inferior court and heard by the lords of council and session. An example of this is a prosecution brought before the sheriff of Sterling in 1738 against James Graeme of Buclivie, advocate, for beating one of his tenants over the head with his gun.\textsuperscript{25} Graeme’s defence was that he was exempt from the sheriff’s inferior jurisdiction and that the case could be heard only by the College of Justice, the rationale being that if they had to answer cases before inferior local judges it would interfere with their ability to attend in Edinburgh.\textsuperscript{26}

In the second place, College members were exempt from common duties within the burgh, such as the traditional obligation of watching and warding (or any financial payment made in lieu thereof). Third, they were free from customs dues and shore dues (charged at ports for importing foreign produce) on the production of a certificate that any such goods brought into Edinburgh were for their personal use. In November 1688 the council put in place arrangements with the tacksman (leaseholder) of the impost on wines to scrutinise and try to stem the growth of orders of imported wine for the private use of lords of session and others but, in reality, there was little they could effectively do.\textsuperscript{27} In 1783 the then tacksman, John Begrie, brought a complaint narrating that many persons who were importing wine free of duty claimed to be advocates’ clerks who could not possibly be so because they worked in lines of business that were incompatible with the office of lawyer’s clerk, or were clerks to men who had become advocates but were now in the army or had never resided in Edinburgh.\textsuperscript{28} A list of such transgressors was made up and passed to the dean of Faculty. It included Kenneth Mackenzie WS who had received free impost warrants but had allegedly used them to import hogsheads of porter (a dark beer) that were delivered not to him but to a local baker and a vintner, both surnamed Mackenzie.\textsuperscript{29} The tacksmen of the fruit market customs were in an equally challenging position because College members were exempt from the tax
that was imposed on the importation of all ‘fruit and garden stuff’ provided this was for their private use only. The limits of the exemption were explored in one case where it was acknowledged that any College member who converted his house into a fruit shop would be as liable to the tax as any other retailer, as would any who sold it from a stand in the street.

College members did, in fact, own or lease shops and, though they may not have directly engaged in trade themselves, their wives may have done. The advocate James Cochrane and his wife Cecilia Oliphant, for instance, became infeft in shops and vaults in the Lawnmarket in 1744. Ann Strachan, wife of the advocate John Polson, was a well-known milliner. The daughters and heirs of George Chalmers WS took title in 1763 to a shop on the south side of Parliament Close, and David Murray DCS leased a shop in the same area in 1796. Many lawyers had interests in shops but these probably represented investments, and it is not always clear whether title was taken personally or in a professional capacity as a trustee. John Davidson WS, for example, is recorded as selling two shops in Parliament Close to a merchant in 1770; why he came to have title to them is unknown. It was, however, a clear rule that any member of the College who actually exercised a trade, or kept a shop or tavern, lost all the privileges and exemptions which they would otherwise have enjoyed. In 1565 the advocate John Moscrop was alleged to have fallen into this category. In general, however, few College members had what, in the case of eighteenth-century writer-turned-merchant, James Scott, was described as an ‘enterprising disposition’.

The fourth, and most important, general privilege related to exemption from any local tax imposed for the benefit of the town. This included, but was wider than, the stent, that is, the assessment of the value of property within the burgh which formed the basis of a tax payable by those who lived there. College members were exempt from the stent but they were not exempt from the national land tax known as the cess. They elected their own annual stent-masters to meet those appointed by the council and to ensure that the cess was fairly imposed on College members on the basis of a proper valuation of the land they held within the town. The balance of taxation between the landed interest and trade was kept ‘a profound secret in all burghs’ but the College’s stent-masters tried hard, to the point of litigation, to obtain their own copy of entries made in the town’s cess-books. The judges, as the town council noted, conceded them no more than the right, at set times, to inspect the master copy in the presence of the town’s own collectors.

There were pressing circumstances, not least in the compromise of 1687, when the stent might be extended to College members but only with their agreement. A voluntary contribution which they made in 1798, for the benefit of the wives of men fighting abroad, provides an interesting example.
When proposed by the council, the contribution was agreed to by a committee of College members which included judges, the dean of the Faculty of Advocates and the deputy keeper of the signet.\textsuperscript{41} It took the form of an assessment of 2 per cent on the rents of houses, to be applied for two years to all inhabitants including members of the College. Anyone who failed to pay was to be reported to the judges who would authorise legal procedures to be used to recover the debt.\textsuperscript{42} To ensure fairness, and indicative of mistrust, it was again provided that representatives from the College were to be present when the stent was determined, to ensure it was imposed fairly.

The privileges specific to each group within the College will be discussed in later chapters dealing with those groups. By far the most important professional privileges were the advocates’ right of audience and the monopoly which writers to the signet had in dealing with papers relating to legal actions. In the controversial case of Patrick Haldane, whose admission to the bench was blocked for political reasons in 1721–2, it was pleaded that service as an advocate in the College meant

\begin{quote}
attending on that station in which an advocate as such is by his admission privileged to act … [he] has the sole privilege of appearing at your Lordships Bar as procurator for the Leidges, of arguing causes of presenting petitions and answers and giving out and returning processes &c.\textsuperscript{43}
\end{quote}

These privileges had no less an economic value than the right to import wine free of customs.

\textbf{IN DEFENCE OF CONTINUING PRIVILEGE}

In the 1780s the question of College privileges arose again amid a concerted campaign by the council and Edinburgh’s Merchants’ Company. In 1780 the latter had demanded that every city inhabitant should be made to contribute to a tax in support of a police force.\textsuperscript{44} With the charity work-house operating at a deficit, the council wanted to increase its revenues, and pressure fell again on College members to be compelled to contribute. A bill was drafted for this purpose (the so-called ‘Poor’s Bill’ of 1784) which would have imposed a property tax, for the benefit of the poor, on all those in Edinburgh occupying property over a specified rental value.\textsuperscript{45}

College members responded vigorously and collectively, with the advocates and writers to the signet taking the lead. At least three members of the Faculty of Advocates, including George Wallace and (probably) Matthew Ross, made separate remarks and suggestions with regard to a memorial produced for the Faculty.\textsuperscript{46} In the course of this dispute, the legal authorities were reviewed, going all the way back to the original papal bull by which the College was
founded and the earliest case, in 1565, in which the advocates and writers to the signet are known to have defended their freedom from ‘all stents, taxations and contributions quatsumever [whatsoever]’. The council made much of a 1579 statute that had authorised town councils to raise funds from the inhabitants of burghs, without exception, for poor relief. This argument was countered by the consideration that College members had gone almost two centuries free from any compulsory assessment and, in that time, there had been only eight years during which voluntary contributions had been made (1687–90; 1712–14; 1731–4). The defenders were not above mentioning the profligacy of the magistrates, particularly their excessive tavern expenses. In 1786 a joint meeting of the advocates and the writers to the signet took place as both prepared to petition the House of Commons against the council’s proposed bill. In the event, the clause seeking to remove the College’s exemption did not survive the committee stage. The council withdrew it when members of the Commons committee, influenced by the arguments of the Faculty and the Society of Writers to the Signet (henceforth the WS Society), expressed doubts about proceeding until the matter ‘should be tried in a court of law’. It soon was, with the Court of Session in January 1788 unanimously finding in favour of the College. An appeal to the House of Lords was heard but dismissed in 1790 with the costs of their London agent, James Chalmers, being borne equally by the Faculty of Advocates and the WS Society.

