

SCOTS AND THE LAW IN QUEENSLAND¹

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The Scots in Australia

The Irish have been portrayed as particularly significant in forming the Australian character. The 'real Australia' is said to have emerged at the end of a 'great chain of being': "Irish, Roman Catholic, convict, working class, trade unions, ALP". This left little room for the Scots. Scots made a very significant, albeit less 'visible', contribution to the 'real' Australia – an Australia that is far from purely Irish working-class.² In the area I am considering today, the law, Scots contributed across the social spectrum – from prominent members of the legal profession to colourful drunks, bushrangers and murderers. Scots have also contributed to Australian society by being involved in politics, often after legal careers. It is a widely accepted notion, supported by many parliamentary examples, that Scots are good with finance, some commonly described characteristics of Scots being stubbornness in pursuit of a principle, and individualism. That prominent early historian of the Queensland parliament, Charles Bernays, said "[I]t would be inconvenient to run the country entirely with the aid of Scotchmen, but they serve a useful purpose as brakes upon slapdash financial and other proposals".³

SCOTS IN QUEENSLAND'S LEGAL PROFESSION

In nineteenth century Australia, Scottish involvement in the law was disproportionately minor⁴ compared to the English and Irish. Why was that? Australian law was based on English law, which is quite different from Scots law. Scottish lawyers could not therefore practise in Australia without retraining, although, as we shall see, many seem to have done so within a few

¹ Justice Atkinson would like to thank Siobhan Doherty and Aladdin Rahemtula from the Supreme Court Library for their extensive research assistance with this paper.

² Prentis, Malcolm D *The Scots in Australia: A Study of New South Wales, Victoria and Queensland, 1788-1900* Sydney, Sydney UP: 1983, 1-2.

³ Bernays, Charles *Queensland Politics During Sixty (1859-1919) Years* Brisbane, Government Printer: c1920, 154, 158.

⁴ Prentis, 164.

years of arriving in the colonies. And then there was Sir Charles Lilley's "implacable opposition to the admission of Scots law agents as solicitors in Queensland".⁵ As a result, most of the prominent Scots lawyers were not trained in Scotland, but in England or Australia.⁶ In the 1840s, in the Moreton Bay district, there were no Scottish solicitors or barristers.⁷ However, the Scots had an ally in English solicitor Thomas Adams, who in 1843 was persuaded by Evan Mackenzie, an influential Scot, to forsake pastoralism and resume his legal career in Brisbane.

Captain John Clements Wickham (1798-1864)⁸

Most of the early Scots who were prominent in the law in Queensland were not lawyers but qualified in other professions and because of that were appointed as magistrates. An early example is Captain John Clements Wickham (1798-1864), born in Leith, Scotland in 1798. From 1812 to 1841 he was in the navy, and commanded an expedition which charted the north-western coasts of Australia. From 1843 to 1859, Wickham was Police Magistrate and Government Representative in Moreton Bay colony. He became the chairman of the first bench of magistrates⁹ with an initial salary of £300. In 1853 his salary increased to £700 per annum and his title changed to Government Representative.¹⁰ Though he had no control over other government officers in the district, he was regarded as their senior.¹¹ Wickham passed judgments at the Brisbane Police Office that appeared to be "fair and impartial"¹². According to the *ADB*, Wickham showed much sympathy and understanding, and exercised his authority with a genuine sense of responsibility.¹³ He sat with two other lay justices of the peace as

⁵ McPherson, BH *The Supreme Court of Queensland 1859-1960: History, Jurisdiction, Procedure*. Sydney, Butterworths: 1989, 314.

⁶ Prentis, 166.

⁷ Mackenzie-Smith, John HG *Moreton Bay Scots 1841 – 59* Virginia, Church Archivists' Press: 2000, 50.

⁸ Mackenzie-Smith, 48; *Australian Dictionary of Biography 1788-1850* Melbourne University Press: 1968, Vol 2, 597.

⁹ McPherson, BH "Early Development of the Queensland Magistracy" Presented to Conference of Magistrates, Brisbane 4 June 1990, 1.

