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THE SCOTTISH ENLIGHTENMENT: THE THIRD SHUMIATCHER LECTURE IN "THE LAW AS LITERATURE"*

The Honourable Madame Justice Bertha Wilson

Madame Justice Bertha Wilson's lecture was delivered on Friday, March 13, 1987 as part of a biennial lecture series established by Dr. Morris Shumiatcher through the College of Law, University of Saskatchewan.

The Saskatchewan Law Review is pleased to present Madam Justice Wilson's lecture for our readership.

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*"It is my purpose and my hope, . . . that to animate an awareness of the inseparability of language and law, each year . . . there be invited to the University a contemporary pilgrime . . . that toward Caunterbury wolden ryde, to present a paper, erudite, spirited, humorous and provocative, the inspiration for which will flow from the law as literature, or from the literature that the law has inspired," Dr. Morris Shumiatcher.

II. INTRODUCTION

When the invitation was extended to me last year to deliver the Shumiatcher lecture on Literature and the Law, the government had recently passed the Prostitution Amendment Act and I recalled somewhat perversely an anecdote in Lord Wavell's Anthology of Poetry "Other Men's Flowers." He and a friend were walking down Piccadilly on the evening of a full harvest moon when a lady of the night accosted them. His friend paused, pointed to the stars and the moon, and addressed the lady in the magnificent words of Sir Henry Wotton:

You meaner beauties of the night,
That poorly satisfy our eyes
More by your number than your light,
You common people of the skies;
What are you, when the Moon shall rise?

He adds dryly that with a horrified glance she fled!

Literature inspired by the law, I thought, should really be fun; so I said I would be delighted to accept. And, it is, indeed, an honour to be asked to speak in the wake of lecturers as distinguished as Lord Elwyn-Jones and The Honourable Samuel Freedman. More sober reflection brought home to me, however, that I had neither the time nor the talent to deal adequately with such a far-ranging subject, so I decided to interpret my mandate narrowly and focus on those writers and literary men of Scotland whose names are associated with that remarkable period in the Eighteenth Century known as "the Scottish Enlightenment." The significant and common factor about them is that, with one notable exception, they were all lawyers or men trained in the law and, if the law were not the sole inspiration of their work, it certainly influenced their style and thinking. I claim little in the way of originality for these anecdotal portraits which I propose to set before you: in the words of Montaigne only "the thread that binds them is my own."

In part preparation for this lecture I felt I should return to the source; so I took Dr. Shumiatcher at his word — when he suggested there be invited to the University a contemporary pilgrim — and I began my literary pilgrimage by returning to Scotland last fall and visiting some of the places about which I will be speaking tonight. So off to "my own, my native land" about which, with your indulgence, I propose to be both enthusiastic and nostalgic.

III. HISTORICAL BACKGROUND

Let me introduce you first to a much abbreviated bit of Scottish history dealing with "The Act of Union, May 1, 1707." It was on that fateful day that the Kingdom of England and the Kingdom of Scotland alike ceased to exist and were incorporated into the United Kingdom of Great Britain, a Union which as been described as unique, "the only instance in history of two sovereign nations coming together to form one by treaty." For a time the Scots tried hard to be loyal to the spirit of the Union; they even referred to the two countries as South Britain and North Britain. They took courses in how to speak English. They flew the British flag called the "Union" Jack — the red and white St. George's cross of England combined with the blue and white St. Andrew's cross of Scotland. It was a Scot, James Thomson, who wrote "Rule Britannia," a new anthem for a new Kingdom, and another Scot, William Smellie, who first compiled the supreme reference book of the English speaking world, note the name, *The Encyclopedia Britannica*. Even today it irks every Scot to hear references to the Queen of England, rather than correctly, of the United Kingdom.

But most important, the Articles of Union contained guarantees for those institutions the Scots considered essential for the continuing identity of the society — a society which, needless to say, they regarded as infinitely superior to its counterpart south of the border. These special provisions covered the Scottish universities, the established Presbyterian Church of Scotland and the distinctive Scottish legal system and structure of the courts. (The Queen, for example, upon her accession to the throne took an oath to maintain the Church of Scotland as established in 1690 and upon crossing the border attends Presbyterian services, not as Head of the Church, but as an ordinary worshipper). British yes, but free and separate in the areas of education, religion and law — three of the most powerful forces that were to keep alive the spirit of national independence among those who had opposed the Union and those who subsequently became disillusioned with its operation. It was no coincidence that the years immediately following the Union saw a remarkable outburst of intellectual brilliance among the Scots. It was as if the country deliberately set out to establish her cultural claim to nationhood and display her superiority to the English in a wave of patriotic fervour. Historians, philosophers, novelists, literary critics, scientists and scholars initiated a flowering of genius such as Scotland has never seen before or since. Little wonder it became known as “the Scottish Enlightenment.” Last year I visited the Royal Museum of Scotland which was featuring a special exhibition on the Edinburgh of this period and described it as “A Hotbed of Genius.”

Many of the luminaries of this enlightenment period were lawyers or men trained in the law, and with the freedom given by the Articles of Union to maintain her own legal system (in the words of David Daiches) “the law in Scotland became identified with Scottish national feeling, as well as with creative and intellectual progress in the most general sense.” Law and literature became closely identified with the Edinburgh society of the day. The old city, as it expanded into the new town, became the “Athens of the North” and a variety of clubs and associations sprang up to serve the needs of the literati, as they called themselves. It was a magnet which drew visitors from far and near. When Benjamin Franklin came from America to visit Scotland in 1759 he characterized his stay as “Six weeks of the densest happiness I have met with in any part of my life.”

Another visitor at this time from less than 30 miles away flashed like a meteor across Edinburgh’s social scene and took the town by storm. A prominent hostess wrote of this visitor after he had been in the city a few weeks: “The man will be spoiled, if he can spoil, but he keeps his simple manners and is quite sober.” And another wrote: “The attentions he received during his stay in town from all ranks and descriptions of persons were such as would have turned any head but his own.” The subject of such interest and hospitality was none other than Scotland’s national bard — *Robert Burns*.

The returning pilgrim to Scotland lands at Prestwick, the international airport, which some would have it, is deliberately located a few miles from Alloway, the birthplace of Robert Burns whose entry into the world on January 25, 1759 is described in his own words:

Our monarch’s hindmost year but ane
Was five-and-twenty days begun,
’Twas then a blast o’ Janwar’ Win’
Blue hansel in on Robin.

That blast of wind destroyed the clay “biggin,” the low thatched cottage, now restored as a museum to which all Burns’ lovers repair. Burns is the one

exception in our gallery of lawyer authors about whom we will be speaking this evening. His only connection with the law was the years he spent as an Excise Officer. But this was a position he took very seriously and it undoubtedly had an influence on his poetry. Indeed, in one of his letters he observed that he enjoyed the excise for the insight it gave him into "the various shades of human character." It helped him greatly, he said, in "his trade as a poet." It is also from this period of his life that we have on record a complaint he made about improper influence being exercised on the Bench. In 1790 he wrote to a colleague: "I wish and pray that the goddess of justice herself would appear to-morrow among our honourable gentlemen, merely to give them a word in their ear that mercy to the thief is injustice to the honest man."