THE SIZE OF THE COLLEGE

The distinct groups within the College generally operated in complementary spheres of business. Some regulation was necessary, however, because, since their interests were not identical, there was always the potential for competition between them. Therefore, within a century-and-a-half of 1532, the two largest groups, the advocates and the writers to the signet, had for their members’ mutual self-interest created the WS Society and the Faculty of Advocates. By the eighteenth century smaller groupings, such as the clerks of session, the macers and the extractors, were also active in promoting their own interests. These groups developed their own internal rules, governing everything from the distribution of the fees and profits of office to the question of who was entitled to attend informal end-of-session dinners.

The town council in the seventeenth century had been right to be concerned that were no effective constraints on the growth in size of the College. At its foundation in 1532, the number of members had not been precisely fixed. The lords of session did make provision for the admission of up to ten general procurators (that is, advocates) but this *numerus clausus* disappeared by the 1550s. Later attempts to limit the numbers of
writers to the signet came to an end during the seventeenth century. In 1687 no limits were reimposed and the number of advocates continued to expand rapidly until the 1710s. Some offices, however, were fixed and remained relatively static. For instance, there were never more than four ordinary macers, the number of ordinary lords of session remained fixed, and the six principal clerks of session continued to oversee three separate offices, in each of which remained two depute clerks and four extractors.

To assess the extent to which membership of the College fluctuated, Tables 1(a) and 1(b) look at the admission rate of key groups across the same period, 1700–99 (inclusive). Of these, only the ordinary lords of session were subject to a limit. The notaries public were not by right members of the College but they were drawn from across the country and, though most of them worked in the provinces, many trained as writers in Edinburgh. Indeed, this training is one of the major points of contact which the College community had with local practitioners. It is, therefore, fair to assume that the demand for the services of writers to the signet and notaries is indicative of the general demand for legal services across the country. Equally, it is reasonable to assume that the popularity of the bar bears some relation to the prospects of employment and thereby to the amount of litigation in the Court of Session. The only way to test these assumptions is to consider the rate of admissions across the century and to relate this to what is known about the level of business in the court.

The remarkable thing about the rates of admission is the uniformity of the picture they present. Immediately following the Union of 1707, the number of lawyers within the College began to contract. The intake of advocates and writers to the signet decreased significantly and it did not begin to recover until 1750. Likewise, the number of notaries public also declined from a high point in the first decade of the century, suggesting a decline in the demand for legal services. There is evidence of a similar decline in litigation rates elsewhere in Europe, in places as diverse as Paris, London and Bremen. Between 1726 and 1780, the municipal courts in Bremen saw a particularly dramatic downturn in business in terms of civil cases brought per head of population. In the College of Justice, analysis of the Outer House rolls suggests a very similar pattern of development. There is a clear relationship between the business in the court and admission to the bar and the WS Society. The pattern is broadly mirrored by that of the admission rate of notaries public, with contraction [Table 1(a)] followed by an accelerating rate of expansion [Table 1(b)].

The tables reflect patterns of office-holding within the College and permit comparison with two groups of non-College members; locally, procurators in the bailie court of Edinburgh, and, nationally, notaries public. The figures do not necessarily represent discrete individuals because the same man might
Table 1(a) Admissions per decade, 1700–49

<table>
<thead>
<tr>
<th>Category</th>
<th>1700–09</th>
<th>1710–19</th>
<th>1720–29</th>
<th>1730–39</th>
<th>1740–49</th>
<th>Total</th>
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</thead>
<tbody>
<tr>
<td>Ordinary lords</td>
<td>10</td>
<td>7</td>
<td>5</td>
<td>7</td>
<td>3</td>
<td>32</td>
</tr>
<tr>
<td>Advocates</td>
<td>99</td>
<td>85</td>
<td>83</td>
<td>64</td>
<td>33</td>
<td>364</td>
</tr>
<tr>
<td>Writers to the signet</td>
<td>57</td>
<td>31</td>
<td>39</td>
<td>36</td>
<td>30</td>
<td>193</td>
</tr>
<tr>
<td>Edinb. procurators</td>
<td>8</td>
<td>8</td>
<td>7</td>
<td>8</td>
<td>2</td>
<td>33</td>
</tr>
<tr>
<td>Notaries public</td>
<td>314</td>
<td>229</td>
<td>293</td>
<td>295</td>
<td>205</td>
<td>1,336</td>
</tr>
</tbody>
</table>

Table 1(b) Admissions per decade, 1750–99

<table>
<thead>
<tr>
<th>Category</th>
<th>1750–59</th>
<th>1760–69</th>
<th>1770–79</th>
<th>1780–89</th>
<th>1790–99</th>
<th>Total</th>
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<tr>
<td>Ordinary lords</td>
<td>12</td>
<td>10</td>
<td>4</td>
<td>7</td>
<td>11</td>
<td>44</td>
</tr>
<tr>
<td>Advocates</td>
<td>57</td>
<td>71</td>
<td>64</td>
<td>73</td>
<td>98</td>
<td>363</td>
</tr>
<tr>
<td>Writers to the signet</td>
<td>26</td>
<td>45</td>
<td>60</td>
<td>99</td>
<td>133</td>
<td>363</td>
</tr>
<tr>
<td>Edinb. procurators</td>
<td>2</td>
<td>8</td>
<td>8</td>
<td>7</td>
<td>22</td>
<td>47</td>
</tr>
<tr>
<td>Notaries public</td>
<td>228</td>
<td>299</td>
<td>349</td>
<td>381</td>
<td>440</td>
<td>1,697</td>
</tr>
<tr>
<td>College agents</td>
<td>53</td>
<td>6</td>
<td>55</td>
<td>35</td>
<td>44</td>
<td>193</td>
</tr>
</tbody>
</table>

feature in more than one category. David Armstrong, for example, is unique in having been both an agent in the College of Justice and then an advocate although many writers to the signet were notaries public and, after 1707, virtually all ordinary lords of session were former advocates. Of all these categories, only the number of ordinary lords remained fixed, never rising above fifteen (including, for this purpose, the lord president).

The number of bailie court procurators may have been fixed on a de facto basis, because admission depended on the concurrence of existing procurators (formed into a local society) who might wish to limit competition by maintaining a steady number. This was certainly a practice prevalent in other local courts with societies of procurators. There is, however, no absolute evidence to confirm this. Bailie court regulations, produced in 1789 in response to a petition from the ‘Praeses and Society of Solicitors before the Town Court of Edinburgh’, say nothing explicitly of any cap on admissions. The only clue as to why so many new solicitors should have been admitted in 1790s lies in the justification for collecting and revising the regulations, namely:

‘the many alterations of circumstances arising from the Extention of the
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Royalty, the great increase of Inhabitants within the City & Libertys and the various questions and suits which fall under the cognizance of the court. 57

The extension of the royalty (the area of land which the town held of the crown by royal charter) and the development of the New Town were pressures that would also have augmented Court of Session business. If, as seems likely, this helps explain the jump in the number of writers to the signet, wider economic factors must explain the rise in the number of notaries public.

The failure of the College to continue its exponential increase in size at the beginning of the eighteenth century relieved some of the pressure on its relationship with the town council. This was also a period of entrenchment for the College, allowing a number of legal families to consolidate a power base, among them emerging dynasties, such as the family of Dundas of Arniston, the Pringles, Fergussons and Boswells of Auchinleck.

