

University of Dundee

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Shiels, Robert

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The Great War and Parliament House, Edinburgh

Dr. Robert Shiels¹

Introduction

The Great War is said to have dramatised the transition from the Victorian and Edwardian eras to the 1920s, and, as a watershed, it emphasised that things would never be the same again: it was the boundary between two different societies.² Not least of the remarkable consequences of the war was the price in human life: the scale of the war losses for Scotland was perhaps 74,000 individuals.³ The effects of war were widespread and generally immediate and an economic turning point.⁴ The effects of conflict came to be experienced everywhere: ‘the post war world was in large part a world paralysed by grief’.⁵

Notwithstanding a major war over five years, the legal systems in Great Britain and Ireland had to function: life went on amidst war even if it was not that experienced previously. Many lawyers left to go to serve in the Navy, the Army or in government service, known as ‘national work’.⁶ There was certainly suitable work for lawyers: ‘victory rested on a prodigious administrative achievement’.⁷ Some lawyers stayed at

¹ MA, LLB, University of Dundee; LLM, PhD, University of Glasgow.

² H. Perkin, *The Rise of Professional Society: England since 1880* (Routledge, 1989), 224-5.

³ E.A. Cameron, *Impaled Upon A Thistle: Scotland Since 1880* (Edinburgh University Press, 2010), 121, gives the figure suggested by the 1921 Census.

⁴ C.M.M. Macdonald and E.W. McFarland (Eds.) ‘Scotland and the Great War’ (1999) Chap.1, ‘The Scottish Economy and the First World War’, 11.

⁵ J. Nicholson, *The Great Silence: 1918-1920 Living in the Shadow of the Great War* (John Murray, 2009), 5.

⁶ R.K. Hannay, *The Society of Writers to His Majesty’s Signet* (T & A Constable, 1936), xviii.

⁷ D. Stevenson, *With Our Backs to the Wall: Victory and Defeat in 1918* (Penguin, 2012), xvii.

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home and kept the legal system viable. The effect of the Great War on Parliament House, Edinburgh remains ephemeral. Perspective is perhaps only possible now as intense personal involvement can and does lead to distortion.⁸

One study of manpower resources concluded that the available contemporary sources do not lend themselves well to statistical analysis of Scotland's contribution in the Great War.⁹ For example, some names appear on several memorials, demonstrating that individuals were often remembered by different communities, and not just their place of birth or usual residence.¹⁰ It is not impossible then that the loss of lawyers, and court employees were not listed in legal sources but merely left for remembrances elsewhere. This short study may be considered at best impressionistic, and probably statistically naïve.

The Legal Profession

The view of one Scots lawyer was that 'the shining crystal bowl was smashed in pieces by the outbreak of war on 4 August 1914'.¹¹ Assessing the full effect of the war on the legal profession in Scotland would be a major project; in the meantime, consideration is given to the supreme courts in Parliament House, just off the High Street, Edinburgh. This was the centre of the Scottish legal system, and a community composed of lesser communities.¹² The loss of manpower there was often that of qualified *and* practising lawyers.¹³

To assess, even superficially, the nature and extent of the effect of the Great War the starting point might reasonably be the lists of lawyers in the pages of *The Scottish Law*

⁸ A. Gregory, *The Last Great War: British Society and the First World War* (Cambridge University Press, 2008), 1.

⁹ Patrick Watt, 'Manpower, Myth and Memory: Analysing Scotland's Military Contribution to the Great War' (2019) 39(1) *Journal of Scottish Historical Studies* 75-100.

¹⁰ *ibid*, 100.

¹¹ J.A. Lillie *Tradition and Environment in a Time of Change* (Aberdeen University Press, 1970), 72.

¹² John Finlay, *The Community of the College of Justice: Edinburgh and the Court of Session, 1687-1808* (Edinburgh University Press, 2012), 251.

¹³ Many of the recruits went straight from school: see e.g., J. Lewis-Stempel, *Six Weeks: The Short and Gallant Life of the British Officer in the First World War* (Orion Books, pb 2010), chapter 1.

List.¹⁴ The front page of the *first* edition had the subtitle of *A Legal Almanac Directory and Remembrancer* and it was asserted there that it had been corrected to 1 January 1848. Published annually thereafter, the law list provides perhaps the easiest guide to the membership of the profession, and like all formal lists it captures a brief moment of administrative details which might provide a base line of sorts.

By 1914 the Scottish legal profession had referral Bar in the Supreme Courts in Edinburgh (the Court of Session and the High Court of Justiciary), all members of which had the nomenclature of ‘advocate’ and all were members of the Faculty of Advocates. There were also instructing lawyers whose title varied: some were ‘solicitors’, others ‘solicitors in the Supreme Courts of Scotland’, there were ‘writers’ and others were ‘procurators’, locally there were ‘advocates in Aberdeen’, and some who were probably content with the title of ‘law agent’.¹⁵

Business at Parliament House

The demographic problem arising from the Great War has long been known but perhaps the detail has been missing.¹⁶ While the business for the profession of advocate had been flourishing at the start of the twentieth century, the volume of work had declined in the years leading up to 1914. Thereafter, in the inter-war years the courts were less busy due to the Great Depression. Such a superficial explanation has no regard to the effects of the Great War.