Burns was not the dissolute drunk that some of his earlier biographers claimed. He probably drank no more than many of his convivial contemporaries and he died, according to Dr. Jock Murray, Dean of Medicine at Dalhousie University, (in a recent article in last November's "Saturday Night [1986]), not from dissipation but from heart disease and appalling advice from his doctors. In the famous autobiographical letter to Dr. Moore of August 1787 he sized up his own character: "A strong appetite for sociability . . . my reputation for bookish knowledge, a certain wild, logical talent, and a strength of thought something like the rudiments of good sense."

At my class reunion last fall at the University of Aberdeen one of the fond reminiscences we shared was the memory of our old professor of Latin who, every year in his opening lecture, proudly and unequivocally asserted that the three greatest lyric poets in the world were Sappho, Catullus and Robert Burns. To a hushed audience he would then quote the exquisite lines from the "Lament for the Earl of Glencairn," Burns' devoted friend and patron:

The bridegroom may forget the bride
Was made his wedded wife yestreen;
The monarch may forget the crown
That on his head an hour has been,
The mother may forget the child
That smiles sae sweetly on her knee;
But I'll remember thee, Glencairn,
And a' that thou has done for me!

Is it any wonder that, with the exception of Shakespeare, Burns has been translated into more languages than any other poet in the world, including, most recently, Chinese and Korean? There is always a fresh assessment of his life and work, the latest being last year's publication "The Laughter of Love" by Dr. Raymond Grant, Professor of Anglo-Saxon at the University of Alberta. But to return — it has been said that "My love is like a red, red rose" is the greatest joyful love lyric, and "Ae fond kiss" the greatest sad love lyric in the English language.

It was G.K. Chesterton who took Goldsmith and Burns to illustrate the wide gulf between the classic and the romantic by contrasting two poems about a girl forsaken by her lover. Goldsmith (who was almost a contemporary of Burns) could write:

When lovely woman stoops to folly
And finds too late that men betray
What charm can sooth her melancholy
What art can wash her tears away?

Now listen to Burns on the same theme:

Oft hae I roved by Bonnie Doon
To see the rose and woodbine twine;
And ilka bird sang o' its love,
And fondly sae did I o' mine.
Wi' lightsome heart I pu'd a rose,
Fu' sweet upon its thorny tree;
And my fause lover stole my rose,
But ah! he left the thorn wi' me.

Will poetry ever again be written like this? I wonder — especially when I read T.S. Eliot and hear it in the modern idiom of a blasé age:

When lovely woman stoops to folly
And paces about her room again, alone,
She smoothes her hair with automatic hand,
And puts a record on the gramophone.

In 1949 when we arrived in Renfrew, Ontario, I recall the Burns supper held in our first January in Canada. Dr. Max MacOdrum, then president of Carleton University in Ottawa, proposed the toast to the immortal memory of Robbie Burns quoting poignantly from his love songs, the tears pouring unrestrained down his cheeks. We had haggis and bag pipes and all that! And I felt that the country to which I had come was more Scottish than the one I had left behind!

Burns was far from being the unlettered “ploughman poet” that Edinburgh society had lionized. His father, poor tenant farmer though he may have been, gave him the best education he could afford. At age six he was sent to the local school at Alloway — don't forget that as early as 1470 the Scottish Parliament had passed the first compulsory Education Act in Europe — and later his father joined with some other neighbouring families to hire jointly a tutor who grounded his pupils in the three R's, English literature and grammar and — as befitted Scotland's relationship with her old ally — some French. (You may not know that for many years the Scots and the French enjoyed a common citizenship.) Although Burns spoke in his local dialect of lowland Scots, his numerous letters disclose that he could write perfectly good English. Indeed, one of the difficulties he faced was whether to write in braid Scots or in English as one can see from the Glencairn lament or his long poem “The Cotter's Saturday Night.”

A contemporary of Burns who was also to become world renowned wrote to a friend: “Is it not strange that at a time when we have lost our princes, our parliaments, our independent government, even the presence of our chief nobility, are unhappy in our accent and pronunciation, speak a very corrupt dialect of tongue, which we make use of; is it not strange, I say, that in these circumstances we should really be the people most distinguished for literature in Europe?” This contemporary was none other than the brilliant *David Hume* whom friends said spoke a Scots even broader than Burns.

Most of us encountered David Hume for the first time when we teethed on the British empiricists in the philosophy class or in the introduction to causation during our years in law school. It is unfortunate that his skeptical ideas on causation may have put us off. I was lucky that my philosophy professor at Aberdeen, John Laird (who looked for all the world like a North-east of Scotland farmer and who wrote a book on Hume 50 years ago still considered worth reprinting) after taking us through the extra-ordinary Humean notion that there was no basis in reason for the belief in causation and which he called “one of the most remarkable pieces of sustained philoso-

phical argument in any language" would happily remind us that Hume led a useful and productive practical life in spite of his skeptical intellectual views. "Be a philosopher," said Hume, "but amid all your philosophy be still a man." You remember how Hume began the discussion with his famous illustration:

Here is a billiard ball lying on the table, and another ball moving towards it with rapidity. They strike; and the ball, which was formerly at rest, now acquires a motion. This is as perfect an instance of the relation of cause and effect as any which we know, either by sensation or reflection. Let us therefore examine it.

And examine it he did, coming to the conclusion that there was no binding or necessary connection between these two events. Well, it seemed to be very hard to refute Hume's argument. It was re-assuring that most subsequent philosophy spilled a great deal of ink on this very question including Kant who frankly admitted that Hume had wakened him from his dogmatic slumber. So, if we in our feeble sophomore essays couldn't refute him, it was a source of Scottish pride that no one else seemed to be able to do so either. And there was one very happy by-product; the fellows in the philosophy class concluded that their hours spent in the billiard hall hadn't been wasted after all!

Hume, of course was the main luminary of the Scottish enlightenment and was famous in his time not only as a philosopher, but also as a historian, scholar, man of letters, and diplomat, more at home in Paris than in London and beloved by all in his native Edinburgh where he spent most of his life. If no-one now reads Hume's "History of England," it is interesting that one twentieth-century figure did and so records in his autobiography *My Early Life*; namely, Winston Churchill, no mean historian himself. Voltaire said Hume's was possibly the best that had been written in any language. And another creditable practitioner of the craft, Macauley, writing in the "Edinburgh Review" at the time called Hume the ablest and best historian of later years. Hume was justly proud of the revival of letters in his native Scotland, jealous of her reputation, and not a little prejudiced against the English to whom he felt quite naturally superior. When he wrote to Gibbon to congratulate him on the excellence of his great historical work, *The Decline and Fall*, he said: "I own that if I had not previously had the happiness of your personal acquaintance, such a performance from an Englishman in our age would have given me some surprise. . . . I no longer expected any valuable production ever to come from them."