THE COURT AND THE COLLEGE

The community of the College existed solely to serve the court. Although the focus here is not on legal procedure, it is useful to say something about how the court conducted its business. 58 The Court of Session had fourteen lords ordinary and a president. 59 Important decisions were taken by ‘the hail fifteen’, sitting in the Inner House, while a lord ordinary of the week was appointed to sit in the Outer House, dealing with ordinary and extra-ordinary actions. In the case of ordinary actions, which were the vast majority, the lord ordinary would generally make interlocutors on matters of procedure, at various points in the process, and then finally decide the case. In extraordinary actions, dealing with important points such as the reduction of heritable titles, he would prepare the cause for a hearing in the Inner House which exercised an exclusive jurisdiction in such matters. In an ordinary action, if a point of importance emerged, the lord ordinary might report that to his brethren for ‘advising’ or deliberation.

Delegated tasks were also given to the lord ordinary on concluded causes, the lord ordinary on oaths and the lord ordinary on witnesses, all of whom had roles in preparing and ranking evidence in readiness for cases to be reported to the judges in the Inner House. Any judge, except the president, might sit as a lord ordinary, and this was done by rotation. Judges were also delegated to perform other tasks, such as examining the qualification of prospective notaries public. Since Scots procedure favoured fairness over speed, it was possible to reclaim against interlocutors and to do so repeatedly. Lords ordinary were regularly called upon to review their own decisions, as were the judges in the Inner House, and cases could continue for several years without a final resolution.
The Bill Chamber, as well as functioning as a vacation court, dealt with various business, including actions of lawburrows and the granting of authority for certain forms of diligence. It was here that litigants brought bills of advocation and bills of suspension. Through a bill of advocation they sought to have proceedings in Scotland’s inferior courts moved to the Court of Session where it became an ordinary action; by the latter bill, litigants attempted to have an inferior judgment suspended and to have the matter heard before the lords of session. The lord ordinary on the bills (normally the lord ordinary of the week) presided in this chamber which had a separate clerk to those in the Outer House.

Business was conducted in a bustling, often over-crowded, atmosphere. The physical surroundings of the court were described in some detail by Professor William Forbes whose description reinforces the sense of community. The Inner House, a large square room within Parliament House, was entered by the judges from a waiting room in which they, the clerks and the advocates, donned their gowns. It was also here that boxes were placed in which, ‘according to the example of the most famous Judicatories abroad’, the lords and clerks of session received petitions, informations and other papers between set hours every day.

The judges, wearing purple robes faced with scarlet satin, sat around a semicircular bench. In front of them, dressed in black gowns, the six principal clerks sat at a table where, if he were present, the lord clerk register would sit. Opposite the bench was the bar where the advocates attended when they were required to debate before the judges.

To the east of the chamber, in the corner, the lord ordinary on the bills had his own table attended either by the clerk on the bills or his deputy. On the west side of the chamber were two doors leading to the Outer House where the lord ordinary for the week sat on a high bench, set close to the wall. Before him was a long table, at which the depute clerks of session would sit (without gowns, unlike the principal clerks). At a desk, on the left-hand side of this table, sat the keeper of the minute book. Opposite the bench, at a bar known as the fore-bar, the advocates made their pleadings. The passage between the bench and fore-bar was kept free, to be entered only by the lord advocate, solicitor general or their servants, unless a party or witness was required to step forward to take an oath. On either side of the fore-bar were benches where advocates’ clerks could sit, and behind it, enclosed with rails, was a square containing seats where the advocates might sit until called to speak. To gain entry to this area, it was necessary to pass one of the doorkeepers, whose batons marked them out. These black-gowned figures, employed by the Faculty of Advocates, kept out everyone except advocates, writers to the signet or ‘persons of note’.

A staircase on the east of the Outer House led to a loft inside the Inner
House from where the proceedings might be followed. High up, on the west side of the Outer House, there was a window through which the Outer House clerks made announcements, intimating, for example, deliverances made on bills or reading out the minute book.

A COMMUNITY FROM COMMUNITIES

Although the College was thus centred in Parliament House, where the period of its sittings dominated Edinburgh’s social calendar, its members remained rooted in local communities from the Borders to Shetland. These local links they continued to foster; as well as being places of repose during the vacation, local estates brought clients, tenants, income and political influence. Many College members were local justices of the peace. Some, the lords of session, the lord advocate, the solicitor general and (after 1748) the local sheriff-depute were, ex officio, JPs in every county, but others gained appointment in a personal capacity through their landed interests. In Aberdeenshire, for example, eleven advocates, two lords of session and at least one writer to the signet were among the JPs appointed in 1761; the equivalent list for Dumbartonshire contains the names of seven advocates and three writers to the signet. One of them, Ilay Campbell, was also proposed as a JP in Renfrewshire. Charles Areskine, as lord justice clerk (who himself had been appointed a JP in Dumfries in 1750), took advice from local men when nominating new justices of the peace to the lord chancellor. In Dumbarton, he sought the view of the advocate James Smollet, the local sheriff-depute; in Orkney, he asked Patrick Honyman of Graemsay, father of the future advocate and judge, William.

The number of days upon which the court sat decreased markedly, from a norm of about 125 days per year in the 1690s to about 118 days by the 1740s, with a further reduction by the end of the century, with only 112 sederunt days in 1801. This change brought with it a slight adjustment to the timing of the traditional spring and harvest vacations but they broadly continued to cover the months March until May (or, after 1752, mid-June), and August to November, respectively.

The vacations of the court were preceded by ‘the hurry of the session’, as writers and advocates scrambled to present petitions and bills that might secure interlocutors that would delay or discomfit their adversaries, or permit diligence to take place, before the court resumed sitting. This ‘hurry in the heat of a session’, according to Samuel Mitchelson WS, was the only thing that could ‘ever prevent any Client of mine from receiving a return [that is, an instant reply to correspondence] in due course’. The closing days of the session were hectic for judges, advocates and writers alike. So
busy was James Graham of Airth in March 1712 that he lacked time to write to his client, the Duke of Montrose, detailing the outcome of a conference with his fellow advocate Sir Walter Pringle. Instead, as he put it, ‘the hurry of the session’ had obliged him to remit the matter to George Robertson, Montrose’s law agent. According to Robert Dundas, the hurry of the last days of the session ‘cuts off’ all social interaction. At such times, the judges were so busy that often they could do little more than postpone cases until the start of the next session.

These busy periods were the prelude to a mass exodus from Edinburgh. In August 1726 the young advocate Kenneth Mackenzie complained that the town so lacked people ‘that I scarce know any body in it; I never saw it so thin, & [it] affords so little to divert one that is heartily weary of it’. The vacation was the time for judges and advocates to go to their country estates, to catch up on correspondence, to indulge themselves in gardening and estate management or the pursuits of literature and local politics. The first words sent from Edinburgh by Robert Craigie, on being promoted to the important government office of lord advocate, were that he would have to ‘surrender my projects of toiling here eight months and four months at my farm’. It was in the vacations that first-hand accounts of events in Edinburgh made their way into the localities.