The various editions of *Index Juridicus* or *The Scottish Law List* to 1914 provide for each year, all members of the Faculty of Advocates but not all these members were either in practice at all or were available to instruct. Of the former, some had retired or never really been in practice at the Bar: ‘many gentlemen are admitted solely for the purpose of becoming members of a genteel profession - the others are the working members’.¹⁷ Appointment to a judicial or academic position in Scotland or elsewhere

¹⁴ *Index Juridicus* or *The Scottish Law List* (Wm. Blackwood and Sons, 1848).

¹⁵ Lord Macmillan, *A Man of Law's Tale* (Macmillan, 1952), 35-7.

¹⁶ D.M. Walker, *A Legal History of Scotland: Volume VII The Twentieth Century* (W. Green, 2004), 527-8: some of the description there seems, as it is without sources, to be an example of oral history

¹⁷ (1860) 2 *The Scottish Law Journal* 25. For an example of non-practising advocates see the obituary at (1916) 31 *Scottish Law Review* 138: ‘he ceased attending at Parliament House some years ago’.

or engagement in some other occupation meant that the number of those in practice was smaller than the lists suggested.

It has never been easy to determine how many people entered the Faculty of Advocates in order to practice and how many did so for other reasons.¹⁸ One way of quantifying the number of advocates in practice is to note those who had a particular clerk specified against their name: to have a clerk is to indicate *prima facie* an availability to accept instruction.¹⁹ Not to be in practice and therefore not being available to take instructions did not necessarily mean that an advocate was without employment: there was no restriction on an advocate engaging in collateral occupations, paid or unpaid, provided that he or she was not employed by or in partnership with a solicitor.²⁰ Such clerks dealt with the business of several advocates, but that did not negate the possibility or probability that there were other clerks who were employed by individual senior counsel and who were thus not listed for the information of instructing solicitors at large.²¹ Post-nominal letters for a few advocate's clerks suggest that they were legally qualified as law agents.

At the outset of the twentieth century the 'correct designation' of lawyers, other than advocates, was 'law agent'.²² For solicitors, as known today, *The Scottish Law List* contained several long lists of Certified Practitioners being those who obtained duly stamped certificates during the November of the year before the year of publication. This certification was a requirement of the Stamp Act 1891 (c.39), section 43. Not all solicitors needed then or now to be members of either *the Society of Writers to the Signet* or *the Society of Solicitors in the Supreme Court of Scotland*, but many were members although not in practice in the Edinburgh area.

By 1914 there was a system of demarcation: access to advocates as the Supreme Court pleaders was through solicitors who might be their clerks. This worked both ways as

¹⁸ N.T. Phillipson, 'Lawyers, Landowners and Civic Leadership of Post-Union Scotland' 171, 175 in Sir Neil MacCormack (ed.) 'Lawyers in Their Social Settings' (W. Green, 1976).

¹⁹ Walker (n. 15), 527

²⁰ Walker (n. 15), 529

²¹ Walker (n. 15), 536

²² Walker (n. 15), 544 but no reason or source is cited in support of that purported correctness: it is likely that the origins lie in the law of principal and agent and the work of the lawyer in immediate contact with the client.

advocates could not take business directly from the public. It has to be said, however, that an advocate might be in practice and not receive much work: H.P. Macmillan (later Lord Macmillan of Aberfeldy) was called to the Bar on 5 November 1897 and received his first brief four days later, from an uncle who was a solicitor. His next brief was three months later.²³ This was a period when the Court of Session was ‘in a high state of prosperity and efficiency’.²⁴

The effects of war in this system of demarcation was both particular and general: the loss of specialists in Supreme Court pleading had a consequence for all of the solicitors branch of the legal profession, as throughout Scotland all solicitors may have had recourse to the specialists. Conversely, the loss of a solicitor in business other than in Edinburgh might end or disrupt the flow of a certain type of work from a particular geographical area to advocates.

The table annexed to this paper is a list of King’s Counsel, advocates, advocates clerks and solicitors (in the two Parliament House societies). A straight arithmetical total of each group has been produced for the ten years before and after the Great War as well as the war years. The inherent problems with this may be specified easily: while it might be reasonable to assume that the legal press would record the death of a lawyer for the information of others in the business, that was not necessarily universal: one solicitor was missing for some time before he was declared to be missing and assumed to be dead.²⁵ As with all administrative lists, a time-lag might exist between a death and removal of the appropriate name.

The state of business of Parliament House at the start of the twentieth century was said to have been flourishing. Not everybody flourished: ‘Penury and affluence are more rudely contrasted at the Bar than anywhere else - or at least were in those days before 1914’.²⁶ The smaller matters of Court business were handed to very junior counsel to deal with by solicitors with something of reluctance for there was little guidance from books; and solicitors and the Parliament House clerks had the greater competence of

²³ Macmillan, (n. 14), 31, 37-38.

²⁴ Macmillan, (n. 14), 44.

²⁵ (1917) *Scots Law Times* (News) 114.