But Hume to-day is remembered for his philosophy. Sir Alfred J. Ayer, probably the most distinguished philosopher writing in English today, in his Gilbert Ryle lectures delivered at Trent University, Ontario in the spring of 1979 stated squarely and simply that Hume was "the greatest of all the British philosophers."

Hume, of course, studied law for some four years and, although in the end literature and philosophy won out, he was fully qualified to become Judge Advocate to a military expedition in 1746. Furthermore, he was elected keeper of the Advocate's Library in Edinburgh in 1752 in spite of his unorthodox religious views and, in his own words, "the violent and solemn remonstrances of the clergy." His supporters nevertheless prevailed. It is interesting that many of them were women — the women power of the day. "The smiles of a hundred fair ones," Hume wrote, "exerted no mean influence on my behalf" and, he added, "One has broken off all commerce with her lover, because he voted against me!" The Advocate's Library, which later

became the National Library of Scotland, consisted of over 30,000 volumes, far larger than that of the University of Edinburgh; and by the Copyright Act of Queen Anne in 1709 acquired the right to a copy of any work published in Great Britain which it still holds to this day. Hume's appointment, however, lasted only five years when he resigned over a dispute with the curators (one of them Lord Monboddo whom we will meet later) about three French books he had ordered for the library, one of them with the highly controversial title *L'Histoire Amoureuse des Gaules*.

By all accounts Hume was a delightful human being, nicknamed "St. David" in Edinburgh and called "Le bon David" in Paris, held in affection by all his friends and accepted even by those who vigorously disagreed with him. You can still see his house to-day on St. David Street. Even his atheism which was denounced by the Church and which cost him prestigious university appointments did not preclude friendships with individual clergy of the moderate school. He led a good life and, in old-fashioned words, died a good death, facing annihilation with equanimity. His friend Adam Smith wrote: "Poor David Hume is dying very fast, but with great cheerfulness and good humour and with more real resignation to the necessary course of things than any whining Christian ever died with pretended resignation to the will of God."

During his last illness Hume was pestered by an inquisitive busybody who was himself terrified of death and could not understand how an atheist like Hume could face it with such stoic composure. So he decided to ask him straight out if the thought of his imminent total annihilation did not give him some uneasiness. He recorded Hume's reply: "Not the least; no more than the thought that I had not been." Such an insensitive question to a man on his death bed would be almost unforgivable except that his visitor was one of the most perceptive and persistent notetakers of all time, the famous *James Boswell*.

Boswell is, of course, the author of the foremost biography in all of English literature *The Life of Samuel Johnson* — a book about a great man and written by a great man. Every Scottish student knows Johnson's definition of oats in his famous dictionary: "A grain which in England is generally given to horses, but in Scotland feeds the people" and every Scottish student was taught the correct riposte: "Yes, but where will you find such horses and such people!" Last summer when I visited some of the distilleries on the Whisky Trail and was shown the two giant padlocks on each of the warehouse doors, one key for the distiller and the other for customs and excise, I remembered another bit of school lore, namely Johnson's definition of "excise," as "[a] hateful tax — levied by wretches." Indeed, it required a separate and special article (*viz.* No. VII) in the Treaty of Union to enact: "that all parts of the United Kingdom be forever from and after the Union liable to the same excises upon all exciseable liquors!"

Without Johnson, Boswell would have been little known to posterity and without Boswell, Johnson's fame might have been slight. They needed each other. Fraser Darling (himself a Scot) wrote of *The Life*: "The book is a storehouse of delightful interplay between the heavy common sense of Johnson and the cocksure strutting of a lovable Boswell." I took one look at this cumbrous tome and thought it is little wonder one hesitates to read it today. But I was fortunate to acquire *The Conversations of Dr. Johnson* where the editor, Raymond Postgate, produces an excellent and very readable abridgment. Johnson with his why sir and no sir and yes sir, his pomposity and poly-syllables, are as fresh as the day they were written. Incidentally, Dr. Jock Murray of Dalhousie, (whom I mentioned earlier in connection with

Burns), has tracked the medical condition that caused Johnson to behave in ways that made people think he was demented. Dr. Murray concludes that he probably suffered from a disorder which was unknown at the time — Tourette's Syndrome.

Now, James Boswell was a lawyer, son of Lord Auchinleck (a distinguished judge of the Court of Session) and born in 1740. He entered Glasgow University and had Adam Smith as one of his teachers. In 1761 he went to Edinburgh to grapple with the law and wrote of his experience: "I can assure you that the study of law here is a most laborious task." Like many Scots law students he continued his studies at Utrecht in Holland and was admitted to the Scottish Bar in 1766 where he practised for some 17 years appearing frequently before his father and other eminent judges like Lord Kames and Lord Monboddo. Some of you may have seen the television dramatization and re-enactment of a sheep stealing trial where Boswell appeared before his father and the other judges of the court.

Boswell frequently took his legal problems to Dr. Johnson who apparently had a genuine liking for the company of lawyers and said, on one occasion, that he ought to have become one. Boswell's *Life of Johnson* is full of references to law and lawyers and recounts several Johnsonian observations on cases, problems of legal ethics and the relation between counsel and client. I will spare a Saskatchewan audience some of the illustrations; you will find them in *Man of Law: A Model* by one Morris Shumiatcher.

James Boswell had many friends on the bench during this brilliant period in Scottish history and these judges were also men of culture and wide learning and could justifiably be regarded as literary figures in their own right. Let me mention two of them. I still remember some fifteen years ago casually buying at an airport bookstand a small paperback published by the University of Chicago Press. My eye had been caught by the title, *The Scottish Moralists*, with their portraits on the cover and containing a selection of papers from their work. I was surprised to see included among the familiar names of Hume, Reid and Adam Smith, two judges from the Court of Session, Lord Kames and Lord Monboddo. I subsequently realized that they were included in the compilation because, in addition to their interest and ability in the law, they were preoccupied with what David Hume called the Science of Man, pioneers in a field which would now be called sociology.

Lord Kames was born Henry Home in 1696, educated by private tutors and was called to the Scottish Bar in 1724. In 1736 he was involved in a notorious case which we will hear about again — he was counsel at the trial of one Captain John Porteous. Porteous was captain of the Edinburgh City Guard charged with maintaining law and order on the day of the execution of Andrew Wilson, a convicted smuggler. A large crowd had assembled and when their mood became ugly the City Guard was ordered to fire and killed several obviously innocent people. Captain Porteous was tried for murder and, in spite of the efforts of his distinguished counsel, was condemned to death. On the very day fixed for his execution a reprieve from London overruled the Edinburgh verdict, but a mob taking the law into its own hands, broke into a prison, carried off Captain Porteous and duly hanged him. It is with this true historical incident that Sir Walter Scott opens *The Heart of Midlothian*, about which we will be speaking later.