Arrival back home was not always an occasion for leisure, as a letter of George Robertson to the Duke of Montrose in 1719 makes clear. Montrose wanted James Graham of Airth to give him his opinion upon two memorials but Graham, one of the busiest advocates at the bar, could not find the time to do so amid the rush at the end of the session. As Robertson put it:

… the throng of business then upon his hand could not allow him to get time to consider & ansyr [answer] them. The Lords did ryse on Fryday and on Saturday Mr Graham went for Airth, and I went with him, and carried the memorials with me. But the throng of visitors & countrie affairs of his own did so take him up whyll I was there, that I could get not time to have his serious thoughts on these memorials, all I could doe was to leave the memorials with him, and he promised to consider them with first conveniencie, and then wryt to yow …

Robertson’s excursion to Airth (near Falkirk) was not unusual. Writers and writers to the signet often took the opportunity in the vacation to visit clients, particularly when there was some legal task to be carried out locally or accounts to be settled. For those leaving Edinburgh to return home, the journey was an opportunity to visit friends. On the way to his estate in Buchan, the advocate and local justice of the peace John Gordon used to spend a day with the Douglas family at Fechil in Aberdeenshire. Sylvester Douglas, who later made his name at the English bar, vividly remembered
that as a boy he was inspired to learn French by a gift of Voltaire’s *Candide* made to him by Gordon on one such trip.⁷⁰

**THE SENSES OF COMMUNITY**

There were many kinds of community within the College, and its members may variously be subdivided into networks linked by family ties, professional relationships and political allegiances. These include: scribal communities, whose members lent and borrowed books and manuscripts and commented on printed legal pleadings; communities of political patronage, within which some eagerly participated in wider electoral manoeuvring; and communities of friendship and support that bound individuals together at all levels of the College, in ways that sometimes cut across their narrow professional functions. The professional associates of the advocate David Armstrong, for example, tended to be drawn, like many of his clients, from his native Dumfriesshire.⁷¹ This was also where Armstrong’s major patrons, the dukes of Queensberry, had their own power base, and it was thanks to them that he and his son successively held the office of sheriff-depute of Dumfries. Local knowledge counted not only for the writers who brought clients to advocates – in Armstrong’s case men from the south-west such as Robert Irving WS and John Syme WS – but for the advocates themselves. The network of Dumfries connections in Armstrong’s career was replicated in similar networks surrounding advocates from Fife, Aberdeenshire and elsewhere, and their neighbourhood connections often also provided links to a judge or two, because the lords of session were also drawn from across the country.

In terms of the strongest bond, family, it is no surprise that sons often followed their fathers into the legal profession. A young man could be trained by his father in the practical arts and styles of the law, with access to his library and office, or he might be farmed out to the writing chamber of a fellow practitioner. Successful law agents (known generically as writers) with an eye to upward social mobility, had the wherewithal to send their most promising sons abroad for education in civil law with a view to sending them to the bar.⁷² The legal profession was seen as a family investment and, in this, Scotland is no different from many other early modern jurisdictions.⁷³ In Naples, for example, according to the German writer, Johannes Brunneman, not only was the son of an existing advocate naturally to be preferred to any outside candidate, he was often admitted to the court free of charge.⁷⁴ On the other hand, this can be pushed too far. Barristers in Toulouse in the period 1750–89 were more than twice as likely as a contemporary Scottish advocate to have followed his father to the bar.⁷⁵

Two scholars, Nicholas Phillipson and John Shaw, have both
investigated the social status of Scottish advocates in the eighteenth century. These studies are helpful although, to some degree, they reflect inherent difficulties in accurately comparing the parental backgrounds of intrants to the Faculty, particularly in terms of wealth and social prominence. Many were the sons of ‘lairds’ yet, as a matter of economic reality, this might include the sons of men in a variety of circumstances, from substantial landholders to men of more limited means. Shaw, in particular, uses a narrower categorisation in comparing members of the bar from 1707 with members of parliament. His general conclusion is that the social status of the bar remained fairly high throughout the eighteenth century, and the legal profession, without attracting members of the nobility of the first rank, did appeal to a significant proportion of men within the higher social groups. This is a fair and useful generalisation. The bar certainly did lose some of its appeal because of the attraction of London after 1707. This was particularly true for potential members of parliament but it applies also to a significant number of Scots attracted south to train, in the words used of Alexander Hume-Campbell, ‘as an English lawyer’.

(a) Marital relationships

Beyond the sometimes hereditary nature of the legal profession, there is much to interest genealogists in the history of the College of Justice. The links between members extended far beyond marriage to include apprenticeship, business relationships – particularly in respect of ad hoc trading ventures – and friendships or relationships based on shared interests, including music and horticulture. As we shall see, the College was a hierarchical body. Even so, links of various kinds, whether or not intended to be the basis of permanent relationships, managed to cut across boundaries of status within the College, at least among its more learned members.

Published sources provide only an incomplete picture of the marital relationships of leading College members, with data on writers to the signet particularly disappointing. It is nonetheless worth reviewing (see Table 2). Of the 556 writers to the signet admitted between 1 January 1700 and 31 December 1799, the vast majority are known to have married, although the identity of the first married partner is known in only 22.4 per cent of cases. Of those, more than a quarter were the daughters of College members, the slight majority of whom (nineteen in number) were fellow writers to the signet. Another twenty-two marital partners can safely be identified as women with a strong Edinburgh connection, the daughters of writers, merchants, magistrates, ministers, one baron of exchequer (Mathilda Cockburn, married to Sir Robert Dundas WS) and four Edinburgh-based ‘civil servants’, for want of a better term. Generally, writers to the signet
seem to have married women whose fathers were professional men, merchants, and craftsmen although sixteen of them married the daughters of baronets.

<table>
<thead>
<tr>
<th></th>
<th>Total</th>
<th>Married</th>
<th>Spouse known</th>
<th>College-related spouse</th>
</tr>
</thead>
<tbody>
<tr>
<td>WS</td>
<td>556</td>
<td>526</td>
<td>119 (22.6%)</td>
<td>35 (29.4%)</td>
</tr>
<tr>
<td>Adv.</td>
<td>727</td>
<td>644</td>
<td>476 (73.9%)</td>
<td>54 (11.3%)</td>
</tr>
<tr>
<td>SCJ</td>
<td>84</td>
<td>82</td>
<td>70 (85.4%)</td>
<td>16 (22.9%)</td>
</tr>
</tbody>
</table>

In the same period, which saw 727 advocates admitted, eighty-three are known not to have married. Information about spouses is available with regard to 73.9 per cent of them, of whom only about one in nine married the daughter of a College member. The rest married daughters falling broadly into the same profile as was the case with writers to the signet although two features stand out. First, a few advocates married above the social level of baronet’s daughter (evidently the glass ceiling for members of the WS society); twenty-three were married to earls’ daughters and three married the daughters of dukes. Secondly, no less than 231 advocates (41.3 per cent) married lairds’ daughters (some of whom would have had strong links to the town of Edinburgh). More than four out of every five advocates, of whose wives we are informed, do, however, appear to have married outside the College and the burgh.

With regard to the smallest group, the eighty-four advocates who were elevated to the bench as ordinary lords of session during this period, the marital status of eighty-two is known. Conclusions can be drawn about the marriages of seventy of them, because ten never married and nothing is known about the wives of the other two. Of these, sixteen married within the College. This is more than double the proportion for advocates in general. A lord of session was also more than twice as likely to be the son-in-law of a lord of session as was true either of the bar as a whole or of members of the WS Society. The particularly limited knowledge concerning the wives of writers to the signet is problematic here. Five of them are known to have married judges’ daughters and this represents 4.2 per cent of the total number of spouses whose origins are known. It seems likely that this percentage figure is inflated, because these marriages were more likely than most to be recorded.