¹⁰ Whitfield, LA *Founders of the Law in Australia* Sydney, Butterworths: 1971, 161.

¹¹ *Australian Dictionary of Biography 1788-1850*, vol 2, 597.

¹² Mackenzie-Smith, 111.

¹³ *Australian Dictionary of Biography 1788-1850*, vol 2, 597.

the court of petty sessions¹⁴ and was given the power to hear small civil cases in 1847.¹⁵ Some of the cases with which he dealt reflected the strain between employers and employees in the settlement, and required him to distance himself from some of his fellow Scots, such as John Stewart, George Edmonstone, Lachlan McLean and John Campbell, who as employers were swift to use litigation to resolve matters usually relating to disobedience, neglect of duty or drunkenness on the job.¹⁶ Campbell's former squatter status and importance earned him no favours, as illustrated by the several judgments by Wickham against him for non-payment of wages.¹⁷

Dr William Mactaggert Dorsey (1813-1878)¹⁸

Another non-lawyer who acquired some quasi-judicial status was Dr William Mactaggert Dorsey (1813-1878), who was educated at the University of Glasgow. In 1842 he moved from Sydney to the Moreton Bay district where his medical practice expanded with the town. He was appointed a justice of the peace¹⁹ in 1846. Once, while treating an injured rider in a race-course booth, he was disturbed by a drunk and promptly ordered his arrest. Court proceedings followed, which Dorsey defended himself at a cost of £100, for which he sought reimbursement by the government because he had acted "in the proper discharge of his Public Duty"; he won his claim only after three years of angry letters.²⁰

Arthur Macalister²¹ (1818-1865)

Arthur Macalister (1818-1865) is the first qualified solicitor who features in this history. He was Premier of Queensland in 1866-1867, and 1874-1876. Born in 1818 and educated in Glasgow, Scotland, Macalister came to Australia in 1839. In June 1840 he was appointed Clerk of Petty Sessions and postmaster in Scone, NSW. By 1846 he worked for a solicitor in Sydney and

¹⁴ Kercher, B *An Unruly Child: A History of Law in Australia* St Leonards NSW, Allen & Unwin: 1995, 61.

¹⁵ Kercher, 61.

¹⁶ Mackenzie-Smith, 111.

¹⁷ Mackenzie-Smith, 111.

¹⁸ Mackenzie-Smith, 48.

¹⁹ *Australian Dictionary of Biography 1851-1890* vol 4, 86-87.

²⁰ *Australian Dictionary of Biography 1851-1890* vol 4, 86-87.

²¹ *Australian Dictionary of Biography 1851-1890* vol 5, K-Q.

was admitted to practice as a solicitor in 1850, so his qualifications were Australian.

Macalister arrived in Brisbane in July 1850 to set up practice in Ipswich.²² He was the first solicitor in Ipswich, helped to establish a hospital and was active in the separatist movement. Law was a useful preparation for his political career; on 14 June 1859 he won the new seat of Ipswich, but on 10 December 1859 ceased to sit when the electorate was included in Queensland. In 1860 he won one of three seats for Ipswich in Queensland's first Legislative Assembly. Macalister joined Herbert's ministry as secretary for lands and works in 1862 and was temporarily appointed colonial secretary in July 1862 while Herbert was in England. In 1866-1867 Macalister became Premier after Herbert resigned. From 25 September 1868 to 1871 he was a Member for Eastern Downs and became Secretary for Public Lands and Works in Lilley's government. In June 1871 Lilley's government was defeated, and Macalister failed to form a ministry but was appointed Speaker in Palmer's government. He won the by-election for Ipswich in October 1872 and became Premier from 1874 to June 1876 after Palmer was defeated. In 1875 he was appointed CMG. Macalister was known for his colourful character, apostasies, and notoriety as a breaker of promises (a very non-Scottish characteristic of course), which led to his nickname "Slippery Mac".²³

Peter Macpherson²⁴

Another early Scotland-born, Australian-trained lawyer²⁵ was Peter Macpherson, who was born in Arbroath in 1841 and came to Sydney in 1855 at the age of 14. On 8 September 1865 he was admitted as a solicitor in Queensland²⁶ where he became a prominent Brisbane solicitor and a founding member of the firm Macpherson & Feez that became Feez Ruthning

²² Murphy DJ & Joyce RB (eds) *Queensland Political Portraits 1859-1952* St Lucia, University of Queensland Press: 1978, 47.