²⁶ Quote from Macmillan (n. 14) in Walker (n. 15), 527.

experience to direct them. 'The heavier litigation – and there was a great deal of that - was consequently in the hands of a few established junior counsel and an even smaller number of seniors. To reach these ranks was the stamp of success – present and in prospect. Only then did one make a living of it - and at what price, but a price which those fit to pay it very gladly paid as for a sense of high-powered achievement realised day by day in an abandonment of disciplined effort. So men of distinguished capacities were attracted to the profession and their availability further set success apart as on a pedestal or pinnacle'.²⁷

Lawyers as Soldiers: 1914-1915

The enthusiasm of some gentlemen to be part-time soldiers was nothing new: in the 1860s Sir Henry Campbell Bannerman had had 'a brief and not very serious experience of military matters in the 1st Lanarkshire Volunteers, as the Captain of a Company manned by staff from the family firm.'²⁸ In the 1880s David Lloyd George had joined the Volunteers and he was 'a most unsatisfactory soldier'.²⁹ On 18 May 1859, in the aftermath of the Indian Mutiny and the Crimean war, the Faculty of Advocates resolved to become members of the Volunteers and 110 of their number formed No. 1 (Advocates) Company of the 1st City of Edinburgh Rifle Volunteers. That unit ended when the numbers fell to 25. At the time of the Boer War Faculty members felt sufficiently enthused about events to list all who had been original members of the Volunteers, those who were living members of Faculty who had been in the Militia or Volunteers in the past, and the present members of Militia, Yeomanry, or Volunteers. A list was given of Faculty members then serving in South Africa.³⁰

Similarly, the WS Society in 1900 had sought to find the best means to show sympathy with and give support to the Volunteer movement.³¹ Many Scots lawyers volunteered

²⁷ Lillie, (n. 10), 74.

²⁸ J. Wilson, *CB: A Life of Sir Henry Campbell Bannerman* (Constable, 1973), 48.

²⁹ Roy Hattersley, *David Lloyd George: The Great Outsider* (Little, Brown Group, 2010), 21.

³⁰ 'Notes from Edinburgh' (1900) 16 *Scottish Law Review* 76-80.

³¹ Report by *The Committee of the WS Society as to the Volunteer Movement* dated 5 February 1900 It was noted, at 4-5, that part of the difficulty then was that companies composed exclusively of any particular society or profession were not then encouraged as they had been in earlier times

and departed for war which they soon experienced.³² Some lawyer-soldiers were experienced volunteers: one advocate had served as a militia officer prior to his going to the Boer War.³³ Another, James Ferguson KC, had served in the volunteers for many years and had rejoined aged about 57 years on the outbreak of war in 1914.³⁴

In October 1914 the initial enthusiasm that became apparent throughout the United Kingdom, extended to Parliament House: 'chivalry, self-sacrifice and heroism were the catchwords of those early days of the war and there were very few people who did not respond to the call'.³⁵ The local campaign to raise an Edinburgh battalion, accordingly, 'received every encouragement. From the two societies representing the solicitors' branch of the profession, the WS and SSC societies sent out 'whips' full of noble and patriotic sentiments. The legal profession just now for young men represents a blind alley, and a depletion of office staff is the natural result'.³⁶

The enthusiasm for participation in the war was most obvious with the offer by Sir George McCrae (formerly a Member of Parliament for Edinburgh) to raise a battalion for service.³⁷ That was done swiftly and it became the 16th Battalion, The Royal Scots. The historian of the battalion has enumerated the occupations of the original members by civilian occupation: of the officers there was one advocate, two apprentice solicitors, two law clerks, three solicitors, and one Writer to the Signet. Amongst the other (non-officer) ranks there were two law apprentices, eleven law clerks and seven solicitors.³⁸

By November 1914 it was noted that over 40 members of the Faculty of Advocates had gone away to some branch of the armed forces. Apart from the occasional service uniform in Parliament House there was 'little suggestion that outside our doors this city

³² See (1900) 7 *Scots Law Times* (News) 169, 173 and 181; (1900) 8 *Scots Law Times* (News) 9 and (1901) 9 *Scots Law Times* (News) 25, 149, 157 and 169 for biographies of Scots lawyers, photographed in uniform, who went to South Africa.

³³ 1917 *Scots Law Times* (News) 29.

³⁴ 1917 *Scots Law Times* (News) 49.

³⁵ T. Royle, *The Flowers of the Forest: Scotland and the First World War* (Birlinn, 2006), 25 and 246-251 for the arrangements for those who protested at having to serve in the war.

³⁶ (1914) 30 *Scottish Law Review* 226.

³⁷ J. Alexander, *McCrae's Battalion: the Story of the 16th Bn. Royal Scots* (Mainstream, pb 2004), 72.

