

THE “KING’S BLOODY ADVOCATE”
OR
“NOBLE WIT OF SCOTLAND”?

RESTORATION SCOTLAND AND THE CASE OF SIR GEORGE
MACKENZIE OF ROSEHAUGH, 1636/38-1691:
NEOSTOICISM, POLITICS AND THE ORIGINS OF
THE SCOTTISH ENLIGHTENMENT

A Master’s Thesis

by

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Department of History
İhsan Doğramacı Bilkent University
Ankara
January 2017

*In memory of my beloved canine companion, Elwood,
who was a true friend, who was my best friend.*



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The Graduate School of Economics and Social Sciences
of
İhsan Doğramacı Bilkent University

by

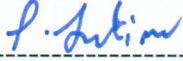
ALP RODOPLU

In Partial Fulfillment of the Requirements for the Degree of
MASTER OF ARTS IN HISTORY

THE DEPARTMENT OF
HISTORY
İHSAN DOĞRAMACI BİLKENT UNIVERSITY
ANKARA

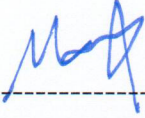
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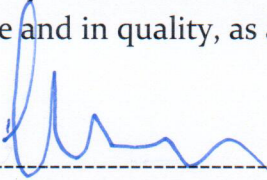
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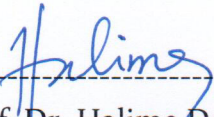
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ABSTRACT

THE “KING’S BLOODY ADVOCATE” OR “NOBLE WIT OF SCOTLAND”?

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M.A. in History, Department of History
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The aim of this thesis is to assess Sir George Mackenzie’s (1636/38-1691) life all-inclusively, deed and word, by taking his professed stoicism as the unifying force in his struggles to combat a “bigot age”. Remembered on the one hand as “Bloody Mackenzie” due to his vigorous prosecutions of Covenanters as Lord Advocate, and known to his contemporaries as the “Noble wit of Scotland,” and “the brightest man in the nation” on the other, Mackenzie suffers a contested legacy. The analogy to Dr. Jekyll and Mr. Hyde made by his biographer thus persists to this day, because Mackenzie’s public career and literary output have not been scrutinized comprehensively. This thesis presents Mackenzie’s life to be thoroughly consistent, but also as focally uniform in its battle against a benighted age, most emblematically found in the Covenanting mindset. This contestation against what he saw as a fanatical and zealot religiosity makes Mackenzie a candidate of the seeds from which Scottish Enlightenment germinated. Accordingly, in the following investigation, Mackenzie’s life is first accounted (Chapter II), and subsequently amended by an exposition of the literature on his literary and public career (Chapter III). A brief discussion of the Covenanters then establishes the antithetical counterpart to Mackenzie’s ideological position (Chapter IV). Five stoically moulded and continuous aspects of Mackenzie’s public career and literary output is identified in the ensuing section (Chapter V), to then be further-used to illustrate the potential of Mackenzie for the students of the Scottish Enlightenment (Chapter VI).

Keywords: Bloody Mackenzie, Early Modern Intellectual History, Enlightenment, Neostoicism, Restoration Scotland

ÖZET

KRAL'IN "KANLI SAVCI"SI MI?
YOKSA,
"İSKOÇYA'NIN SOYLU NÜKTEDANI" MI?

Rodoplu, Alp
Tarih Yüksek Lisansı, Tarih Bölümü
Tez Yöneticisi: Yrd. Doç. Dr. Paul Latimer