²³ Murphy & Joyce, 45.

²⁴ Prentis, 167.

²⁵ Another was Thomas Macdonald-Paterson, born in Glasgow, who arrived at age 17 in Queensland where he worked as a butcher, investor and law clerk. He became a well-known Brisbane solicitor in the firm of MacDonald-Paterson & Co. In 1891 he was a delegate in the Australasian National convention in Sydney (Prentice 168).

²⁶ *Law List of Australasia 1876* Melbourne, Charles F Maxwell: 1876, 174.

& Co, now Allens Arthur Robinson.²⁷ In 1874 Macpherson published one of Queensland's first legal textbooks entitled The Insolvency Act 1874 (Brisbane: Watson & Co)²⁸, and in 1887 combined with Harding J to produce a revised edition entitled The Acts and Rules Relating to Insolvency (Brisbane: Watson Ferguson & Co.)²⁹ He was a Legislative Councillor and later Cabinet Minister.

Peter Macpherson was involved in numerous issues concerning the legal profession, such as the amalgamation of the profession and the formation of a Law Society, although not without the interference and sometimes opposition of Sir Charles Lilley. In 1869, giving evidence before the Select Committee of the Administration of Justice in Queensland, Lilley had himself provided a blueprint for a Law Society;³⁰ however, in 1871 Lilley opposed the Legal Practitioner's Bill of that year, convinced that "the functions of the mere attorney and of the jurist, the lawyer and the advocate were as distinct as they possibly could be ...".³¹ The next year Lilley reversed his argument and his advocacy of the Legal Practitioner's Bill 1872 convinced various successful Brisbane solicitors to support the amalgamation of the professions. He explained his change of heart by claiming that the previous bill had not allowed for proper professional education. In August 1873 Peter Macpherson was one of the 15 solicitors who formed the Queensland Law Society,³² and later part of a sub-committee that prepared the Society's Rules.³³ But Macpherson too wavered in his views on how the legal profession in Queensland should be structured: indeed, in September 1881 while opposing the Legal Practitioners Bill 1881 in the Legislative Council, Macpherson quoted extensively from Lilley as an illustration that "even such an eminent man as Mr Lilley was could fluctuate in his opinion on matters of this sort".³⁴ Whatever their political differences, there was clearly a close friendship, since,

²⁷ McPherson BH 1989, 143.

²⁸ McPherson BH 1989, 143.

²⁹ McPherson BH 1989, 143.

³⁰ Gregory, H *The Queensland Law Society Inc 1928-1988: A History* Brisbane, Queensland Law Society: 1991, 20.

³¹ Gregory, 18.

³² Gregory, 22.

³³ Gregory, 22.

³⁴ Macpherson, P *Queensland Parliamentary Debates* Vol 34, 68, 21 September 1881.

along with Lilley's son, Edwin, Peter Macpherson was one of the executors of Lilley's will when he died in 1887.

The Hon. Justice Allan Wright Macnaughton (1860-1937)³⁵

The first lawyer noted in this list whose tertiary education was in Scotland was the Hon. Justice Allan Wright Macnaughton (1860-1937), born in Edinburgh in 1860 and educated at Fettes College and the University of Edinburgh, who arrived in Sydney in 1880 and on 15 December 1882 was called to the bar in NSW.³⁶ He practised in Sydney and was an equity reporter for the law reports. On 6 April 1886 he was admitted to the Queensland Bar³⁷ and in 1890 moved to Townsville and acquired an extensive and lucrative practice. Macnaughton was commissioned as an acting Supreme Court Judge on several occasions. In 1909 he was appointed to the District Court and in 1912 was appointed the first judge of the Industrial Court established by the Industrial Peace Act of 1912. In 1917 with Justice McCawley as President, he became one of the two judges of the court of Industrial Arbitration in Brisbane, where he participated in many of the early wage and industrial rulings. While a District Court Judge, in 1915 he was described as an "aspirant" for the Supreme Court Bench in Personal Sketches and Recollections of Queensland Judges "By one who knows them" (The Catholic Press 25 Feb 1915). His perceived political neutrality made him acceptable to T J Ryan's Labour Government, which employed him to conduct a number of official enquiries on its behalf. In 1922 he was appointed to the Supreme Court under the Supreme Court Act of 1921. According to Blair CJ he was a "repository of case law" who paid close attention to contemporary legal developments throughout his judicial life, and on the bench was said to be "quick and industrious, if at times impatient" – this last being a failing in which he was, I am sure, unique.