³⁸ *ibid*, 290-1. Perhaps, the battalion is best remembered for the thirty professional footballers who joined it.

is more or less a barrack town full of armed men'.³⁹ The number of advocates who were absent on military service was revised up to 66 in a published list and 21 of them more or less enjoyed lucrative practice.⁴⁰ The place was noted as being 'not so lively as it was wont to be. In fact, when the several Courts have started each day, and such counsel as are employed are inside the Court rooms, the aspect of the great hall is decidedly depressing'.⁴¹

Lawyers as Soldiers: 1915-1916

The names of advocates on naval or military service were published in a provisional list in the *Scots Law Times* of 5 December 1914: there were 67 advocates and 12 intrants.⁴² It had been noted by contemporaries that a number were serving in the ranks but it was said that those 'who appear in the list as privates are wisely content to bide their time till commissions come their way, and they have certainly set a good example by giving their services at once in the ranks rather than making the holding of a commission a *sine qua non* of their joining the forces'.⁴³

Within a short time of the publication of the list of serving advocates and intrants, it was reported that commissions had been granted to other members of the Faculty of Advocates. It was suggested that 'when hostilities are over, it is pretty safe to say, the peaceful career of a lawyer will not appeal to many who, having come safely through a time of adventure and excitement will prefer to keep to the profession of arms'.⁴⁴

The historian of the SSC Society recorded that as muster lists were not available it was difficult to say which members of the Society were called up as existing members of the Territorial Army and which joined out of spontaneous patriotic duty. The report of the Widows' and Orphans Fund for 1915 showed that within nine months of the

³⁹ (1914) 30 *Scottish Law Review* 246.

⁴⁰ (1914) 30 *Scottish Law Review* 262.

⁴¹ (1914) 30 *Scottish Law Review* 246.

⁴² (1914) *Scots Law Times* (News) 138.

⁴³ (1914) 30 *Scottish Law Review* 246.

⁴⁴ (1915) 31 *Scottish Law Review* 9.

commencement of hostilities eleven of the fund's contributors were on active service, six of them bachelors and five married men.⁴⁵

Matters from early to mid-1915 started to take on a different hue with a consequential and bitter note appearing: 'War means waste – waste of accumulated wealth, waste of fruitful energy, and, most serious of all, waste of hopeful manhood. The last is being felt in all businesses and employments, and in proportion to its numbers, not least in the legal profession. The profession responded loyally to the country's needs, and the war is taking its heartless toll'.⁴⁶

Possibly the first formal intimation in the professional press was that of the death of an infantry officer on 13 July 1915 who had been a partner in a firm of solicitors in Motherwell.⁴⁷ Thereafter, many other comparable losses were recorded in the trade press but as the focus of attention is Parliament House, Edinburgh notice here is restricted to solicitors by whatever name then preferred who were most probably associated with the Supreme Courts. Two other solicitors, both Writers to the Signet in Edinburgh, were killed in action a short time later.⁴⁸ In October 1915 an advocate died of wounds.⁴⁹

The exodus from 'PH' meant that in 1915 around the first anniversary of the outbreak of war there were estimated to be about 60 advocates *left in practice* and of eligible age then to serve.⁵⁰ It was also noted that four King's Counsel had enrolled as special constables and five others had become members of what were described as 'Volunteer Corps'.⁵¹ In early 1916, it was announced that there were to be no appointments of King's Counsel made in Scotland during the period of the war. An anonymous commentator thought then that few of those juniors who had gone on military service

⁴⁵ J.B. Barclay, *The SSC Story: 1784-1984* (The Edina Press, 1984), 139. This is the history of the Society of Solicitors in the Supreme Courts of Scotland.

⁴⁶ (1915) *Scots Law Times* (News) 53.

⁴⁷ (1915) 31 *Scottish Law Review* 176.

⁴⁸ (1915) 31 *Scottish Law Review* 178.

⁴⁹ (1915) 31 *Scottish Law Review* 255-6.

⁵⁰ (1915) 31 *Scottish Law Review* 238.

⁵¹ (1915) 31 *Scottish Law Review* 239.

were likely to be aspirants for silk for several years to come. Further, there were then more seniors than there was suitable work for them.⁵²

A published note of 31 March 1916 suggested that ‘the legal profession can claim a preponderance of first hand patriotism’ because of the ‘vast number of active participants in the great struggle who are members of the profession’.⁵³ Such patriotism doubtless took on a different perspective when Edinburgh citizens saw a Zeppelin that had flown across Leith and Edinburgh on the night of 2/3 April 1916 and there dropped a variety of bombs and incendiary devices.⁵⁴ The injuries to members of the public in the Grassmarket led to the death of one of their number, and others elsewhere.⁵⁵ The physical threat to Parliament House was real, and the absence of direct damage was probably a matter of chance.

The losses had reached the point then that five out of the thirteen Court of Session Judges had lost a son, ‘and the average is lamentably high’.⁵⁶ While on the Bench, Lords Dewar, Salvesen, Cullen and Ormisdale had all lost a son in war and Lord Mackenzie had a son who had gone missing shortly after the commencement of the war.⁵⁷ Lord Kingsburgh had, after he had retired, lost a son.⁵⁸ So too had Lord Salvesen.⁵⁹ Lord Ashmore, the first Judge appointed after the Great War, had also lost a son.⁶⁰ There were deaths of sons amongst members of the shrieval bench.⁶¹

The death toll was relentless: in July 1916 killed in action were an advocate and a Writer to the Signet.⁶² In August 1916 there was intimation of the death of an advocate.⁶³ In

⁵² (1916) 32 *Scottish Law Review* 21-2.

⁵³ (1916) 32 *Scottish Law Review* 96.

⁵⁴ *The Scotsman* newspaper, Tuesday April 4, 1916.

⁵⁵ National Archives of Scotland: HH 31/21/8: Chief Constable’s Report.