Ocak 2017

Sir George Mackenzie'nin (1636/38-1691) hayatını zıtlıklar yerine devamlılığı olan topyekün bir biçimde yazmak mümkün mü? Bu tezin amacı böyle bir anlatının mümkün olmakla kalmayıp, geleneksel yaklaşıma nazaran daha doğru ve yapıcı olduğunu sergilemek. Öyle ki, biyografisinde Doktor Jekyll ve Mister Hyde'a benzetilen Mackenzie'nin itibarı da bu şekilde ikiye bölünmüş. Bazıları için kralın "Kanlı Savcı"sı, diğerleri içinse Mackenzie "İskoçya'nın soylu nüktedanı" veya "memleketin en parlak dehası"ydı. Bu tez, Mackenzie'nin kamusal alandaki (yani siyasi-adli) kariyeriyle, edebi-düşünsel çalışmalarını birarada değerlendirerek, Mackenzie'nin yaşamını bütünlemesine sunmakta. Mackenzie'nin (neo-)stoacılığı bu yorumlamada bütünleyici unsur olarak öne çıkmakta. Dolayısıyla, Mackenzie'nin yaşamı çelişkilerin hükmettiği değil de, tutarlı ve hedefine kilitlenmiş bir savaşımın şekil verdiği bir ömür olarak görülmektedir. Bu savaşımın hedefinde yobaz bir çağ ile, bağnaz ve fanatik eğilimleri temsil eden 'Covenanter'ları bulmaktayız. Mackenzie'nin İskoç Aydınlanma düşüncesinin gelişimine olası katkısı da bu savaşımın şekli ve içeriğinde tespit edilebilmektedir. Bu genel tutumu sunmak adına bu tez önce Mackenzie'nin yaşamını konu alan bir tartışmaya yer vermekte (Bölüm II). Mackenzie'nin kariyeri ve yaşamı üzerine mevcut literatürü inceleyen bir bölüm bu anlatıyı tamamlayıcı rol üstlenmekte (Bölüm III). Karşıt grubu irdelemek adına Covenanter'lar hakkında kısa bir tartışma neticesinde (Bölüm IV) Mackenzie'nin beş stoacı görüşünü ve/veya davranışını ortaya koyan bir sentez sunulmakta (Bölüm V). Bütün bunların ışığında son olarak Mackenzie'nin Aydınlanma'yla ilgilenenler için potansiyel önemi üzerine yorum getirilmekte (Bölüm VI).

Anahtar Kelimeler: Aydınlanma Çağı, Erken Modern Dönem, Kanlı Mackenzie, Neostoacılık, Restorasyon Dönemi İskoçyası

ACKNOWLEDGEMENTS

Only after producing a substantial piece of writing does one truly understand the meaning of the generosity others show you in your endeavour. They do this by a most precious gift: time. In my case, time came most abundantly in the shape of patience. Support, encouragement and support were ever-present, but it was the patience I was shown that I value and appreciate above all else. Thus I cultivated—inadvertently and without their consent—the Stoic in them.

Professor C.D.A. Leighton's—my first supervisor in this project—vision prompted me to consider Sir Mackenzie. I am emphatically thankful because Mackenzie and the Restoration Period Scotland proved to be immensely rich and I will continue research on it years to come. But, I owe Dr. Leighton more profoundly—the way an apprentice would his master. While he enjoys his most deserved retirement, I continue my research and I am frequently confronted by not only the accuracy of the history he communicated to his pupils, but also the thorough and compelling nature of his interpretations of it. Not having managed to complete this project under his supervision will always be a source of regret.

Professor Paul Latimer's unyielding patience, kindness, and encouraging direction made the completion of this project possible. He most graciously accepted to continue what I started with Dr. Leighton. He guided me in transferring onto paper what I developed mentally. This act was the greatest challenge for me, and it is still showing. Were it not for Dr. Latimer's efforts, there would be nothing of my efforts to show. I am immensely grateful for his masterful management of this project and me.

I thank Professor Mehmet Kalpaklı for giving me the necessary last push to complete this project—and thus liberating me to move on. Professor Ken Weisbrode and Professor Sandrine Berges were the two mentors on whom I could always rely—their friendship means the world. I am also grateful to Professor Ted McCormick (Concordia University) and Professor Brian Cowan (McGill University) for their most beneficial conversation, guidance and help.

If it were to illustrate an iota of the gratitude I have for my parents, I would accept Sisyphus' condemnation without a moment's deliberation. I could not have done anything meaningful in life were it not because of them. You are still my heroes. I love you.