The Hon. Justice Charles Jameson (1852-1936)³⁸

³⁵ McPherson BH 1989, 314-5.

³⁶ *Queensland Law Almanac* 1895, 90.

³⁷ *Queensland Law Almanac* 1895, 90.

³⁸ McPherson BH 1989, 315.

All the figures I have mentioned so far were from at least middle-class homes, with their family backgrounds giving them expectations of a professional career in medicine or law, or officer status in the navy. An early example of that quintessential Australian character, the self-made individual, is Justice Charles Jameson (1852-1936), Born in Scotland in 1852, he arrived in Australia in 1872, and worked as a cattle buyer, railway navvy, on a cattle station, and as a gold miner. While engaged in this physical labour, Jameson read for the Bar, reputedly carrying *Stephen's Commentaries* in his saddle bags. On 6 February 1883 he was called to the Bar in Queensland and practised in Brisbane.³⁹ He was appointed Secretary to the Crown Law Offices. In 1892 he was the northern Crown Prosecutor in Townsville and appointed to the District Court in 1910. From time to time he was the acting northern Supreme Court Judge. In 1915 Personal Sketches described him as "ponderous, generous and sincere". He took Lukin's place on the Supreme Court at Rockhampton in 1921 under the Supreme Court Act of 1921, and in 1922 sat, apparently on special selection, at least once in the Court of Criminal Appeal in R v Connolly & Sleeman (No 2) [1922] StRQd 278. Having come later to the legal profession, Jameson was almost 70 when appointed to the Supreme Court and served for only a little over a year, retiring on 16 December 1922.

The Hon Justice Sir James W Blair KCMG (1870-1944)⁴⁰

One of the most significant, if controversial, of Queensland lawyers and politicians of part-Scots heritage is Sir James Blair, born in 1870 in Ipswich of a Scots father and Irish mother. On 6 March 1894 he was admitted to the Bar. He became an independent member for Ipswich in 1902 and appointed Attorney-General in 1903 after the Liberal-Labour coalition victory that finally ended the thirteen-year rule of the 'continuous ministry'. One of Blair's first actions was to abolish the Sheriff's office – a decision quickly reversed when the new administration realised what the Sheriff actually did – but not before he had sacked the Under-Sheriff, Arthur Hoey Davis, better known as the author 'Steele Rudd'. Although Steele Rudd had the good sense to marry a

³⁹ *Queensland Law Almanac 1895*, 90.

⁴⁰ McPherson BH 1989, 324.

Scottish lass, and would later write warmly in his *Duncan McClure and the Poor Parson* stories about the Scots' contribution to the Darling Downs, he was himself the son of a Welsh convict and an Irish orphan girl, and after his retrenchment devoted many column-inches in *Steele Rudd's Magazine* to vicious personal attacks on Blair.

At the Bar, Blair's practice had been largely confined to criminal cases. He was counsel on appeal in the Kenniff trial, which laid his reputation for the later widely held belief that "if the need arose, Jimmy Blair could make them weep".⁴¹ In 1922 he accepted appointment as the Northern Judge (he had previously declined this offer in 1908). He then transferred to Rockhampton after Jameson's retirement, and remained there for two and a half years. From 1925 to 1940 he was Chief Justice of Queensland.