⁵⁶ (1916) 32 *Scottish Law Review* 96.

⁵⁷ There are other references to the sons of lawyers: see Barclay, (n. 43), 139; the practical point may be a concern about the heirs or successors to family businesses.

⁵⁸ N. Macdonald, *Sir John Macdonald: Lord Kingsburgh* (Lumphanan Press, 2010), 202-3.

⁵⁹ H.F. Andorsen (Ed.), *Memoirs of Lord Salvesen* (Chambers, 1949), 104; and a nephew, an Army Officer, was killed in a railway accident, *ibid*, 106.

⁶⁰ 1920 *Scots Law Times* (News) 65.

⁶¹ E.g., Sheriff T.A. Fyfe lost two sons killed in the war: (1928) *Scots Law Times* (News) 81.

⁶² (1916) 32 *Scottish Law Review* 189.

⁶³ (1916) 32 *Scottish Law Review* 215-6.

October 1916 there was intimation of a Writer to the Signet in Edinburgh.⁶⁴ Further in November 1916 there was intimation of the death in action of a Writer to the Signet who was a partner in an Edinburgh firm, and an advocate.⁶⁵

The effect of the departure of those in practice and the deaths was beginning to be felt seriously: from 12 May 1916 it was noticeable that ‘the Faculty of Advocates has been pretty well drained of members capable of bearing arms or at least wearing uniform... good juniors cannot be said to be actually scarce. Their ranks are, of course, thinned down, so much so that work which used to be scattered is being offered to a select few, which leads to papers having frequently to be returned, whereby certain young counsel who might have otherwise have waited for years for a chance are receiving substantial crumbs swept from the tables of their busier brethren. There are now chances going which, but for the war, could not have been hoped for...’.⁶⁶

Within a month or so it was rather written in a contradictory way that if the war ‘lasts much longer there is one national institution in Scotland which will require to have its constitution revised, and that institution is the Court of Session. At present the fact is patent that there is not enough work to justify the presence of two-thirds of the bench and the officials, and if economy is to be practiced, the greater part of the Court premises ought to be closed...’.⁶⁷

It was said, sadly no doubt; ‘Parliament House has now no population worth speaking about...’.⁶⁸ The Great Hall had been taken over for office work ‘of national importance’ and the art work moved to a place of safety because of the threat of bombs from Zeppelins.⁶⁹ They were returned after about three years.⁷⁰ The office work in the Great Hall was later moved and the staff soon missed as the ‘spectacle of real honest toil in

⁶⁴ (1916) 32 *Scottish Law Review* 239.

⁶⁵ (1916) 32 *Scottish Law Review* 293-4.

⁶⁶ (1916) 32 *Scottish Law Review* 140.

⁶⁷ (1916) 32 *Scottish Law Review* 165, and 241.

⁶⁸ (1916) 32 *Scottish Law Review* 165.

⁶⁹ (1916) 32 *Scottish Law Review* 216.

⁷⁰ (1919) *Scots Law Times* (News) 18.

progress in Parliament House would have kept away the feeling of depression which the empty aspect of the place engenders.’⁷¹

Lawyers as Soldiers: 1916-1917

It was said on 28 February 1917 that the Court of Session ‘has been drained pretty well dry of its available manhood of military age, and now, if National Service is to take many volunteers [sic] from the remaining population of Parliament House, some shutting down of a portion of the establishment will be necessary. The population which does remain is not a large one, and any reduction of it would mean that difficulty in finding counsel in sufficient numbers to attend to the business being disposed of from day to day would necessarily be experienced. Even with the existing shortage of work in the Outer House, steady employment is yet being found all over for about a score of counsel daily...’.⁷²

By April 1917 three Writers to the Signet in Edinburgh had been killed in action. In May 1917 there was notice of the deaths of two advocates.⁷³ In July 1917 a Writer to the Signet in an Edinburgh firm died in action.⁷⁴ Death during military service was noted for two partners from separate Glasgow firms.⁷⁵ An advocate was killed in action in August 1917.⁷⁶

Lawyers as soldiers: 1917-1918

In January 1918, the Court of Session, it was noted: ‘is a most conservative institution and even the existence of the present great war [sic] is not allowed to interfere with the maintenance of the track beaten down by our forefathers. Agents without assistants are kept in Court until 4 p.m. attending to their cases, and their indoor work must be done

⁷¹ (1916) 32 *Scottish Law Review* 267.

⁷² (1917) 33 *Scottish Law Review* 79.

⁷³ (1917) 33 *Scottish Law Review* 159.

⁷⁴ (1917) 33 *Scottish Law Review* 217.

⁷⁵ (1917) 33 *Scottish Law Review* 245.