Lastly, I thank Ada: you stood by me, confronted and comforted me, and encouraged me in all my efforts. You were my rock. You *are* my rock. "You rock, rock." You are my dearest confidante and my beloved partner-in-crime. In this role, you give me the delight of sharing—a priceless present. My efforts have meaning—my life has colour and music—because I can share this adventure with you. 102.

I expected relief and a sense of accomplishment at the end of this adventure. I see a most bittersweet feeling taints it. To see one's labour fail in producing something comparable to it is regretful. To see one's labour fail to measure up to the generosity others have shown is nothing but mortifying. I therefore yearn for wholehearted and most sincere apology for even such possibility. The confidence and understanding shown to me by those around me at moments of self-doubt such as this is a source of comfort. Thank you.

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Lift the sneck and draw the bar,
Bluidy Mackenyie, come out if ye daur!¹

CHAPTER I

INTRODUCTION

Is a more comprehensive and thorough evaluation than those hitherto produced of Sir George Mackenzie of Rosehaugh's public career and writings possible? I believe it is, and this thesis aims to present what it entails. Yet, since mere possibility does not establish the execution of a task a worthwhile endeavour, it will prove useful to preliminarily comment on why this project deserves to be undertaken. The following introduction therefore intends to illustrate the legitimacy of this question. This justification will be seen to have

1. Old Scottish schoolboy rhyme;

See Taylor Innes, "The Bloody Mackenzie," *The Contemporary Review*, Vol. XVIII. Aug-Nov, 1871, 249: "At the present day, as for generations back, the boys of the old town of Edinburgh (those of them especially whose parents are connected with the moorland districts of Scotland), hold it a feat of daring to go to the persecutor's tomb as the gloaming darkens into night, and with trembling lips and feet prepared for instant flight, to shout through the key-hole [this] quaint and horrible adjuration—."

arisen from Mackenzie's contested legacy, his eventful life, and rich and extensive literary output. Further implications will eventually figure out once the various and seemingly inconsistent aspects to Mackenzie's life are presented to in fact be in decent agreement. These implications have bearing on the status of neostoicism in the context of early modern Scottish intellectual history, and on the question concerning the origins of the Scottish Enlightenment and Counter-Enlightenment.

Mackenzie has traditionally drawn the attention of historians due to his public and political career during Restoration Period Scotland. Charles II's return to the throne in 1660 marks the beginning of this period, which came to a close with the Glorious Revolution of 1688. Appointed Lord Advocate by Charles II in 1677, Mackenzie played a noteworthy role in Scottish politics and affairs of state. His appointment to this office was in part due to his career in politics theretofore. Such career had begun with his election to the Scots Parliament in 1669. Accordingly he found a place in the political histories of the period.

Mackenzie's rise to prominence was also due to a career in law, which had commenced a decade prior to his assuming political office. Having produced a hefty corpus of legal writings throughout his life, which consider a vast array of juridical and jurisprudential topics, Mackenzie accordingly earned a legacy in the history of the development of modern Scottish law. Ac-

cordingly, he has also found himself a place in the legal histories of early modern Britain.²

Mackenzie's Lord Advocacy happened at a considerably intensified period of religious turmoil and sectarian conflict. As the king's legal servant, Mackenzie played a lead role in the suppression of Presbyterianism—the Covenanters in particular—in favour of episcopacy, and royal authority and prerogative. Accordingly, Mackenzie found himself a place—perhaps the most substantial—in the religious histories of the period and succeeding times. It is primarily this historiography that calcified the unpopularity of Mackenzie into an infamous legacy.³

From 1990s onwards, Mackenzie also entered the focal scope of intellectual historians of early modern Scotland. The primary reason for this is Mackenzie's literary career, the beginning of which precedes his public employ-

2. George W. T. Omond, "Sir George Mackenzie," *The Lord Advocates of Scotland from the Close of the Fifteenth Century to the Passing of the Reform Bill* (Edinburgh: Douglas, 1883), 200-242.