Three controversial cases arose during his term – the Mungana Mines case 1929 where a Royal Commission report had condemned two former premiers, Theodore and W McCormack for conspiracy with respect to the purchase of two mines at Mungana in North Queensland.⁴² The suggestion, "under a thin fictional veil", of Blair's venality in Frank Hardy's political novel Power Without Glory, is dismissed by the *ADB* as "no more than malicious contemporary gossip".⁴³

The second legal controversy involving Blair occurred in 1939 when he presided over a criminal trial of members of the League for Social Justice who had invaded a Labour caucus meeting armed with batons, coils of barbed wire and hammers.⁴⁴ The trial was held in Brisbane City Hall because there were so many defendants. Although Blair made it clear to the jury that he felt they were all guilty, they were all found not guilty.

The third case was the Ithaca Election Petition, where Webb, a member of the Protestant Labour Party appealed to E A Douglas, sitting as an elections

⁴¹ *Australian Dictionary of Biography 1891-1939* vol 7 A-Ch, 318.

⁴² *Australian Dictionary of Biography 1891-1939* vol 7 A-Ch, 320.

⁴³ *Australian Dictionary of Biography 1891-1939* vol 7 A-Ch, 320.

⁴⁴ *Australian Dictionary of Biography 1891-1939* vol 7 A-Ch, 320.

tribunal, that Hanlon, Labour minister and member for Ithaca, had distributed illegal leaflets that resulted in his winning the election by 456 votes. Douglas upheld the appeal, but subsequently Hanlon's counter-appeal was sustained by Blair and E A Douglas' brother, R J Douglas. Blair applied the standard of knowledge required in criminal trials (as in R v Goddard), on which basis few politicians would ever be liable for cheating at elections.⁴⁵ As well as being overturned, E A Douglas was already aggrieved by what he believed had been Blair's role in the removal of judicial pension rights in 1922 by the Labour government; in 1944 Douglas asserted that Blair had "suppressed a pension plan for judges ..., received a salary as lieut-governor, and had been given large undisclosed payments by the government without statutory authority".⁴⁶ Statements made and questions asked in parliament appeared to justify all payments made to Blair.⁴⁷

In 1927 Blair became Chancellor of the University of Queensland, in 1930 received a knighthood, became Lieutenant-Governor in 1933 and in 1935 received a KCMG. He combined positions of office-bearer in the Scottish Union and the Irish Association. The *ADB* allows that "Like all public men he had his detractors [who claimed] he was venal, he was weak, he 'married beneath him' because of that weakness, and he lacked dignity. Others [...] delighted in his colourful personality, his gift of ready and apt speech, his wit and love of humour, his kindness of heart and genuine interest in his fellow men".⁴⁸

SCOTS' ENCOUNTERS WITH THE LAW

Finally let me turn briefly to those Scotsmen and Scots descendants who saw the law from the other side – as drunks, bushrangers, and murderers.

William Fyfe⁴⁹

⁴⁵ McPherson BH 1989340.

⁴⁶ *Australian Dictionary of Biography 1891-1939* vol 7 A-Ch, 320.

⁴⁷ *Australian Dictionary of Biography 1891-1939* vol 7 A-Ch, 320.

⁴⁸ *Australian Dictionary of Biography 1891-1939* vol 7 A-Ch, 321.

⁴⁹ Mackenzie-Smith, 112.

One of the earliest was a Scottish ex-convict, William Fyfe, who on 4 July 1848 was executed for the murder of Robert Cox at Kangaroo Point. This is the famous crime to which Patrick Mayne allegedly confessed on his death bed in 1865, as Rosamond Siemon details in her best-selling *The Mayne Inheritance*,⁵⁰ although this claim has more recently been questioned in a detailed study of the primary evidence by Bernadette Turner.⁵¹ What is undisputed is that, in the early hours of a Sunday morning in 1847, Robert Cox was stabbed in the right side of the chest and dumped in the Brisbane River where his body was discovered by a boatman and his family. Preliminary proceedings were held in Brisbane; however, on 12 April, Fyfe, a cook, was sent to Sydney where he faced trial and was convicted on circumstantial evidence. Both before and after his execution, doubts were raised about Fyfe's guilt and other aspects of the case: it was claimed that Fyfe had been unable to afford the costs associated with bringing witnesses to the Sydney trial; pleaded that one of those witnesses could account for him at the time of the murder and protested his innocence to the end.