⁷⁶ (1917) 33 *Scottish Law Review* 273.

as best as can be managed in the evenings. Counsel are scarce, yet all the motion rolls and single bills are disposed of in seven Courts simultaneously'.⁷⁷

By April 1918 the complaint was that the Court of Session 'already considerably depleted of counsel, is certain to be still harder hit by the raising of the age limit for service with the forces to fifty-one, the number of juniors in active practice who come into the net being liable to well-nigh exhaust the supply presently available, while of seniors there are four eligible, of whom one has been for some time past holding military rank, while another has just intimated his acceptance of a non-combative post in London... The scarcity of seniors has for some time past been acutely felt, and the withdrawal of any more will make the shortage very awkward'.⁷⁸

The view was that the solicitor branch was less likely to have numbers called up as an official announcement has been made that 'the stage had been reached at which the number of solicitors and their skilled clerks should not be further depleted as there were more aged men to be found in the solicitors branch than at the Bar'.⁷⁹ To a large extent the passage of time that year lessened the problem: with Armistice in November 1918, and a Royal visit, some life was infused into a 'decayed legal world'.⁸⁰

The year 1918 had been grim for the legal profession: an advocate with two years seniority was killed in action as was another with thirty years.⁸¹ Notification early in 1918 was made of the death of a Writer to the Signet who had been missing in action for nine months.⁸² An advocate died in Edinburgh of an illness contracted on active service in France.⁸³

⁷⁷ (1918) 34 *Scottish Law Review* 23.

⁷⁸ (1918) 34 *Scottish Law Review* 128.

⁷⁹ (1918) 34 *Scottish Law Review* 128-9.

⁸⁰ (1918) 34 *Scottish Law Review* 280.

⁸¹ (1918) 34 *Scottish Law Review* 21.

⁸² (1918) 34 *Scottish Law Review* 49.

⁸³ *ibid.*

Lawyers as Soldiers: 1918-1919

When the war ended lawyers returned at different times from one another, to where they may have left off: the members of the Faculty of Advocates who returned to practice were able with the authority of the Dean of Faculty to intimate their availability for consultation.⁸⁴ Solicitors individually intimated their return.⁸⁵ The *Scottish Law Review* commented that ‘the war cloud’ that had hung over Parliament House for four years had drifted away.⁸⁶

Walking back and forward in the Great Hall in Parliament House was a very well established legal habit: “The Floor” was a great forum. Decisions involving new applications of legal principle were questionably discussed, and to say that a case was regarded on The Floor as bad law was enough to detract from its value as a guide or precedent. The merits of leading and rising counsel, the latter especially, were expertly assessed, and on the merits and peccadillos of judges and divisions equally so, especially of newcomers to the Bench whose qualities of intellect and temperament as shown at the Bar were not always without re-education assets as shown on the Bench’.⁸⁷

By January 1919 the numbers in Parliament House were well nigh up to normal standard.⁸⁸ Before the war it had been an extremely busy place.⁸⁹ However, afterwards there seemed to be ‘some brooding influence still hanging over us which undoubtedly must be ascribed to the war. There is no animated conversation, nor are there any hearty outbursts of laughter in the great hall such as used to be pleasant features of the place, and though daily there are plenty of men under the roof of the building, they seem to have a habit of hiding themselves in odd corners, and as everybody now lunches at the same hour there is a time in the day when not a soul is to be seen going about, a thing unknown a few years back’.⁹⁰

⁸⁴ See (1918) *Scots Law Times* (News) 78; (1919) *Scots Law Times* (News) 6, 9, 17, 22, 25, 30, 41, 54, and 90

⁸⁵ E.g. (1919) *Scots Law Times* (News) 10, 25 and 30.

⁸⁶ (1919) 35 *Scottish Law Review* 18.

⁸⁷ Lillie, (n. 10), 70-1.

⁸⁸ (1919) 35 *Scottish Law Review* 48.

⁸⁹ Lillie, (n. 10), 75.

⁹⁰ (1919) 35 *Scottish Law Review* 75.

Moreover: 'one can readily pick out the active service men from the returned men who have been absent on civilian duties, for without exception the former are thinner than when they set out, and their weather-beaten features have hard lines on them which they did not have formerly, while military moustaches have in several instances been cultivated while on service'.⁹¹

Honours and Awards

The war effort required different skills, some of them less obvious than others. TM Cooper, later Lord Cooper of Culross, had been called to the Bar in 1915 and rejected for military service on medical grounds but he gave up a practice and worked in the Blockade Department of the Ministry of Trade, receiving the OBE at the end of the war. He commenced practice again in 1919.⁹² Robert Horne, later Chancellor of the Exchequer, was on the outbreak of war a well-established senior advocate aged 43 with 18 years seniority: his military service was of an executive nature as a senior Army officer and later he was created KBE for his war work.⁹³

Yet, it has to be said the dislocation of ordinary life by exposure to the violent side of war probably led to an unsettled work force later in peace: the honours and awards may have been in themselves a measure of the nature of the disruption. Major Alan Ker VC WS gave up his employment at the age of 32 and became an infantry officer. His leadership and bravery in a prolonged episode of severe close quarter action led to his award. It must have been difficult to return to office practice in George Street after the war at the very edge and a period as a prisoner of war.⁹⁴ Two members of the SSC Society were each awarded the DSO, one was awarded the OBE and the MC as well as a *Croix de Guerre*, and another received the MC.⁹⁵

⁹¹ *ibid.*

⁹² Lord Cooper of Culross, *Selected Papers 1922-1954* (1957), xiv.

⁹³ Robert S. Shiels, 'Lord Horne: a forgotten advocate?' 2007 *Scots Law Times* (News) 284.

⁹⁴ Lord Ashcroft, *Victoria Cross Heroes* (Headline, 2006), 182-3.