Also see, John Cairns, T. David Fergus and Hector L. MacQueen, "Legal humanism in Renaissance Scotland", *Journal of Legal Studies* 11 (2007), 40-49; and Clare Jackson and Patricia Glennie, "Restoration Politics and the Advocates' Secession, 1674-1676", *Scottish Historical Review* 91 (2012), 76-105.

3. Robert Wodrow, *The Sufferings of the Church of Scotland from the Restoration to the Revolution* in 4 vols., ed. R. Burne (Glasgow: Blackie, Fullarton, & Co., 1828-30); William Crookshank, *The History of the State and Sufferings of the Church of Scotland, from the Restoration to the Revolution*. in 2 vols., (London: 1749); John H. Thomson, *A Cloud of Witnesses for the Royal Prerogative of Jesus Christ, Being the Last Speeches and Testimonies of those who have suffered for the Truth in Scotland since the year 1680* (Edinburgh and London: Oliphant, Anderson & Ferrier, 1871).

ment. His publications of the 1660s, which were numerous essayistic treatises that deal with moral and philosophical topics, have attracted particular attention. The overarching characteristic that unified these works is stoicism— or what is today referred to in the literature as neostoicism, namely, Christianized stoicism. His best known and most popular publication to this day is his *Religio Stoici*⁴, preceded only by the preludial *Aretina*⁵. It is this characteristic of Mackenzie's 1660s-writings that makes him interesting to those concerned with the intellectual history of this period in the Scottish and British context.

Mackenzie advocated stoic wisdom in response to what he identified to be the socio-political problems of his contemporary world: fanaticism, and social and political instability. Mackenzie wrote of himself that he was by "Religion, a Protestant, ... and by Humour, a Stoick."⁶ He found personal refuge in such wisdom in what he described to be a "bigot age."⁷

It would mislead to presume Mackenzie was alone in this regard. He was party to a powerful and multi-faceted movement that "not only exercised a profound hold over the emergence of the moral, religious and political thought of the late Renaissance; [but] also directly influenced the lives of the

4. George Mackenzie, *Religio Stoici* (Edinburgh: for Robert Brown, 1663).

5. George Mackenzie, *Aretina; Or, The Serious Romance* (Edinburgh: for Robert Broun, 1660).

6. Mackenzie, *Religio Stoici*, i.

7. *Ibid.*, 5.

scholars, courtiers and princes”⁸ of the early modern period. Stoicism served a formative and paradigmatic function in the period, only recently scrutinized by historians. However, although numerous thorough historiographical presentations of it have been produced in consideration of early modern England and most of continental Europe, only a handful of studies exist for the early modern Scotland. Given that there is little reason to doubt Mackenzie’s representative capacity as a Scottish neostoic, none of such studies fail to mention his name.

Mackenzie’s neostoicism as formulated in his publications from the 1660s have entered the radar of scholarship due to two of the numerous matters they consider. Firstly, they partake in the debate concerning the question about the superiority of public employment (i.e. active life) or retirement (i.e. solitary life) over the other.⁹ Secondly, they exemplify an advocacy of latitudinarianism with an appeal to stoical dogma in response to the contention in Scotland between Presbytery and Episcopacy, and the political and social instability it caused in the aftermath of the Restoration.¹⁰

8. David Allan, *Philosophy and Politics in Later Stuart Scotland. Neo-Stoicism, Culture and Ideology in an Age of Crisis, 1540-1690* (East Lothian: Tuckwell Press, 2000), 1.

9. David Allan, “‘In the Bosome of a Shaddowie Grove’: Sir George Mackenzie and the Consolations of Retirement,” *History of European Ideas* 25 (1999): 251-273.

10. Clare Jackson, “Latitudinarianism, secular theology and Sir Thomas Browne’s influence in George Mackenzie’s *Religio Stoici* (1663),” *Seventeenth Century* 29 (2014): 73-94.