Finally, the close working relationship of advocates with writers to the signet might suggest a basis for intermarriage between these two branches of the profession but barely one in a hundred advocates had a WS as a father-in-law. The traffic was in the opposite direction, with writers marrying
advocates’ daughters although the small sample makes it difficult to extrapolate how common this was. The known figures suggest that about one WS in every twenty married an advocate’s daughter but that, as a group, they were about three times more likely to marry the daughter of another WS.

Only a small minority of College members, therefore, had a father-in-law within the College. There is no necessary link between success at the bar and any family relationship (despite sons often following their fathers into that profession). Men practising there who had an advocate as a father-in-law, like Robert Dalziell or the more successful Andrew Macdouall or Ilay Campbell, might still reasonably expect to benefit from his experience and advice and might even take over some of his clients when he died or retired from the bar. Marrying a judge’s daughter was likewise no guarantee of success but judicial favouritism could be a great advantage and may have assisted the careers of men like Alexander Lockhart, George Brown, David Dalrymple of Westhall, George Carre and Alexander Maconochie, all of whom reached the bench themselves.

(b) Fiduciary relationships

A family or professional link often featured when College members were called upon to act as tutors or curators. Their legal skills, and contacts within the court, were much in demand by those who wanted to ensure the smooth administration of their children’s inheritance in the event of their death. Care, however, had to be taken before agreeing to enter into such fiduciary relationships because they might prove both onerous and risky. Lord Grange was hesitant to become one of the curators of the young Francis Wemyss because the young man had inherited English estates and Grange insisted that advice be taken from English lawyers as to what his potential liability might be should he make negligent acts or omissions. Lord Dun, also approached, had declined to act because of the pressure of his private affairs but having two lords of session among a group of curators or trustees was not particularly unusual.

The tutors of Agnes Murray-Kynnynmond, who were involved in lengthy and complex litigation concerning her estate, included Lord Grange, Lord Drummore and Alexander Cunningham WS. Agnes, the only daughter of the advocate Hugh Murray-Kynnynmond, was through her mother granddaughter of Hugh Somerville WS, and there were many family legal connections. The same might be said of the daughter of the late James Elphinstone, a writer, who was the subject of dispute in 1726 between her tutors, Charles, Lord Elphinstone, and the judge Lord Coupar (James Elphinstone, later Lord Balmerino), because they had each identified a different potential husband for her. The matter almost became academic
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when she was carried off by force from the custody of Couper’s servant, at his estate in Bo’ness, by a local man attracted by her £3,000 estate. Matters of this kind lay open the range of family and professional networks at play within the College. Lord Alva and Alexander Cunningham WS, for example, were two of the curators who, in 1780, sought to interdict the thirteen-year-old Elizabeth Gartmore from leaving Scotland with her mother to live in Lisbon.85

Mortifications (*mortis causa* public trusts) were another, more public, context in which men drawn from across the College might co-operate together.86 An example is the fund of 5,000 merks which Adam Christie DCS left in trust, the income from half of which was to support a bursar at the University of Edinburgh with the remainder to be spent in support of the widows and orphans of advocates and writers.87 The trustees were, *ex officio*, the lord president and the dean of the Faculty of Advocates together with the heirs of Sir Alexander Gibson PCS. The lords of session audited the accounts annually. This fund was regularly reinvested and funds were lent out with the approval of the judges. The trust set up by John Strachan of Craigrook WS (d.1719) was administered by two advocates, two writers to the signet and two lords of session, although this seems to have been done in co-operation with the presbytery of Edinburgh.88 As the trust continued to be administered, new trustees were occasionally assumed although they seem to have served for life; Lord Elliock, for one, continued in this office for over twenty years.89

In the private sphere, there were many opportunities for co-operation and conflict between College members. In many debt actions and sequestrations, the creditors included an array of judges, advocates and writers to the signet. In fact, they often took a lead in sequestration matters, being appointed to represent their fellow creditors. Lords Milton and Murkle, and the advocate John Campbell of Succoth, for instance, were among the trustees for the creditors of the Earl of Roseberry in 1736.90 Lord Drummore had to decline hearing a case in 1751, a dispute over annual rents between the advocates John Stuart of Allanbank and Archibald Inglis, because his nephew, James Stewart, had an interest in the matter.91

Although they were rarely directly involved in trade, they did invest in commerce, sometimes on a regional basis. Many of them, sometimes at the urging of clients and patrons, invested in the Ayr Bank and suffered significantly from its collapse in 1772.92 They also provided financial backing to joint ventures. Thus, the advocate Robert Fraser, for instance, went into a venture in the tobacco trade in 1708 on the basis of a verbal agreement with the Edinburgh merchant, John Watson, who was to manage the business.93 Twenty years later, Alexander Mackenzie of Delvine PCS invested in the riskier venture of attempting to salvage treasure from wrecked ships.94 The most remarkable example of such a venture must be that of another
advocate, Robert Gordon of Cluny.\textsuperscript{95} Because he was personally acquainted with John Law, Cluny was sent to France in 1719 by his relative Sir William Gordon in order to invest some of the latter’s money in French stocks. Cluny managed Gordon’s Mississippi stocks and spent time playing chess among the foreign ministers resident in Paris. The investments, like Law’s schemes, ended in disaster.

(c) Patronage relationships

As a working environment, patronage was as rife in the College of Justice as it was anywhere else in eighteenth-century Scotland.\textsuperscript{96} The College contained an abundance of men seeking patronage, at almost every level, and it also contained a range of office-holders who might grant lesser offices or intercede with others to do so. This institution itself contained offices of variable value and status for which there was often strong competition involving the highest to the lowest about the court. At the same time, a number of offices elsewhere, such as in the universities or in public bodies and corporations, were filled by College members \textit{ex officio}, often through the influence or election of other members of the College. Legal disputes generated by the disposal of patronage, for instance whether an office-holder enjoyed the right to appoint a depute for life, often fell to be resolved judicially by the lords of session. Election disputes, which arose even more frequently, were linked strongly to the system of patronage and placed the College as an institution at the heart of Scottish civil and political life.