In 1752 Henry Home was appointed a Judge of the Court of Session, taking the title of Lord Kames, and sat on the bench for over 30 years. In appearance he was not the most prepossessing individual, as I saw from his portrait in the National Gallery of Scotland, which also adorns the cover of

David Walker's book *The Scottish Jurists*, published last year. His language in court frequently left much to be desired and he had a rather rough sense of humour. The story is told that when Kames tried for murder at Ayr in 1789 a certain Matthew Hay with whom he used to play chess, he said to him when the verdict of guilty was returned, "That's checkmate for you now, Matthew."

Yet he was a distinguished man of letters as well as a eminent man of law, possessing a remarkable breadth of scholarship. David Walker says of him that he was a jurist, literary critic, historian, moralist, anthropologist and several other things besides. He was a friend and counsellor of many of the leading literary figures of his day including James Boswell, David Hume and Adam Smith. We are told that in his early years Hume would not publish anything without first consulting Kames. He entertained Benjamin Franklin on his visit to Scotland and kept up a correspondence with him for many years.

His major work was an enormous labour of love — a digest of the decisions of the Court of Session in the form of a dictionary under the heading of the *ratio decidendi*. Walker points out that we have here an extremely early use of this term and concept, and that Kames may even have originated it. He is also said to have been one of the first to introduce in criminal trials the practice of charging the jury.

Boswell's association with Kames is true to character displaying his insatiable intellectual curiosity and his voracious sexual appetite. He went so far as to go down to the Advocate's library to consult the original manuscript of a sixteenth-century case which Kames had cited in his dictionary-digest and which Boswell thought was inaccurate. Kames did not take very kindly to this and wrote: "Friend Boswell, what business has your officious honour to pry into secrets — was not the dictionary sufficient authority without going any farther? Take what you have got for your peeping." And — oh yes — Boswell committed adultery with Kames' daughter Jean.

Let me read to you from *The Scottish Moralists* a sample of Kames' literary style and showing his wide range of interest. Hear him on town planning:

My plan would be to confine the inhabitants of London to 100,000, composed of the King and his household, supreme courts of justice, government boards, prime nobility and gentry, with necessary shopkeepers, artists, and other dependents. Let the rest of the inhabitants be distributed into nine towns properly situated, some for internal commerce, some for foreign. Such a plan would diffuse life and vigour through every corner of the island.

Then he goes on:

The two great cities of London and Westminster are extremely ill fitted for local union. The latter, the seat of government and of the noblesse, infects the former with luxury and with love of show. The former, the seat of commerce, infects the latter with love of gain. The mixture of these opposite passions is productive of every groveling vice.

As an inhabitant now of a capital city myself and by law enjoined to live therein I will make no comment!

More briefly on Monboddo, he was born James Burnett in 1714 and studied Greek at my old alma mater the University of Aberdeen and he remained an enthusiastic Greek scholar all his life. Like so many Scotsmen of his time he studied Civil Law on the Continent spending all of three years at the University of Gröningen. He was appointed a Judge of the Court of Session in February 1767 taking the title Lord Monboddo on his appointment to the Bench. He was a much more colourful figure than Kames, both in his

personal life and his intellectual interests and, even in his own day, was considered a bit of an eccentric. For example, instead of sitting on the Bench with his fellow judges, he always took a seat underneath with the clerks; this was not the only way he would distance himself from the rest of the court. We are told that in his judgments he was very much his own man "generally in the minority and sometimes alone."

On the other hand, he had a gregarious and sociable nature, was a keen supporter of the theatre, and when the court was sitting entertained at his house every two weeks inviting friends to what he called his "learned suppers" in the style of the banquets of ancient Greece. We have a picture of such a party at Monboddo's house in Kay's *Edinburgh Portraits* where we are told that "[h]is Lordship's private life was spent in the enjoyment of domestic felicity and in the practice of all social virtues . . . there were few things he so much delighted in as the convivial society of his friends." It was to some of these parties that Robert Burns was invited during his whirlwind stay in Edinburgh and, of course, fell in love with Monboddo's beautiful second daughter Elizabeth. Sadly her beauty was that of the consumptive and she died at age 21 of tuberculosis, the scourge of Scotland which only within my lifetime has been eradicated. Burns wrote an "Elegy on the late Miss Burnett of Monboddo" the second verse being:

Thy form and mind, sweet maid, can I forget?
In richest ore the brightest jewel set!
In thee high heaven above was truest shown,
And by his noblest work the Godhead best is known.

H.G. Graham describes how on leaving the court for one of these festive occasions Monboddo "put his judge's wig into a sedan chair to keep it dry while he himself walked quietly home in the rain."

We saw the connection that Kames had with the Porteous riots and by a strange coincidence Monboddo also had an involvement in that incident. It is recorded that when he returned from his studies in Holland he happened to arrive in Edinburgh on the day Captain Porteous was hanged. When about to retire for the night his curiosity was aroused by the mob running along the street beneath his window. W. Forbes Gray recounts the story:

Instead of going to bed, he made his way to the street, where his scantily clad condition and the nightcap which he wore added a touch of humour to a situation tragic in the extreme. Speedily becoming entangled with the crowd, he soon found himself in the Grassmarket where he was an involuntary witness of the scene which Scott has painted in indelible colours in his *Heart of Midlothian*. Monboddo was so shocked by what he saw that he passed a sleepless night, and next morning seriously mediated leaving Edinburgh as a place unfit for a civilized being to live in.

Boswell was a close friend and confidant of Monboddo but oddly enough Monboddo had little time for another fellow Edinburgh bon vivant, David Hume. Monboddo had been a curator of the Advocate's Library when Hume as the librarian got into trouble over the purchase of his dubious French books and history has remembered Monboddo's wisecrack that the great philosopher died confessing not his sins but his Scotticisms!

I found the sample of his work cited in *The Scottish Moralists* the least interesting of all the papers there. Many of his ideas like his personality are bizarre and his anthropology is out-of-date. He was interested in dreams, mermaids and any anthropological curiosity that came his way, all this making him the butt of Dr. Johnson's wit who said that Monboddo talked nonsense and didn't know it. He believed that the orangutan was a class of

the human species lacking only speech. It was the similarity and kinship between men and animals and the mystery of speech that seemed to have a strange fascination for him. A Canadian audience will be interested in what he has to say about the beaver:

It appears to me to have required an extra-ordinary degree of sagacity to invent so artificial a thing as speech, nor do I think that there is any animal other than man yet discovered, unless perhaps it be the beaver, that has sagacity enough to have invented it.