The decade of the 1660s corresponds to the period right after Mackenzie's return to Scotland from the continent where he was trained in law. His writings from this period that have drawn attention in more recent scholarship were therefore the product of a relatively young man at the threshold of his adult life and professional occupation. When put in context of his long career in public office that came after—especially after having advocated the superiority of solitude and retirement over the active life demanded of such engagement—, asking the nature of his professed Stoic humour had bearing on his later career and on his life more comprehensively begins to appear meaningful. This is further complimented when one acknowledges Mackenzie's career in public office to have mostly been afforded in a struggle against a certain ideology—an ideology advocated by a dissenting religio-political social group, namely the Covenanters.

In this sense, the two issues on which Mackenzie wrote and that have made his writings of the 1660s interesting for recent scholarship continued to have relevance and bearing on Mackenzie throughout his later life. This was not unnoticed and recent historiographical attention shown to Mackenzie has not been used to revise the story of his lord advocacy and political life, which was traditionally the source of interest in him. Yet, when one juxtaposes the fruits of both the traditional and the more recent histories that have shown interest in Mackenzie, one observes that there are parts of his life that have been ill-addressed at best. It is only reasonable to wonder whether or not attending to the gaps would yield insight into the historiographical questions

that have made Mackenzie a historical figure worthy of investigation in the first place.

It is the contention of this thesis that a more comprehensive evaluation of Mackenzie's life, writings and public career is called for due to this professed neostoicism as well. His service to Charles II as Lord Advocate earned Mackenzie the sobriquet "Bloody Mackenzie". This historical legacy, which has only been partially revised by recent historical scholarship, amounts traditionally to a religious persecutor. Whether or not Mackenzie's stoicism can be reconciled with the actions that won him this reputation deserves assessment, especially when stoicism's popularity that began a century prior was effectively a result of the usefulness people found in it in an age of turmoil, violence and instability due to wars of religion.

As the highest state prosecutor, Mackenzie executed the wishes of the crown: "it must not be forgotten that by statute, the Lord Advocate was bound to prosecute all those against whom the Privy Council resolved to take proceedings."¹¹ During Charles's reign, Mackenzie primarily carried the royal response to the intensification of religious turmoil by the Presbyterian Party and by its most militant faction, the Covenanters. Restraining social and political unrest that accompanied this in the 1670s was Mackenzie's principal struggle.

11. A. M. Williams, "Sir George MacKenzie of Rosehaugh," *Scottish Historical Review* 13, no. 5 (1916): 141.

The prosecuted authored not only a martyrology after what they saw as the persecuted, but also a demonology, in which Mackenzie enjoyed one of the lead roles. Accordingly, this makes it reasonable to scrutinise how Mackenzie's literary career and the content of his publications—particularly those from the 1660s—may be reconciled with his actions later on as a public official that won him that unenviable sobriquet. At first glance, Mackenzie's opinions as formulated in his 1660s-writings do not seem to accord well with his conduct as a public official and an officer of the law.

Hence the question that was raised at the outset: Is a more comprehensive and thorough evaluation of Sir George Mackenzie's life, public career and writings possible after all? I advocate that it is, and the primary purpose of what is to follow is such conviction's demonstration.

In essence, there are two points of inspiration I derive from Mackenzie's writings and public career, and the existing literature on him and on the phenomenon of neostoicism of the period that will carry through this demonstration. Both of these points stem first from an amendment I propose for the existing historiographical understanding of the phenomenon of neostoicism in the context of early modern Scottish literary and political activity, and second, from interpretative twist I intend to bring to Mackenzie's life-long literary and political struggle against bigotry, fanaticism and superstition.