Aside from the brokering of patronage at the exalted level of political agents and managers, such as Lord Milton and Henry Dundas, men used professional links in a very informal way to gain favours.\textsuperscript{97} The lawyers in the College, in particular, often had strong connections to commercial life in Scotland, dealing as they did with clients’ monies, uplifting rents and borrowing and lending. They might be persuaded by a client directly either to take on an apprentice writer themselves or to seek a place for a young man in another legal office in Edinburgh. The Glasgow merchant James Dunlop sent his son, George, to David Balfour WS to train as a writer, armed with a letter of introduction from Balfour’s client, and Dunlop’s correspondent, Sir William Forbes.\textsuperscript{98} Dunlop went on to become a WS himself. Equally, a lawyer might use his influence with a client, as James Dundas WS did, to place a young man in a large Glasgow trading office.\textsuperscript{99} In this way, lawyers could use their contacts as a currency in a world dominated by personal associations in which men might advance themselves by the exchange of favours, professional or political. The advocate James Graeme of Buchlyvie, for instance, was rewarded with the office of Surveyor General of Tobacco
in Greenock for help in ensuring the election to parliament of James Campbell of Ard kinglass in 1754. This office, worth £150 per annum, was below his station but it was seen as a stopgap while something better, such as the office of commissary of Glasgow, might be arranged.\textsuperscript{100}

If offices were not available, lawyers wanted patronage to provide them with clients. Sometimes it did so as a by-product. The young Alexander Lockhart, an advocate from a Jacobite family, was unsuccessful when he approached Lord Milton for the vacant office of commissary of Edinburgh in 1732. His father, Sir George Lockhart of Carnwath, had had links both to the Duke of Argyll and to Andrew Fletcher of Saltoun, Milton’s uncle, and it was likely on Milton’s advice that a few months later, John Marnees in Williamswood wrote to Lockhart. Marnees asked Lockhart to help a prisoner languishing in the Tolbooth prison. Although the prisoner was from a poor family, and had little from which to pay a lawyer, two comments are of interest in Marnees’s letter. First, he expressed the wish that Lockhart was better known in his country so that he might ‘have more trouble from our people’ (that is, gain more business) and second, he added a telling postscript, ‘when better clients comes in my way if I can yow shall have them’\textsuperscript{101}. In short, if Lockhart took the case, for whatever meagre sum it was worth, then he would benefit in future from potentially more lucrative clients. This must have been typical of the kind of calculation made by any advocate at the bar whose reputation was still to be made.

Patronage was certainly a factor in how men lived their lives. For an advocate, the hope of gaining or pleasing a patron or judge might determine to whom he chose to dedicate his printed theses, or it might encourage him to go further, even to the point of publishing a legal treatise. At a less exalted level, it might encourage a writer or an extractor to seek a lectern in a particular writing office in the hope of future advancement, because the College, like the town council, normally promoted from within. In short, the system of patronage provided an incentive for individuals to identify a strategy for their own promotion and, in doing so, to inform themselves about how the College worked, who influenced its internal organisation, what functions its offices served and what the relative values of those offices were. Part of the strategy involved making use of any local connections, particularly among the nobility, which might prove influential to men in Edinburgh or London. Even if a vacant office was in the gift of the clerks of session or the judges, that did not mean they might not be influenced by a word from outside the College. The writer Samuel Shaw, for instance, had a tenuous link with the Chief Baron of Exchequer in Scotland (James Montgomery) and played it for all it was worth. He bid first to replace an extractor in one of the offices of the principal clerks of session in 1785, then to have Montgomery intercede with Lord Ankerville to appoint him as his
clerk, and finally in 1789 to help him replace the late John Flockhart as keeper of the general register of hornings. Shaw was one of those men, and there were many, who took a great interest in the health of those about him, particularly anyone whose office, should it fall vacant, might be within the reach of him, his friends or relations.

When the level of litigation was low, as it was particularly in the 1740s, and fee income within the College was hard won, the demand for minor offices was particularly keen. Not everyone played fairly. The death of the Edinburgh commissary Andrew Marjoribanks, in April 1742, led to the emergence of no less than six candidates for his office, all but one of whom were at the bar. The sixth, William Baillie WS, literally sought to gain a march on his competitors by heading off to London, bearing a demission by Marjoribanks in his favour, for which he had paid the ailing man £500. The following year, when John Dalrymple PCS died, there were said to be twenty-two candidates for the vacant office. This was an unsalaried office although its fees were variously estimated to be worth £370 to £400 sterling per annum. This level of demand was as nothing to the clamour at the bar to gain a sheriff-deputeship in 1748 following the abolition of heritable jurisdictions, a cause more easily won with influential backing from noble patrons; or, indeed, to the manoeuvrings sometimes undertaken to gain appointment to the bench or, once on the bench, to the criminal circuit.

(d) Support relationships

A final feature of the College community, and the mark of any community, is its concern for its weakest members. In Edinburgh, the town council provided subsistence to its pensioners, generally the heirs and dependants of impoverished merchants and craftsmen. These included local writers in distressed circumstances, and their widows, who received modest quarterly payments for life at least until the city treasurer, in July 1744, was ordered to cease direct payments. In future, subsistence was to be provided from funds appropriated to the new charity workhouse. Exempted from this provision was Magdalene Fleming, widow of Andrew Keay, who had been one of the keepers of Parliament House until he demitted office in 1736. Keay had ostensibly resigned office in order to provide a place for a burgess who would otherwise require financial assistance from the council and, as a quid pro quo, the council had agreed to pay £10 annually to support his wife, daughter of Sir James Fleming, a former lord provost. This payment continued beyond 1744 yet this is one instance where the pensioner, at least in theory, might have enjoyed a parallel claim on the College of Justice.

In fact, support of its poor was not a College responsibility and, given the privileges claimed by its members as part of a national institution, it
was certainly not a town council one. Looking after their own poor was one of the reasons for the creation of the Faculty of Advocates and the WS Society and it is evident that other groupings within the College organised their own widows and dependants’ funds. In 1733 the WS Society, seeking an increase in fees, complained that the cost of looking after the widows and dependants was increasing, acknowledging that as its ‘numbers increase so must the poor’.109

In its earliest known constitution, the Faculty required advocates to make regular contributions to its charity box ‘for the releife of decayed Advocatts there wyfes children and known servants’.110 As we shall see, supporting their poor was one reason why the advocates insisted on raising their entry dues in the eighteenth century. This was an obligation not limited simply to the next generation. To focus on the Faculty of Advocates, its minute books are full of references to requests for charitable funds. Many petitions survive in the Faculty’s records from advocates like Alexander Bruce who, in 1728, was suffering a ‘present straitning condition’, or from advocates’ widows, like that of the late Alexander Campbell in 1725 who recounted the ill health which had plagued him for the last nine years of his life, leaving her and their children in difficult circumstances.111 Family links to lawyers in these petitions are often stressed. Thus, that of Elizabeth Hamilton (née Grant), in a petition in 1788, mentioned her father-in-law, James Hamilton of Olivestob (Adm. 1703), who had been sheriff-depute of Haddington, had a ‘considerable practice at the Bar, and will be remem -
bered by many of the members as a very worthy man’ (he died in 1757).112 Unfortunately, he lost a large estate as a result of the South Sea Bubble in 1720. As a widow, Elizabeth had little more to fall back on except a list of her late husband’s Hamilton relations. Olivestob had married a grand-daughter of Sir Thomas Nicolson (former lord advocate) whose other daughter married into a number of noble families. Olivestob’s aunt had married the then lord president, Hew Dalrymple, and the only child of that marriage, Marion, married another advocate, Lewis Colquhoun of Luss (Adm. 1728).113 This detailed ancestry was mentioned to establish the links between the petitioner’s husband’s family and the Faculty. Although Elizabeth had been supported by her relations, this had ceased when, following the death of her first husband, she had twice remarried beneath her rank. What she ultimately wanted was to get her children into the charity workhouse in Edinburgh.