Fanciful and out-of-date, did you say? I suppose so; but then again some Canadian pronouncements would incline one occasionally to think that the beaver had the gift of speech after all!

But let us return to my pilgrimage . . .

As I stood before the monument to Sir Walter Scott on Princes Street, I realized why no visitor to Edinburgh can readily forget this memorial. It is the largest ever erected to any writer in the world and I am told that when the foundation stone was laid in 1840 a special holiday was declared so that the general public could attend the ceremony. Glasgow, the capital's rival city, made its tribute in a somewhat different way. George Square, with which some of you will be familiar, was specially laid out to honour King George III resplendent with a giant column in the centre to be topped with a statue of the King — but instead it bears a statue of Scott. It would seem that only a place fit for a king was the proper setting for the great poet and novelist — in both cities appropriate memorials to one who rises above all others, the towering literary figure of his time, and the prime example of our theme.

Sir Walter Scott was a lawyer, as was his father before him. He was born in 1771 and grew up in the Edinburgh of David Hume and in 1786 he was apprenticed to his father. At the age of 21 he was admitted to the Scottish Bar; in 1799 he became Sheriff-Depute of Selkirkshire (a post he held to the end of his life with duties somewhat similar to those of a County Court Judge) and in 1806 he was appointed Clerk of the Court of Session, an office which he held for 25 years. I cite these bits of historical detail to illustrate that the many references to the law which we find in his novels sprang from an intimate knowledge and practical experience. Indeed, we have on record (*Lockhart's Life*, chapter vii) a sample of a brief by Scott defending a murderer, and no less an authority than Lord Macmillan has paid tribute to Scott's official disquisition on the technical subject of jury trials. By the way, Lord Macmillan presented to the National Library of Scotland the manuscript of *Redgauntlet* which he had bought in 1923. Macmillan goes on to say in his reminiscences:

Redgauntlet is of special interest to Scots lawyers as it contains a largely autobiographical account of Sir Walter's own early days in the law. The manuscript is a beautiful one, written with Scott's neat and regular penmanship and containing very few corrections or additions.

As a practising lawyer in his very first criminal case, Scott successfully defended a rascal of a poacher and upon hearing the verdict "not guilty" whispered to his client, "You're a lucky scoundrel." "I am just of your mind," was the reply, "and I'll send you a rabbit in the morning" — an early baptism into the moral dilemma of winning the case of someone who likely committed the crime. I recall as a young lawyer, a memorable lecture given to us by Mr. Justice Edson Haines, precisely on this point, when he described the nature of a trial as a search for "proof" not "truth." This is reflected, I believe, in that peculiar Scottish verdict "not proven" which has been both praised and damned with equal animation. Incidentally, when I visited the Law Courts

at Parliament House in Edinburgh I was reminded that a Scottish jury consists of 15 members and they are required to give only a majority verdict.

But let us return to Scott, the writer, of whom not a few have noted that law was one of the main educative influences of his life. The inspiration which that training and experience provided is manifestly evident in his famous historical romances, *The Waverley Novels*. They are full of references to law and lawyers, the best known being Paulus Playdell, "a good scholar, an excellent lawyer and a worthy man" in *Guy Mannering*, and Bailie Nicol Jarvie in *Rob Roy*, one of Scott's most fascinating creations. Scott not infrequently took the opportunity to expound through his characters the odd technical point in Scots law. The most famous example of this is in *The Antiquary* where Monkbarns explains the curious theory behind the Scots law relating to imprisonment for debt.

You suppose, now, a man's committed to prison, because he cannot pay his debt? Quite otherwise; the truth is, the king is so good as to interfere at the request of the creditor, and to send the debtor his royal command to do him justice within a certain time, 15 days, or 6, as the case may be. Well, the man resists and disobeys — what follows? Why, that he is lawfully and rightfully declared a rebel to our gracious sovereign whose command he has disobeyed, and that by three blasts of a horn at the market-place of Edinburgh, the metropolis of Scotland. And he is then legally imprisoned, not on account of any civil debt, but because of his ungrateful contempt of the royal mandate.

This passage had the rare distinction of finding its way into the Scottish Law Reports when Lord Gillies in the case of *Thom v. Black* (5th December 1828, 7 Shaw 159) relied on it saying, "The law on this subject cannot be better expressed than it is by Monkbarns in a work of fiction with which we are all well acquainted."

But I wish to confine my remarks to my favourite Waverley Novel — that great prose drama — *The Heart of Midlothian*. I can still vividly recall the BBC radio's dramatized version in 1947, all the more effective because so much of the original dialogue was retained.

The Heart of Midlothian enabled Scott to develop a large theme which has been described as "the nature of justice as it is in any age." It allowed him to portray a Scottish criminal trial (introducing a bit of comic relief through the absurd legal nonsense of Bartoline Saddletree); it allowed him to treat the deep dilemma of justice and mercy; and the apparent conflict between the law of God and the law of man; and it gave him a chance to paint the uneasy relationship between Scotland and England in the years following the Act of Union.

The story takes its title from the old Edinburgh prison, The Tolbooth, which was known as the Heart of Midlothian and where Effie Deans is imprisoned and later convicted on a charge of child murder. Her half-sister Jeanie refuses to give false evidence to save her but sets out for London with the assistance of the Duke of Argyle to seek a pardon from Queen Caroline. Jeanie Deans is, of course, one of the great heroines of fiction and is the principal character of the novel, a lovable puritan fearing neither God, her Heavenly Father, nor stern Davie Deans, her earthly one. The high point of Scott's dialogue comes in her plea to the Queen for her sister's life:

Alas! it is not when we sleep soft and wake merrily ourselves that we think on other people's sufferings. Our hearts are waxed light within us then, and we are for righting our ain wrangs and fighting our ain battles. But when the hour of trouble comes to the mind or to the body — and seldom may it visit your Ledyship — and when the hour of death comes, that comes to high and low — lang and late may it be yours! — Oh, my Ledy, then it isna what we

hae dune for oursells, but what we hae dune for others, that we think on maist pleasantly.

"This is eloquence," said the Queen to the Duke of Argyle and we would applaud her verdict. Scott, the advocate, becomes Scott the poet as he gives his character these sublime words to plead for Effie before her Queen. And here we must remember that Scott was indeed a poet of some considerable reputation before he turned to writing romances in prose. He has been justly called the greatest of lyric writers between Burns and Shelley and one of his most beautiful poems is mad Madge Wildfire's Song in *The Heart of Midlothian*:

Proud Maisie is in the wood,
Walking so early;
Sweet Robin sits on the bush,
Singing so rarely.
'Tell me, thou bonny bird,
When shall I marry me?'
'When six braw gentlemen
Kirkward shall carry ye.'
'Who makes the bridal bed,
Birdie, say truly?' —
'The grey-headed sexton,
That delves the grave duly.'
The glow-worm o'er grave and stone
Shall light thee steady
The owl from the steeple sing,
'Welcome, proud lady.'