On the one hand, I propose, for instance, that Mackenzie advocated the superiority of retirement or solitude over public employment in his writings of the 1660s without necessarily committing to the conviction that such exempt-

ed one from political action. When the highly political quality of stoicism in the early modern context is recognized, then a decision between a life of public employment or of solitude or retirement is seen to depend not on philosophical, but immediately concrete conditions, becomes clear. Accordingly, I propose that the substance of Mackenzie's writings from the 1660s is not necessarily inconsistent with his later career in high office. The circumstances in which Mackenzie had found himself in the 1660s meant that an active engagement in the affairs of his contemporary world was made possible through literary activity, the most effective conduct of which happened to be in the context of so-called solitude or retreat. The ideological struggle Mackenzie carried out in the circumstances of the 1660s, he continued throughout his public career.

On the other hand, I propose that Mackenzie's neostoicism has allowed him to confront what he saw as the ultimate danger in his contemporary world on all fronts. The latitudinarian tendency of his so-called stoic humour allowed him to challenge the Covenanting mindset from a complex footing and on a fundamental level. Mackenzie appealed to a set of stoically inspired dispositions that put into question the axiomatic beliefs on which much of the religio-political convictions of the Covenanters depended. I propose an interpretation of Mackenzie's assault on the Covenanting ideology as such to be one that brought the fight into an epistemological footing. It is this interpretation that constitutes the amendment to the existing historiographical under-

standing both of Mackenzie's neostoicism and of neostoicism in the early modern Scottish context.

What will this investigation achieve? What will be its contribution to the historical literature and scholarly debate? I foresee three possible contributions the research I have conducted to promise.

Firstly, this thesis addresses a gap in the literature. Recent attention to his writings of the 1660s has helped to illustrate that he was a virtuoso as understood in the seventeenth century. One of the consequences of this recent revisionist historiography has been to remedy Mackenzie's historical reputation. However, the interest in Mackenzie can also be seen to have been the product of other scholarly curiosities. This thesis intends to give Mackenzie precedence, and this can be seen from the question that the following investigation will attempt to answer. Moreover, by virtue of its comprehensive ambition, this thesis brings the varying historiographical perspectives that has hitherto been shown towards Mackenzie under a single roof.

Secondly, this thesis conceives an understanding of neostoicism in the example of George Mackenzie, which amends the way neostoicism has been understood by the scholars of early modern Scottish intellectual history. I am not proposing a drastic re-evaluation of this historiographical concept. Yet, the example of Mackenzie does enrich and bring recently overlooked nuances to this concept, which may, in extension, shed a new light on other historical figures or their writings dating from this period.

Thirdly and lastly, this thesis presents an example that locates neosticism within early modern debates of religious controversy, and in extension, in the history of the origins of the Enlightenment. The focus of this thesis, the figure of Sir George Mackenzie, exercised influence in a most concrete sense due to his public office, but also in terms of a man of letters due to his prolific and successful literary career. I propose we juxtapose this observation with a certain historiographical trend in recent times that conceives the Enlightenment as not only the consequence, but also the continuation, of religious controversy. It is accordingly seen, I maintain, that by virtue of its place in debates over religious controversy, neostoicism is also a most promising historical phenomenon to be scrutinized for the history of the Enlightenment and Counter-Enlightenment. This thesis, although not substantially, partakes in such scrutiny.

Whether 'tis nobler in the mind to suffer the slings
and arrows of outrageous fortune;
Or to take arms against a sea of troubles, and by
opposing, end them.

—Shakespeare, *Hamlet* (1603)

CHAPTER II

A BRIEF ACCOUNT OF MACKENZIE'S LIFE

The epigraph by which this brief account of Mackenzie's life is prefaced is well known. I evoke Shakespeare's words not to suggest an exhaustive analogy between Hamlet and Mackenzie, but to instead draw attention to the dichotomy conjured in these words, which bear significance in this context. This dichotomy is one between a passive and contemplative acceptance of fortune on the one hand, and an active engagement against unfavourable, but surmountable circumstances on the other. The former promises a life of solitude and peace and of likely isolation from others, while the latter assures struggle within the public sphere and inevitable conflict with persons, with some chance of fashioning a personal legacy. It is in terms of the choice between active interference and fortuitous acceptance that a reference to the words of a fictional character becomes instructive for understanding the most basic theme of Mackenzie's life.