⁹⁵ Barclay (n. 44), 139.

Alternatives to Uniform

There were other means for lawyers to provide assistance by way of 'national work'. As one recent historical account has it: 'For all the suffering that accompanied it [the Great War], victory rested on a prodigious administrative achievement'.⁹⁶ One member of the SSC Society had the rather onerous sounding task of being 'solicitor for Scotland for the War Office, the Ministry of Munitions, the Scottish Office and other Departments'.⁹⁷ Two other members of the SSC Society were similarly used in their civilian capacity in Government Departments.⁹⁸

Discussion

One historian has referred to the stubborn persistence of the image of the Great War as a demographic disaster.⁹⁹ This view rejected the common belief that the war resulted in a Lost Generation - defined as all the dead, or specifically, as those educated elites who would otherwise have become post-war leaders. How might this approach affect the view of Parliament House?

(a) *The Dead*

Psychologists with an interest in bereavement see the public naming of the dead as crucial to the process of recovery.¹⁰⁰ Thus, there is in the Advocates' Library on a plaque a list of 22 advocates and four intrants who died. The historian of the WS Society noted that 'a large number' of members and their apprentices answered the call to arms and of these 32 members and ten apprentices died.¹⁰¹ The WS Society published a booklet with a list of those who served and those who died.¹⁰² Inexplicably, no such

⁹⁶ D. Stevenson, *With Our Backs to the Wall: Victory and Defeat in 1918* (Penguin, 2011), xvii

⁹⁷ Barclay, (n. 44), 140

⁹⁸ *ibid*, each individual mentioned received the OBE for their war efforts.

⁹⁹ G.J. De Groot, *Blighty British Society in the Era of the Great War* (Longman, 1996), 271

¹⁰⁰ A. Gregory, *The Silence of Memory: Armistice Day 1919-1946* (Berg Publishers, 1994), 23.

¹⁰¹ R.K. Hannay, *The Society of Writers to His Majesty's Signet* (T & A Constable, 1936), xviii

¹⁰² *Roll of Honour: Members of the Society of Writers to His Majesty's Signet, and Apprentices, 1914-1919* (Wm. Blackwood and Sons, undated, probably c.1920).

listing exists for the SSC Society.¹⁰³ In the first year of the war, five Court of Session officials died.¹⁰⁴ The final total of dead lawyers and clerks associated with 'PH' may be about 75, but that is uncertain.

(b) The Legal Society

An historian of the Great War and its aftermath has asserted that the 'inhibiting effects of a cultural malaise are from their very nature difficult to calculate, particularly in circumstances where it has not generated violent social or racial victimization or serious civil strife'.¹⁰⁵ In short, the effect of the war was the loss of people and the exhaustion of those still alive. The matter is not helped by the fact that there seems to be little in the legal literature of the effect of the Great War on the legal profession in Scotland; hence the importance of what is recorded. Sheriff Lillie wrote: 'Thus was suddenly ended a period of great brilliance and abounding prosperity at Parliament House. The war years were a virtual blank. The return of peace saw its fortune at the lowest ebb. Of pre-war practising counsel there remained in attendance there little more than a third. The on-lookers had practically disappeared'.¹⁰⁶

(c) The Trends

There are discernible trends in the figures in the table annexed to this paper. The most obvious event was the fall in the number of advocate's clerks in 30 years from 21 in number to 5. The clerks kept the diaries and discussed the availability counsel with those seeking to instruct them. In 30 years the number of silks had slightly more than doubled. In the same period the number of advocates who it may be assumed were available for instruction rose from 191 (in 1904) to 242 (1916) and then back to 144. It is a rather simplistic notion in many ways, but from 1916 to 1929 the diminution in numbers was that of 98 advocates.

¹⁰³ Barclay, (n. 44), 139.

¹⁰⁴ (1915) 31 *Scottish Law Review* 179.

¹⁰⁵ Richard Overly, *The Morbid Age: Britain Between the Wars* (Allen Lane, 2009), 383.

¹⁰⁶ Lillie, (n. 10), 72.

The WS and SSC members were solicitors but they were listed separately in *The Scottish Law List*. The WS membership had increased from 536 to 634 (1914), which must be regarded as substantial, but thereafter it fell to 551. The loss in numbers was from the peak in 1914 that of 83. The SSC members rose from 379 by a handful of members in the period 1905 to 384 but then fell relentlessly to 280 in 1929, a fall of 104.

Concluding remarks

There seems on the available evidence to have been several threads to the demographic effect of the Great War on the legal profession in Parliament House: first, there was a loss of qualified lawyers who were there in different capacities and in practice; this was an immediate loss. Secondly, there was a loss of those who certainly intended entering the legal profession (students and those in training); this was a loss for the medium and long term. To that one must also add the apparent loss of business: the advocates' clerks diminished markedly in number down to a quarter of the pre-war total, itself a clear indication it may reasonably be presumed, of the dramatic fall in business available to the Bar.