We have it on record that one of the reasons Scott was appointed a judge was because of William Pitt's admiration for "The Lay of the Last Minstrel." It might produce interesting results if Prime Ministers of our time were to add literary merit to their criteria in making judicial appointments!

When I visited Scott's home at Abbotsford on the banks of the Tweed, we were told that it is pretty much as Scott left it, a house full of antiques which he himself had collected. Half-way up the wall near the front door is a stone inscribed:

The Lord of Armies is my Protector
Blessit ar thay that trust in the Lord 1575.

This stone was once the lintel of the Old Edinburgh Tolbooth, the Heart of Midlothian and, when the prison was demolished in 1817, the entrance gate was given to Scott as a gift.

The legendary brilliant interplay of Scott's dialect dialogue and narrative English prompts me to digress for a little on —

IV. THE GUID SCOTS TONGUE

Those of us who watched "The Story of English" on PBS television or read the book will recall how Scots was described as one of the oldest, richest and most interesting varieties of English with a long pedigree of its own. Put simply, there are three types of English found in Scotland to-day — that spoken by those educated in England, frequently the sons and daughters of the Scottish aristocracy, barely distinguishable from the Queen's English; that spoken in the broad dialects of the various regions in Scotland, all so full of special words and peculiar vowel sounds as to be well nigh incomprehensible to the outsider; and then somewhere in between — an accent like mine and Jack Webster's — where our vocabulary is largely purged of specific Scotti-

cisms but retains the particular lilt of one's regional background. This is the language of the Scot educated in his own country.

Dialect is the rich life blood of any language and, even despite the modifying influence of BBC standard English, every visitor to Scotland is astonished to hear the variety of pronunciation as he travels round a comparatively small country and is somewhat surprised to hear that dialect obtrudes often on the tongue of even the most educated. And the proud Scot may be not a little miffed if his speech is unduly criticized, as evidence the story of the witness in a Glasgow court where several times he had spoken of going "doon the watter" (as every Glaswegian refers to a trip down the River Clyde). A rather sarcastic prosecuting counsel who had no doubt taken a post graduate degree at Oxford asked the question: "My good man, do you spell water with two t's?" The witness bridled at this pompous affront to his native speech and replied: "No sir! but we spell manners with two n's!"

Now, in the Eighteenth Century, the period of which we have been speaking, while the Scots wrote in English they spoke a vernacular loaded with special words and accents. The three Scottish Lords of Justiciary who were ordered to appear at the bar of the House of Lords concerning the grievous matter of the Porteous riots were scarcely understood by their English brethren. Dr. Johnson on his Scottish tour could hardly believe his ears at the contrast between the written and spoken word of the Scot and was led to comment that "the Scotch wrote English wonderfully well." But they had to work at it — Boswell even consulted a dictionary when writing his love letters.

But after the Act of Union the educated Scot made a conscious effort to purge his speech of Scotticisms as we saw illustrated in the case of Hume and in the ambivalence of Burns. They struggled to prune their speech of Scots phrases and learned to speak English as the Duke of Wellington spoke French "with a great deal of courage." In 1761 Thomas Sheridan the actor and elocutionist was invited from London to deliver 12 lectures on the "correct" speaking of English at St. Paul's Episcopal Church in Edinburgh and about 300 of the city's most distinguished citizens attended! Professor James Beattie of Aberdeen University published one of the most popular books of the century with the awesome title, "Scotticisms Arranged in Alphabetical Order Designed to Correct Improperities of Speech and Writing."

But to-day, along with the resurgence of Scottish nationalism, we have some leading Scottish poets once again writing in their dialect; and only three years ago there was published William Lorimer's translation of the New Testament in braid Scots, which a former colleague of his presented to me last fall. At one time Dr. Lorimer toyed with the mischievous idea that the only standard English in this version of the New Testament would be those words spoken by the Devil! But he thought better of it, betraying that "canniness" of the Scot which is best illustrated by the story of the old woman who declared that it was unwise to speak ill of the Devil. It might some day come in handy not to have done so! I will conclude this digression by reading you a sample of Lorimer's translation:

Gin I speak wi the tungs o men an angels, but hae nae luve i my hairt, I am no nane better nor dunnerin bress or a ringing cymbal. Gin I hae the gift o prophecie, an am acquent wi the saicret mind o God, an ken aathing ither at many may ken, an gin I hae siccan faith as can flit the hills frae their larachs — gin I hae aa that, but hae nae luve i my hairt, I am nocht. Gin I skail aa my guids an graith in awmous, an gin I gie up my bodie tae be brunt in aiss — gin I een dae that, but hae nae luve i my hairt, I am nane the better o it.

(Paul's Hymn to Love in First Corrinthians ch. 13.)

But let us return to our main theme.

This was also the age of the literary periodical which saw the establishment of two very remarkable magazines, The Whig "Edinburgh Review" and its rival the Tory "Blackwood's Magazine." In their heyday they exercised considerable influence and had a long and varied history; the Review came to an end in 1929 and Blackwood's continued publication until December 1980.

The "Edinburgh Review" was founded in 1802 by *Francis Jeffrey* and *Henry Brougham*. Jeffrey was its most distinguished editor for over 30 years and has been described by his biographer as "the greatest of British critics." I confess I had never heard of Brougham until I began delving into this period, but he sufficiently captured the imagination of Chester New, former professor of History at McMaster University in Hamilton, for him to write his biography only 25 years ago. Within 10 years of its inauguration the new quarterly had made such a name for itself that it had a circulation of 13,000 and the best writers in the country were attracted to its pages by the unusually high fees they were paid.

Its enormous success challenged the production of "Blackwood's Magazine" which was founded in 1817 and its first editors were two young men *John Gibson* and *John Wilson*. Lockhart is, of course, familiar to all of us as the son-in-law of Sir Walter Scott and author of his famous biography, as well as a life of Robert Burns. Lockhart's life of Scott is considered by many the next best biography in the English language after Boswell's *Johnson*. Wilson I had known because of my understandable interest in his name and he wrote for Blackwood's under the pseudonym of Christopher North. He was a man of many talents and became professor of moral philosophy at the University of Edinburgh in 1820.

But once again the remarkable thing about every one of these four leading literary figures is that they were all lawyers. Jeffrey was admitted to the Bar in 1794, became Dean of the Faculty of Advocates in 1829 and was elevated to the Bench in 1834. Brougham studied law at Edinburgh, was called to the Scottish Bar in 1800, then to the English Bar in 1810. In 1820 he successfully defended Queen Caroline when she was accused of adultery; and in 1830 he was made Lord Chancellor.