What qualifies a life to be proper or truer to its nature? What is the morally suited and natural way to lead a human life? Is it an active life of public employment and engagement promising good, cosmopolitan citizenship? Or is it a life in retreat and solitude that assures a contemplative existence that promotes the cultivation of personal virtues due to its isolation from the corruptive forces of the public?

Having been formulated in terms of a choice between the *otium* and the *negotium*, the history of such reflection is to be traced to the ancient and classical worlds. Whether it is a public life or a life of retreat and solitude that enjoys moral superiority over the other lies at the heart of this debate and it assigns it an indisputable universality and atemporality, as well as a rich and long history. Yet, this question is debated proportionally passionately depending on how troublous an age is thought to be. The Restoration period was exemplary in this regard.

There was a significant public discourse in the seventeenth-century European context on the question concerned with the supremacy of *otium* versus *negotium*. Mackenzie was an important interlocutor of the debate in the British context. Such a question was not an inconsequential philosophical quandary for mere reflection. It had immediacy and meaning for individuals like Mackenzie. He penned several treatises at the outset of his adult life and professional career when much was uncertain. In these, he primarily defended

the superiority of retreat and solitude over public employment.¹ In contrast, after decades in high office, he wrote the following at the outset of his posthumously published *Memoirs*:

Because our country-men are more willing to do those things that deserve to be recorded than to write what others have done, I am resolved to embrace the last, since I cannot attain to the first; and possibly I may this way, since I can by no other, somewhat curb the insolence of such as, though they fear not the opposition of their country-men, will possibly fear the censure of posterity.²

Mackenzie believed that he lived in an age of bigotry and unreason, which disseminated to all strata of society. His lifelong struggle was against all types, but it was steadfast regardless if he possessed power to exercise or was equipped only by his pen. Nonetheless, it seems likely that in his heart, Mackenzie thought the life of the mind was the nobler, and he did produce a literary corpus much admired and appreciated by his contemporaries; yet, like Hamlet, he took arms against those whom he thought to comprise that sea of troubles, and this proved more defining of his life and legacy.

Moreover, Mackenzie was clearly concerned with his personal legacy as we see from his words above; and he had all the reason to be fearful. What became of Duke of Lauderdale's legacy is instructive in this context because it

1. George Mackenzie, *A Moral Essay, Preferring Solitude to Publick Employment, And all it's Appanages; such as Fame, Command, Riches, Pleasures, Conversation, &c* (Edinburgh: for Robert Brown, 1665).

2. George Mackenzie, *Memoirs of the Affairs of Scotland From the Restoration of the King Charles II A. D. MDCLX* (Edinburgh: n.p., 1821), 4.

may used to comprehensively describe Mackenzie's legacy despite the fact that he was, most probably, the better man:

He [Lauderdale] lost the political battle, and his friends never ended up saying anything about him that would have naturally been positive; his enemies on the other hand—well, they dictated the narrative and used everything they had to smear his image, reputation and achievements while in office.³

It is worth noting that his biographer, Andrew Lang, likened Mackenzie to another fictional character—a character already possessing a split personality: “A biographer wholly destitute of sympathy for his hero makes dull work; I trust that my sympathy with the Dr. Jekyll in Mackenzie has not blinded me to the Mr. Hyde in his composition.”⁴

It is possible to divide Mackenzie's life into five separate but continuous parts. From his birth in 1636/38 to his return to Scotland in 1660 after his law education in the continent would be the first part. The decade of the 1660s—i.e. from his entrance to the Scots Bar in 1660 and publication of *Aretina* in 1661 to his election to parliament in 1669—marks the second. These two initial stages may also be seen as his formation-years. The third part would be from the beginning of his parliamentary career to the year of his appointment as

3. “Maitland, John, duke of Lauderdale (1616–1682),” Ronald Hutton in *Oxford Dictionary of National Biography*, ed. H. C. G. Matthew and Brian Harrison (Oxford: OUP, 2004); online ed., ed. Lawrence Goldman, May 2006, <http://www.oxforddnb.com/view/article/17827> (accessed August 14, 2015)

4. Andrew Lang, *Sir George Mackenzie. King's Advocate, Of Rosehaugh. His Life and Times* (London, New York, Bombay, And Calcutta: Longman's, Green And Co., 1909), vii.