The lawyers in practice in Parliament House, and elsewhere for that matter, in the years after the Great War had to survive in the following inter-war business cycle: '1920-21, post war recession; 1922-26, a period of relative stagnation; 1926, short economic downturn; 1927-29, a short period of boom'.¹⁰⁷ None of this or what occurred in the 1930s could have been conducive to building a practice or achieving and maintaining a living. In 1929 it was suggested that while it might be an exaggeration to say that the legal profession in Scotland was then in a precarious position, it was certainly in an unsatisfactory one. Further: 'no other profession or trade is less well protected or more subjected to encroachment on what were once deemed to be its privileges and

¹⁰⁷ Overy (n. 104), xxi.

prerogatives'.¹⁰⁸ References to 'starving juniors' may have been exaggerated for effect but not necessarily wrong in principle.¹⁰⁹

The demographic trough started *during* the war: in 1925 the new calls had been noted by year: 1914 (13 advocates); 1915 (4 advocates); 1916 (*nil* advocates); 1917 (*nil* advocates); 1918 (1 advocate); 1919 (10 advocates); 1920 (4 advocates); 1921 (8 advocates), 1922 (4 advocates) and 1923 (4 advocates).¹¹⁰ Later figures are available for *after* the Great War was most noticeable for new calls to the bar:¹¹¹ 1924 (13 advocates); 1925 (7 advocates); 1926 (1 advocate); 1927 (4 advocates); 1928 (*nil* advocates); 1929 (2 advocates); 1930 (3 advocates); 1931 (5 advocates); and 1932 (7 advocates). The decline from 1914 took ten years to reach again the figure of that year and then it dwindled away for some years. It was an explicit comment, and a separate issue, that the fall in the numbers of new members of the Faculty of Advocates was due to the absence of litigious business.¹¹²

A generation later, Lord Gibson recalled the period after the Great War.¹¹³ He noted in a speech in 1946 that during the Second World War the number of Counsel in attendance in Parliament House fell to a minimum of forty-five. Members returned from the all services and new entrants raised the figure to eighty-one: 'which corresponds with a figure of about 144 in the year 1920, that number gradually dropping to about 100 in the early and mid-1930s.'¹¹⁴ It is clear that a close watch was being kept on the number 'in attendance' and that if those quoted by Lord Gibson are correct, and it is certain that they were, then the figures given in the attached schedule were probably wrong in that those who were qualified as lawyers generally were not in attendance in the numbers suggested from a mere head count.

¹⁰⁸ J.C. Gardner, 'A suggestion for strengthening the position of the legal profession in Scotland' 1929 *Scots Law Times* (News) 163.

¹⁰⁹ 1931 *Scots Law Times* (News) 45.

¹¹⁰ *Index Juridicus* (n. 12), see for the year 1925, 50-71.

¹¹¹ 1931 *Scots Law Times* (News) 51; 1933 *Scots Law Times* (News) 93.

¹¹² 1930 *Scots Law Times* (News) 24.

¹¹³ 'Post War prospects for Lawyers in Scotland' (1947) 63 *Scottish Law Review* 1.

¹¹⁴ *ibid*, 2.

Statistically, 'it remains a startling fact that, of males aged between 19 and 22 when the war broke out, over one in three did not live to see the Armistice, and that war-related mortality was greatest at the age of 20'.¹¹⁵ The loss of talented people during and because of the Great War has been held to be the cause of the grave deficiency in men of political ability in the turbulent decade of the Thirties.¹¹⁶ That recognition of the effects of a demographic trough was probably true of many trades and professions.

The range of potential candidates for judicial office and other vacancies to be filled by those with legal qualification was narrow and after, say, 1920 became smaller by the year. Financial constraints on government, however, meant that there may not have actually been many vacancies arising. Attitudes are difficult to assess and while Harold Macmillan had been happy as an undergraduate at Oxford for many years afterwards he would not go there: 'everybody was dead. It was a terrible place, terrible atmosphere'.¹¹⁷ The same was probably true of the morale in Parliament House.

¹¹⁵ G.R. Searle, *A New England? Peace and War 1886-1918* (Clarendon Press, 2004), 779 and fn. 13.

¹¹⁶ J Lewis-Stempel *Six Weeks: The Short and Gallant Life of the British Officer in the First World War* (Orion, 2010), 317.

¹¹⁷ A. Horne, *Macmillan 1957-1986* (Macmillan, London, 1989), 268.

Appendix

**The numbers of practitioners listed by general description of status or occupation
at Parliament House, or at least for membership of the legal societies there**

	KC	advocates	WS	SSC	Advocates clerks
1904	28	191	536	379	21
1905	34	236	551	384	25
1906	35	235	557	384	25
1907	38	238	571	382	21
1908	40	230	574	376	21
1909	42	233	582	373	21
1910	47	232	592	368	21
1911	46	244	593	363	21
1912	44	238	611	364	21
1913	47	237	620	352	19
War					
1914	49	237	634	356	19
1915	50	247	624	345	18
1916	46	242	612	341	17
1917	46	238	603	339	16
1918	40	226	587	335	16
1919	37	215	565	325	16
Peace					
1920	49	185	565	328	7
1921	54	183	562	325	6
1922	58	177	561	324	6
1923	56	156	565	323	6
1924	59	157	552	324	5
1925	65	160	554	318	5
1926	66	162	553	321	5
1927	67	157	548	310	5
1928	67	151	567	305	5
1929	65	144	551	280	5

Source: *The Scottish Law List 1904 to 1929*