William Fraser asserted that Fyfe, a Scottish ex-convict, went to his death because he refused to involve a woman with whom he spent the night – although this was a common myth in an age when criminals often claimed to share the same qualities of chivalric courtesy and gallant protection of the reputation of women as their alleged 'betters'.

James Macpherson, "The Wild Scotchman"⁵²

James Macpherson "The Wild Scotchman" [sic], had a rather better claim to chivalry, although, or perhaps because, he was also one of Queensland's best known bushrangers.⁵³ He was born in Duthil, Inverness, Scotland in 1841

⁵⁰ Siemon R, *The Mayne Inheritance : a gothic tale of murder, madness and scandal across the generations*. St. Lucia, Qld, University of Queensland Press, 1999.

⁵¹ Turner B, "The Burden of Proof. Did Patrick Mayne kill Robert Cox?", *Proceedings of The University of Queensland History Research Group*, no 13, 2002, pp 29-52.

⁵² Sabato, E MacPherson "McPherson "The Wild Scotchman" <http://www.sabatech.net/scotchman/>. Sabato is Macpherson's brother's great-granddaughter. The article has not been published and no sources are referenced. However, the article generally accords with other reported accounts.

⁵³ Morrison, Allan A "Charles Lilley." *Royal Australian Historical Society* (1959) 45(1), 1, 12.

and moved to Australia in 1855. In 1862 when Charles Lilley discussed his Militia Bill at the “Valley”, he was mobbed. Macpherson was his prominent defender, assisting him to escape.⁵⁴ In 1864 Macpherson commenced his career as a bushranger in the Bowen district, where, with others, he stuck-up “Will’s public-house”. He began robbing mails in a widespread area. Pat McCallum was robbed several times in the Gayndah area. If the bushranger needed a horse, or whatever, he would help himself to McCallum’s gear, always returning it, usual with a note – “this is Pat McCallum’s saddle – see that he gets it back!”

In March 1866 Macpherson was captured near Gin Gin and tried in Brisbane. On 4 April 1866 a description of his capture appeared in the Maryborough Chronicle – “[Macpherson] ... commenced to unstrap a double-barrelled gun ... Mr Nott ... told him that if he did not ... surrender, he would fire at him. ... Macpherson at once said, “I give myself up.” He added, “I knew you were not the police by the pace at which you followed me down that ridge” and he described with some humour, the absurd attitudes which he had witnessed in police horsemanship – some holding on by the front, and some by the back of the saddle. The prisoner was very communicative and appeared cheerful.” Although acquitted on that occasion, Macpherson was subsequently convicted on other charges and imprisoned on a hulk in the Brisbane River, then transferred to St. Helena Island in Moreton Bay where he attempted to escape but was recaptured. In 1874 he was granted a release after various petitions.

William Fraser⁵⁵

William Fraser was rather more mundane in his criminal activities. He was a Kilcoy pioneer who came to Brisbane via service at Durundur, Scotland. He was frequently brought before the police magistrate to face drink-induced charges ranging from driving a dray on the footpath to petty theft. His most significant attempt to establish his respectability was undone by his alcoholism. He established the Blue Bonnet store with his Scottish wife, Lexie. It only lasted a short time because the store was stocked with alcohol.

⁵⁴ Morrison, 12.

⁵⁵ Mackenzie-Smith, 52.