College bodies did not stop at assisting their own poor. Apart from an assertion of the economic benefit Edinburgh enjoyed from having litigants attracted to the College, one of the arguments put forward by College members in defence of their privileges, against the threat of the ‘Poor’s Bill’ in 1784, was the fact that ‘we serve the publick & the poor & are compellable to do so’.114 A small number of advocates, writers to the signet and (from
agents in the College, were all nominated annually, by the Faculty, WS Society and the Society of Agents, to act gratis for litigants on the poor roll. This maintained a tradition of free representation for the poor that went back continuously to the sixteenth century and was linked to the fact that advocates in the College could be compelled to act for any litigant, rich or poor, by the judges. An undated paper, attributed to the vice dean of the Faculty of Advocates, Andrew Crosbie (d.1785), and written to defend the exemption of College members from jury service, referred to the rule on compellability as authority for the view that the ‘office of an advocate in the Service of his Client is in the use of Law not a voluntary but a necessary Service’. This idea of a national public service reinforced the credentials of all College members as a community established to serve for the good of the wider community.

CONCLUSION

There was a sense among practising lawyers of the importance of attendance in Parliament House, the home of the Court of Session. Lord Cockburn thought it madness that any advocate promoted sheriff would possibly choose to reside in his sheriffdom all year, because any man who cut himself off from breathing ‘the legal atmosphere of the Supreme Court’, he thought, ‘to a certainty loses his law’. That legal atmosphere was shared not simply by advocates and judges but also by law agents, clerks, macers and keepers. Their sense of community was a palpable one, shaped not only by their shared privileges and common purpose but also by a myriad of social and family links that gave almost everyone a degree of relationship with someone else.

The atmosphere of the College was ripe for gossip and, in private correspondence, there are illusions to prospective marriages, elopements, idle table talk, and salacious stories often culled from litigation involving well-known figures or scions of well-known families. In the proof of an action in 1749 is one such letter in which the writer recounts the disappointment of her newly wed cousin who had, on their second night together, grabbed her unfortunate husband ‘by the privy Members [sic]’ and chastised him for his lack of stamina, drawing comparison with what she had heard of ‘one Bogle, a Writer in Hamilton, who is married to a Sister of Sir William Fleming’s, who never performed under ten Times a-night’. It was indeed a small world and it was one in which professional men had to defend their reputations. When Alexander Cunningham WS, crediting false reports of his wife having committed adultery, accused various men of involvement (including William Graham, advocate), he was immediately subject to an action of defamation.
Introduction

Quite apart from personal and political rivalries and petty jealousies, the community of the College, as we have seen, was not one community. It was a series of interlinked communities combined together to compose a distinctive institution, set apart from other institutions within the town of Edinburgh. The next chapter will investigate more closely some of the points of contact between the members of the College and the town.

NOTES

2. A College of ‘cunning and wise men’ was referred to in the legislation of 1532; the phrase College of Justice appeared in a later ratifying statute in 1540: K. M. Brown et al., eds, *The Records of the Parliaments of Scotland to 1707* (St Andrews, 2007–10), 1532/6, 1540/12/64.
4. 48 Geo. III, c. 151.
5. National Library of Scotland [NLS], Saltoun, MS 17538, fo. 109r. Although the words ‘such as’ are used, this list of members is, in fact, complete.
7. National Records of Scotland [NRS], Books of sederunt, CS1/10, fo. 70v.
9. On 14 November 1692 similar privileges to those held by College members were extended to the lord justice clerk’s servant and a macer in the justiciary court but strictly they were not members of the College: Glasgow University Library [GUL], W. Forbes, ‘Great Body of the Law of Scotland’, MS Gen 1245, fo. 1809. The lords of justiciary were, of course, also senators of the College. The barons in the Court of Exchequer were, by statute in 1707, given ‘the same privileges and immunities of the
members of the College of Justice’, except that they may have actions brought against them before the lords of session that were not competent in the exchequer: The Exchequer Court (Scotland) Act 1707 (6 Anne, c. 53), s. 18. The barons, ushers etc., were part of the social community of lawyers but not regarded as part of the College. On the significance of these courts, see A. Murdoch, *The People Above: Politics and Administration in mid Eighteenth-century Scotland* (Edinburgh, 1980), esp. pp. 14–17. On the exchequer specifically, see A. L. Murray, ‘The post-Union Court of Exchequer’ in H. L. MacQueen, ed., *Miscellany Five* (Stair Society, 2006), pp. 103–31.

10. For example, multiple copies of voluminous legal papers, running sometimes into hundreds of pages, had to be printed. The financial relationship between one lawyer and the printer Walter Ruddiman is set out in Advocates Library Session Papers [ALSP], *The Petition of William Taylor*, 22 Dec. 1767, Arniston collection, vol. 84, no. 23.

11. NRS, CS1/11, fo. 226r.

12. Advocates Library [AL], FR 339r/2/2, ‘Reasons against the passing of the towne of Ed[inburgh]’s ratification anno 1637’.

13. For example, RPS, 1587/7/30; 1633/6/38; 1661/1/325; 1685/4/46. The focus of some of this legislation (particularly the 1633 and 1685 acts) lies on the privileges granted to the lords, rather than to College members in general.


16. A bond in Mackenzie’s name for 9,000 merks, lent by him to the council in Dec. 1685, was retired in May 1686; he lent a further 6,000 merks in Aug. 1688 (after he was restored as lord advocate) which the council sought to apply ‘for payment of such urgent creditors as are pressing for their debts’: Edinburgh City Archives, town council minutes [TCM], SL1/1/31, fos 241r, 361r; SL1/1/32, fos 1v, 225r. It is noticeable that Mackenzie’s rival, John Dalrymple (then HMA), was appointed one of the council’s assessors in March 1687: ibid., SL1/1/32, fo. 92r.

17. Ibid., SL1/1/32, fo. 1v.

18. NRS, CS1/8, fo. 118r, *Acts of Sederunt*, pp. 174–5. The proportion was to be worked out in accordance with the rents of their houses.


27. ECA, SL1/1/32, fo. 260r. A tack is a lease.
29. Ibid., SL1/1/104, fo. 322–3.
30. Ibid., SL1/1/66, fos 175–7.
31. ALSP, The Petition of Daniel Stewart, 6 Feb. 1789, Arniston collection vol. 180, no. 27, p. 6. Stewart was not a member of the College and, had he been, even this point might not have been conceded. His argument was drafted and presented by a College member, however.
32. TCM, SL1/1/64, fo. 215; SL1/1/72, fos 235–6.
34. TCM, SL1/1/78, fo. 318; SL1/1/126, fo. 306. The daughters of Samuel Gray WS were shopkeepers: Sanderson, Women and Work, p. 206.
35. TCM, SL1/1/87, fo. 163.
38. The council’s stent-masters were merchants and tradesmen; they were not selected from within the membership of the College nor from writers in Edinburgh.
40. TCM, SL1/1/53, fos 51–2.
41. TCM, SL1/1/129, fos 397–403.
42. Except in regard to writers to the signet, who would be reported to the keeper, and commissioners of the WS Society who had ‘full power over their members in the first instance’.
44. The material on which this section is based may largely be found in the Faculty of Advocates Records: AL, FR339r/12. This is discussed in detail in A. Stewart and D. Parratt, eds, The Minute Book of the Faculty of Advocates, 1783–1798 (Edinburgh, 2008), pp. 107–10.
45. Stewart and Parratt, *Min. Bk, 1783–1798*, pp. xxvi–xxix. The tax exemption for College members survived until removed by the Poor Law (Scotland) Act 1845 (ibid., xxix). Another Bill at this time, ostensibly to raise ‘lamp money’ (a tax for lighting Edinburgh), was opposed by the Faculty in 1786.