Lockhart studied at Glasgow University and Balliol College, Oxford, and then in 1815 came back to Edinburgh to study law. He was admitted to the Bar in 1816 and actually practised as an advocate but we are told that it was mainly his inability to speak in public that made him turn to literature.

Wilson was educated at Glasgow and Oxford and was admitted to the Scottish Bar in 1814. Incidentally, when I visited Wordsworth's house in the lake district last fall, I discovered that Wilson was a frequent visitor and it was there that he persuaded De Quincey to write for Blackwood's.

This remarkable combination of legal learning and literary genius was not to end with the Enlightenment but would re-appear in later years in such figures as Robert Louis Stevenson (the "s" was always pronounced in his middle name) and John Buchan, Lord Tweedsmuir, later Governor General of Canada. The nearest that Stevenson ever got to Canada was when he went to the Adirondacks just across the border to attend a tuberculosis clinic in 1867. Again the dark shadow of Scotland's endemic disease.

Robert Louis Stevenson was intended to follow his father's and grandfather's profession and become a lighthouse builder, but after a year largely wasting his time at mathematics, engineering and mechanical drawing, preferring as he put it "the low life of Edinburgh," he broke the news to his father that he wanted to give up engineering and devote himself to literature

and writing. The response of the elder Stevenson is significant, having in mind the terms of reference of the Shumiatcher Lecture. One of his biographers tells us that his father

assented to Louis's giving up engineering, but, the pursuit of literature not being a regular profession, he wished him to read for the Bar. The one thing did not clash with the other, he said, the training for the Bar would all add to his mental stock-in-trade as an author — it was, indeed, a case of "continuity of policy."

So Stevenson embarked upon the study of law at Edinburgh University and in 1875 passed with credit his final examination and was called to the Bar in July of that year. The following week he sailed for London on his way to France to study Fifteenth Century poetry!

Literature was obviously his first love.

Every school boy (and every school girl) knows the thrill of reading for the first time Stevenson's, *Treasure Island* and *Kidnapped*, graduating somewhat later, with cold shivers running down one's spine, to *The Strange Case of Dr. Jekyll and Mr. Hyde*. We are told that we owe the masterpiece *Treasure Island* to the request of Stevenson's step-son, Lloyd Osborne, who when he was 12 years old asked his step-father, during a family holiday at Braemar in August 1881, if he would write "something interesting"! So Stevenson sat down and for the youngster's amusement drew a mysterious map of the island and invented around it what he at that time called "The Tale of the Sea Cook." It is worth noting that in October of that year he was still sufficiently interested in the law that he applied — though unsuccessfully — for the Chair of History and Constitutional Law at Edinburgh University. To these exciting stories we have returned as grown-ups time and again with redoubled pleasure. But it is a pity that so few of us have opened what by some is considered the author's greatest achievement, *Weir of Hermiston*. One reason is, of course, that it is unfinished, although Stevenson considered this to be his best writing.

And Lloyd Osborne in a monograph on RLS tells us that one evening after dinner when his step-father read the first chapter he told Stevenson that he thought, "Weir was a masterpiece; that never before had he written anything comparable . . . that it promised to be the greatest novel in the English language." This "magnificent torso" as it had been described was inspired by the notorious historical figure of the Scottish Lord Braxfield who had gained a reputation as a hanging judge. Stories about the real life prototype who was the model for Adam Weir are legend.

Our notorious friend Boswell who has a connection with so many in our gallery of lawyer intellectuals wrote a letter of congratulation to Braxfield when he was appointed to the High Court of Justiciary. And Sir Walter Scott before his call to the Bar wrote his thesis entitled, "De Cadaveribus Punitorum (Concerning the disposal of the dead bodies of criminals)" and with a very wry sense of humour dedicated it to Lord Braxfield whom he always referred to as "Old Braxie." When on one occasion he tried a man accused of subversive activities thought to have been influenced by the French revolution the young man had pleaded, "That he was just a simple reformer, like Jesus Christ." Braxfield snapped back, "Aye maybe, but you saw what happened to him."

It was apparently Sir Henry Raeburn's painting of this grim beetle-browed judge that gave Stevenson the idea for his central character Adam Weir, Lord Hermiston, the Lord Justice Clerk and in *Virginibus Puerisque* he wrote a graphic account of the impressions made upon him when he first saw the Hanging Judge's portrait at an Exhibition in Edinburgh.

Stevenson could not forget that he had been bred to the law and in this, his final novel, he was to recall reminiscences of his life in Edinburgh and what he called those "lost forenoons" at the Court. He was to write on another occasion: "The law acts as a kind of dredge, and with dispassionate impartiality brings up into the light of day, and shows us for a moment, in the jury-box or on the gallows, the creeping things of the past."

Weir of Hermiston is a kind of psychological drama depicting the complete lack of understanding between a father and his son. The one, a brutal overbearing monster who sadistically enjoys bullying a prisoner before sentencing him to death; the other a shy, imaginative sensitive soul who takes after his mother. There is a love story, of course, that between the young Archie and Christina who is the niece of Weir's housekeeper and the story concludes with Archie telling her that their relationship must end. This "ballad in prose," as it has been called, is a tale of doom the characters seemingly caught in a web of the past. Stevenson writes of the housekeeper:

Kirstie knew the legend of her own family and might count kinship with some illustrious dead, for that is the mark of the Scot of all classes: that he stands in an attitude towards the past unthinkable to Englishmen, and remembers and cherishes the memory of his forebears, good or bad; and there burns alive in him a sense of identity with the dead even to the 20th generation.

The final six words of the novel which cryptically stops in mid-sentence (and I quote) "a wilful convulsion of brute nature" could well be a description of the book's whole theme. These were the last words that Stevenson was to write. He died an hour or two later. He had expressed a wish to be buried on top of his favourite mountain in Samoa, and the native chiefs cut a path up through the forest and buried him — their beloved Tusitala, as they called him, meaning "the teller of tales." On this tomb is engraved the epitaph he wrote for himself:

Here he lies where he longed to be;
Home is the sailor, home from the sea,
and the hunter home from the hill.

My pilgrimage did not take me to the South Pacific but I was able to pay homage before the bronze memorial to Robert Louis Stevenson in the west wall of St. Giles Cathedral, Edinburgh — a tribute by his admirers from all corners of the world.

Right from his death Stevenson or RLS, as he was known, became a romantic legend among his countrymen and in January 1895 there appeared in *GUM*, the Glasgow University magazine, a noble and notable obituary essay which said of him that it was "his highest worth . . . that in a querulous age he left us an example of a manly and chivalrous life." The young Scottish student who penned these lines was himself to become a barrister and renowned author and a Governor General of Canada.