Evan Mackenzie (1816-1883),⁵⁶ and the Kilcoy Station Poisoning⁵⁷

Evan Mackenzie was born in 1816 at Portabello, Edinburgh and in September 1840 sailed for Sydney with his brother Colin. In 1842 he took up a station at Kilcoy, near Brisbane and was appointed a justice of the peace. Mackenzie was an early civilian magistrate in the Moreton Bay district. In April 1843 he petitioned the governor to establish a Court of Quarter Sessions at Brisbane after noting the increase in serious offences.⁵⁸

One of the most infamous and “incredible crimes which disgrace [British] efforts at colonization” occurred on Mackenzie’s Kilcoy property in January 1842. On the outskirts of a station owned by Mackenzie, 30-60 Aborigines died from eating damper laced with strychnine, ostensibly made by two frightened, fleeing shepherds from Kilcoy. The Mackenzies were admonished for this appalling crime by Attorney-General James Plunkett, who threatened prosecution if an official complaint was lodged. Evan Mackenzie, who owned the station, was widely suspected for 150 years but recent research suggests that he was probably not himself responsible for the poisonings, since he was in Sydney at the time. With Mackenzie away, the station hierarchy under the leadership of an English overseer, decided to poison local Aborigines whom they feared. The overseer disappeared upon Mackenzie returning. Mackenzie organised the conspiracy of silence to protect the Englishman. It is suggested by a contemporary historian (perhaps understandably keen to exonerate the Scots from such a shocking crime), that the Kilcoy massacre, although it occurred on a station owned by a Scot, was instigated by a Sassanach (an Englishman) and perpetrated by colonial workers.

Conclusion

This brief survey of some Scots influential in the law in early Queensland is unfortunately notable for the fact that it includes no women. Why is this, when

⁵⁶ Mackenzie-Smith, 48; *Australian Dictionary of Biography 1851-1890* vol 5, 170-71.

⁵⁷ Mackenzie-Smith, 21-22.

⁵⁸ Mackenzie-Smith, 111.

Scottish women were often more well educated⁵⁹ than those born in other English speaking nations? There is no explanation written in the histories but its legacy remains in pockets of society to this day, such as in the membership rules of the society of St Andrew of Scotland:

“The Society is composed of responsible persons who are anxious and determined that the Queensland Scottish element will play its full part within the State, the Commonwealth and the Commonwealth of Nations in conformity with the high principles of honesty, integrity, industry and loyalty, laid down and zealously guarded by our forefathers” – <http://qld.standrewsociety.net/>.

The constitution does not explicitly discriminate between men and women; however, according to this website, ordinary membership is restricted to men of 18 years or over and has an annual subscription of \$33.00 or a life

⁵⁹ Scots were educated for more years on average than the English and certainly the Irish. Scottish education was ultimately based on a philosophy of common sense and was traditionally broad in scope and not strictly classical in content.

Co-education has been the rule in the majority of Scottish educational institutions since the days of the Reformers. Scottish education had as an aim equality of opportunity and wide availability, based on the theological egalitarianism of the reformers. In 1866, generally, girls attended public secondary schools in smaller towns. Girls were not admitted to private schools in larger towns, such as Edinburgh High School or Academy, because the upper middle class disliked co-education. In other schools, such as Inverness Academy, girls were taught the same subjects but were segregated from the boys. Educational Endowments (Scotland) Act 1882: £14,259 for the education of girls, in addition to what they shared with boys in other general grants.

In 1849 four main teachers' training colleges in Edinburgh and Glasgow became co-educational and grants for women were made available. From 1868 to 1877 all Scottish universities had established associations for the university education of women but they had no power to grant degrees. The University of Edinburgh in 1874 offered a “Certificate in Arts” awarded to women students who, after taking special lecture courses, passed three or more of the seven subjects required of men for the MA degree. In 1876 the University of St Andrews, though no longer providing lecture courses for women, instituted the diploma of LLA (Lady Literate in Arts) which could be taken by examination at local centres. In 1892 women were admitted to graduation with men.

membership fee of \$550.00. Associate membership is apparently available to women of 18 years or over with an annual subscription of \$19.80 or life membership fee of \$330.00. The Society's Annual Dinner is attended only by men. A Ladies' Night is held each year, but in practice this is the Society's Annual Scottish Ball that both Members and Associate Members attend. A number of senior politicians including the Premier and a number of senior judges of Scottish descent are members. This is a curious legacy of an ethnic tradition which overtly preached the values of education, egalitarianism, and liberal democracy.

**Justice RG Atkinson
Supreme Court of Queensland
28 March 2004**

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