46. These are separate documents in FR339r/12.


48. RPS, 1579/10/27; APS, ii, 139, c.12.

49. AL, FR339r/12.


55. The category of Ordinary lords includes those who were appointed lord president direct from the bar but excludes four extraordinary lords and two lord chancellors.


57. TCM, SL1/1/113, fo. 158.

The College of Justice, from its definition, includes the Court of Session but is a wider institution, including figures, such as the keeper of the Advocates Library, who were strictly not part of the court. The High Court of Justiciary, on the other hand, is not part of the College, although some privileges were extended in 1692 to those of its members who were not College members (supra, n. 9).


The set hours varied over time.

Some men listed are described as advocates (those known to be in practice), some are not. For Honyman, see MS 5082, fo. 18r.

The writer was the younger Samuel Mitchelson.

NRS, GD220/5/1707/7.

NSS, Sir Andrew Mitchell of Thainstoun papers, RH4/70/10/2.

NLS, Yester, MS 7045.

NLS, Mackenzie of Delvine, MS 1209, fo. 146.

NLS, Erskine Murray papers, MS 5130, fos 1r–2v, 50r–53v, 60r. Some men listed are described as advocates (those known to be in practice), some are not. For Honyman, see MS 5082, fo. 18r.

Armstrong’s career is investigated in J. Finlay, ‘Corruption, regionalism and legal practice in Eighteenth-century Scotland: the rise and fall of David Armstrong, advocate’ (2012), TDGNHA (forthcoming).

The word ‘agent’ was used generally of a lawyer in the inferior courts where the word procurator was more typically used; in non-court business, such as estate management, the word ‘writer’ was the common term in use. Agent, however, could simply be a synonym for writer. The lords of session used the phrase ‘solicitor or agent’ to indicate those who managed actions before them, as opposed to the advocates who argued cases before them. Solicitor and solicitor-at-law, terms derived from English practice, grew in popularity towards the end of the eighteenth century.


75. In Toulouse during this period, 31.6 per cent of barristers (50 out of 158) were the sons of barristers: L. R. Berlanstein, *The Barristers of Toulouse in the Eighteenth Century* (Baltimore, 1975), p. 35. In Scotland, the comparative figure is only 13.6 per cent (36 out of 265). For the wider period 1700–99, the Scottish proportion is 16.5 per cent (120 out of 727). This does not include the sons of greffiers, notaires, procureurs or, in Scotland, writers and writers to the signet. If it did, 55 per cent of avocats came from this legal professional background in the period 1750–89, compared to 21.9 per cent of Scottish advocates. There are many societal differences, however, that make the comparison imperfect.


79. Although forty-two of these 556 writers to the signet were married more than once, this analysis ignores second and subsequent marriages unless the second marriage is the first or only one of which family details exist. In twenty-eight cases of multiple marriage, no details at all are recorded except the names of the spouses. Where the father-in-law is a baron of exchequer who had been an advocate, he is not treated as a member of the College but lords of session are.

80. These officers were (with sons-in-law in brackets): solicitor to the board of customs (Thomas Strachan WS); receiver-general of excise duties for Scotland (James Pringle WS); comptroller-general of customs (Richard Hotchkis WS); comptroller of stamps and taxes (Charles Bremner WS).

81. The sons-in-law of dukes were: Alexander Fraser of Strichen (1st Duke of Argyll); Alexander Fraser of Powis (1st Duke of Argyll) and Adam Drummond, younger, of Megginch (Duke of Bolton).

82. This figure is boosted slightly by the fact that two advocates, James Geddes and Hugh Murray-Kynnynmond, shared the same father-in-law, Hugh Somerville WS: *Information for Mrs Isabella Somervel, 25 June 1744*, Elchies collection, vol. 14 (F–Y), no. 18.

83. NLS, Saltoun, MS 16549, fo. 1r.


86. The lords sometimes declined appointments under deeds of mortification, e.g. NRS, CS1/17, fo. 32r.
87. Ibid., CS1/9, fo. 163r; CS1/14, fos 72r–v. It was still being paid by the Faculty treasurer in 1819: AL, FR339r/1.
88. NRS, CS1/11, fo. 193v; 1/14, fo. 56r; NLS, Mackenzie of Delvine, MS 1209, fo. 146.
89. E.g. NRS, CS1/14, fo. 56v; CS1/18, fo. 10v.
90. ALSP, Information for Andrew Fletcher of Milton, Esq [etc.], 7 July 1736, Kilkerran collection, vol. 2, no. 42 (see also vol. 3, no. 60).
92. The list of partners in the Ayr Bank can be found in NRS, Papers of the Maule family, earls of Dalhousie, GD45/24/183; The Scots Magazine xxxiv (1772), 304–5.
93. ALSP, The Petition of Thomas Watson WS, 12 Jan. 1750, Miscellaneous collection, ser. xvi, box 2, no. 88. Fraser was wealthy and had lent 10,000 merks to Lord Prestonhall and his son some time before 1713: ibid., The Petition of George Cuthbert, 19 Dec. 1732, Elchies collection, vol. 5, no. 34.
98. NLS Acc. 4796/1. George Dunlop became NP on 11 July 1799 and WS on 23 June 1807.
100. NLS, Saltoun, MS 16720, fos 28r, 36r.
101. Ibid., MS 16550, fo. 211.
102. NRS, Papers of Samuel Shaw, writer in Edinburgh, RH15/134. Flockhart, appointed 12 Nov. 1778 (ibid., CS 1/16, fo. 52r), died on 18 Oct. 1789.
103. NLS, Yester, MS 7046, fos 37r, 61r, 63r.
104. Ibid., MS 7055, f. 117r.
105. For example, the council paid £8 to Robert Montieth, writer, in 1710 (TCM, SL1/1/39, fo. 1005); £5 to Agnes Glen, widow of John Lowrie, writer, in 1718 (SL1/1/45, fo. 72). The pension of Mary Stewart, widow of Thomas Buchanan, writer, was rescinded in 1735 (SL1/1/56, fo. 67). Margaret Chiesly, widow of Samuel Gray, late procurator fiscal of Edinburgh, and his son, received 15s quarterly: SL1/1/59, fo. 23; SL1/1/64, fos. 4, 186; SL1/1/65, fo. 18. David Denham, writer, was employed to make the quarterly payments in 1737 and write the receipts: SL1/1/58, fo. 248.
106. Ibid., SL1/1/64, fo. 347.
107. Keay was appointed by the lords on 5 June 1729 (NRS, CS1/11, fo. 190v), selected from the town council’s leet; he demitted on 26 Feb. 1736 (CS1/13, fo. 52r).
109. NLS, Minto, MS 11033, fo. 21v.
110. AL, FR339r/2.
111. Ibid., FR339r/9; Pinkerton, ed., Min. Bk, 1713–1750, p. 110. Campbell (d.1725) had spent seventeen years at the bar prior to his illness.
112. Hamilton of Olivestob’s relation, the Edinburgh burgess John Hamilton, petitioned Edinburgh town council for a pension in 1690: TCM, SL1/1/33, fo. 133r.
113. Colquhoun took the surname Grant.
114. AL, FR339r/12.
115. J. Finlay, Men of Law in Pre-Reformation Scotland (East Linton, 2000), 82–6.
116. AL, FR339r/24/4.