And it is with *John Buchan, Lord Tweedsmuir*, that I will conclude this commentary on writers influenced by the law. He was born on the 26th of August 1875 in Perth the son of a Free Church of Scotland minister who soon after moved to a church in Pathhead, a village near Kirkcaldy where Buchan spent his life as a boy. He attended school there and later at Kirkcaldy where I was born. I stayed for two days in Fife last fall and roamed around the little fishing villages along the coast which would have been familiar territory to the young John Buchan as a boy and to Adam Smith, a native and long-time resident of Kirkcaldy and author of the famous *Wealth of Nation*, a book which has never been out of print since its publication 200 years ago.

Buchan was called to the Bar of the Middle Temple in 1901 and by that time had already published 10 books. He practised only a few years specializing in company law and income tax cases long enough to write a text book on *The Law Relating to the Taxation of Foreign Income*. In the preface R.P. Haldane describes it as a "scholarly and comprehensive treatise," albeit, the least known of all his books. Brief though his legal career may have been, Buchan had this to say about it: "Once a lawyer always a lawyer. Though I soon ceased to practice, for years I read the law report first in the morning paper, and fragments of legal jargon still tend to intrude themselves in my literary style." He described himself as a "spinner of tales" and referred light-heartedly to his adventure stories as "shockers" as would be expected of someone who at age 26 had decided that literature "should be my hobby, not my profession." He wrote: "My view was that of Weir of Hermiston: (quoting Stevenson's character) 'to be wholly devoted to some intellectual exercise is to have succeeded in life; and perhaps only in law and the higher mathematics may this devotion be maintained'." Buchan's success in life was in a wide variety of roles — writer, historian, administrator, barrister, publisher, director of information during World War I, M.P. for the Scottish Universities for several years, all culminating in his appointment in 1935 as Governor General of Canada. Upon assuming that office, he was, against the wish of the Canadian Prime Minister, created a Peer of the Realm by King George V with the title "Lord Tweedsmuir of Elsfield."

On November 2 the Tweedsmuirs arrived in Quebec and were received by Sir Lyman Duff, the Chief Justice of Canada, and later in the day the new Governor General was sworn in by the senior Puisne Judge, Mr. Justice Rinfret. The words of welcome spoken by the Prime Minister, Mackenzie King, are pointed and significant:

It is as John Buchan, the commoner chosen to represent His Majesty in other spheres, that you will find the warmest welcome and an abiding place in the hearts of Canadians. In your aristocracy of mind and wealth of imagination you are the familiar friend of thousands of Canadian homes.

For by this time John Buchan was a novelist of world renown and, including his histories and biographies, the author of more than a hundred books with *The Thirty-nine Steps* being a record breaking best-seller. His varied experience in public life was all grist to the imaginative mill of his literary creativity and deeply coloured by his dedication to service and his devout Scottish Presbyterianism. One commentator has noted: "Implicit in all Buchan's thrillers is a belief that civilization is a thin veneer, a sheet of glass which is easily shattered, allowing chaos to rule. His heroes are men of resolution who are called to dedicate themselves to the maintenance of law and order by the responsibility of their positions."

This is even more true in those books like *John MacNab*, *The Dancing Floor* and *Sick Heart River* where he made his hero Sir Edward Leithen a distinguished lawyer like himself with a well endowed legal, rational mind. Not a few autobiographical elements may have crept quietly into the portrayal of this character especially in the last novel. *Sick Heart River* was written while he was Governor General and drew upon his journeys to the Canadian North. Sir Edward Leithen became more and more like his creator. Buchan's biographer, Janet Adam Smith, tells us that this even struck his secretary at Rideau Hall as she took down his story which he dictated from notes and who reported at the time, "His Excellency is writing a very odd book . . . very introspective." John Buchan died suddenly and unexpectedly in 1940 and the strange irony is that in the story Sir Edward Leithen had

been made to die at Easter 1940 a few weeks after the death of his inventor.

Buchan was Governor General during the early critical years of the war before the United States entered the conflict and he played a significant role in his relationship with Franklin D. Roosevelt at that time. It is interesting that to a later President, John F. Kennedy, Buchan's autobiography was his favourite book and Mrs. Jacqueline Kennedy wrote of her husband in 1964: "Other passages that drew him and profoundly shaped his thinking were Buchan's view on democracy and the profession of politics." One other connection with the Kennedy family is not without interest. Mrs. Rose Kennedy in her book *Times to Remember*, published in 1974, quoted from a poem of Buchan's as she reflected upon the tragedies of her life. She said the verse "signified my lost children." It is the fifth stanza of "Fratrī Dilectissimo" commemorating the death of Buchan's brother William and illustrates Buchan's craftsmanship as a poet:

In perfect honour, perfect truth,
And gentleness to all mankind,
You trod the golden paths of youth,
Then left the world and youth behind.
Ah no! 'Tis we who fade and fail —
And you from Time's slow torments free
Shall pass from strength to strength and scale
The steeps of immortality.

V. CONCLUSION

And so I will be done; here then is the tale of my pilgrimage from Burns to Buchan, from Scotland to Saskatoon. I have tried to throw a small spotlight on a limited segment of literature and the law; the common thread that has bound my selection is that these were all Scottish writers producing some of the great literature of the English speaking world, that all save Burns had a legal background which suffused their thinking and not infrequently inspired what they wrote. I have spoken as a this-generation Canadian refreshed from rediscovering her roots by returning to her native Caledonia. As Scott put it in "The Lay of the Last Minstrel":

O Caledonia! stern and wild,
Meet nurse for a poetic child!
Land of brown heath and shaggy wood,
Land of the mountain and the flood.
Land of my sires!

I have amassed quite a small library as I attempted to update a Scottish education of some 40 years ago and it has been a privilege to share this experience with you upon my return home again to Canada. I have never quite been able to understand the emotional springs that give rise to the love and pride I hold for both the land of my birth and the country of my adoption, how easy it has been for me to become a Canadian and feel completely at home in both French and English Canada. Perhaps it is because there is a mysterious element of Scottishness in the Canadian psyche itself, as Lord Tweedsmuir declared at Winnipeg on St. Andrew's Day 1936: "Canada in one sense is simply Scotland writ large." Certainly it has had a magnetic attraction for the Scot and over the years many have come to build a new life here; and could echo the "je me souviens" of their French compatriots. For like them they also cherished memories of the land they had left behind — in the haunting lines of anonymous poet of this Golden Age of Scottish culture:

From the lone sheiling of the misty island
Mountains divide us, and the waste of seas —
Yet still the blood is strong, the heart is Highland.
And we in dreams behold the Hebrides.

Thank you for inviting me here; thank you for being a wonderful and attentive audience; thank you for focussing my extra-curricular reading on the great writing of the lawyer authors of Scotland and thank you for inspiring a most memorable pilgrimage to some of the shrines — spiritual, legal and literary — of my native land.

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* Many of the books are out-of-print and were acquired in antiquarian bookstores in Scotland and Canada or were borrowed from libraries, friends and colleagues.