Lord Advocate and several other high state offices in 1677. The next decade until the Williamite intervention in 1688/69—a period during which Mackenzie held high office and was most influential politically—marks the fourth part of his life. His last years in exile or retirement in England after 1689 to 1691 marks the fifth and final part of his life. One should note that existing historiography more or less follows these divisions.

George Mackenzie of Rosehaugh was born in 1636 or 1638, in Dundee, into a noteworthy Highland Scottish clan, associated traditionally with Kintail and the lands of Ross-shire.⁵ One biographical account notes that "his family was of the bluest blood in Scotland;"⁶ but this is quite likely an overestimation. The Second Earl of Seaforth, Rosehaugh's paternal uncle—and his namesake—deserves noting. Upon his joining him in Holland in 1649, Charles II appointed Seaforth as his Secretary of State for Scotland.⁷ Seaforth died in 1651 and did not get to see his King restored. On his maternal side, Rosehaugh's grandfather, Reverend Peter Bruce (of Ferrar), is worthy of note. A Doctor of Divini-

5. The most detailed account of his ancestry may be found in J. W. Barty, *Ancient Deeds and Other Writs in the Mackenzie-Wharncliffe Charter-Chest with short notices of Sir George Mackenzie of Rosehaugh* (Edinburgh: T. and A. Constable, 1906), 1-6.

6. Francis Watt, *Terrors of the Law. Being the Portraits of Three Lawyers "Bloody Jeffreys", "The Bluidy Advocate Mackenzie", The Original Weir of Hermiston* (London and New York: Ballantyne, Hanson & Co., 1902), 44.

7. Barty, *Ancient Deeds*, 4.

ty, Rev. Bruce served as the principal of St Leonard's College in St Andrews, during which he was also the minister of the Church of St Leonard at St Andrews. More importantly, Rev. Bruce was among the members of the Assembly of the Church that met in Perth in 1618 that passed the famous 'Five Articles', which Bruce supported.⁸

There is a bit of a curiosity regarding George Mackenzie's year of birth. His biographer, Andrew Lang, notes that the Registers of Baptism at Dundee for years before 1648 are missing.⁹ Most sources, including the tablet on his sepulchre, assert Mackenzie's birth-year to be 1636.¹⁰ It is, however, quite possible that he was born in 1638, which, Lang points out, is the year that Mackenzie's own works suggest: "But as Mackenzie himself, in his book, *The Religious Stoic*, published in 1663, declares that he is not yet twenty-five, he must have been born not earlier than 1638."¹¹ According to Lang, the contents of this

8. Barty, *Ancient Deeds*, 6: "It may not be uninteresting to note that the 'Five Articles' propounded by his Majesty, which he earnestly urged the Church of Scotland to accept, were these: (1) Kneeling in receiving the sacramental elements of bread and wine; (2) The establishment of five holy days, viz. the days of Christ's Nativity, Passion, Resurrection, and Ascension, and of the Pentecost; (3) Episcopal Confirmation; (4) Private baptism, and (5) Private Communion."

9. Lang, *Mackenzie His Life and Times*, 22.

10. Ibid.

11. Ibid.

book provide evidence to assume that it was published on the year it was composed, affirming, though indirectly, Mackenzie's year of birth as 1638.¹²

J.W. Barty, a contemporary of Lang, who has offered the other substantial and detailed account of Mackenzie's life, claims that there ought be little doubt about 1636 as Mackenzie's year of birth.¹³ "If Mackenzie was born in 1636, not in 1638," says Lang in contrast to Barty's suggestion, "it is not easy to account for the long interval between the time when he left school, which would be 1646, and the date when he entered Aberdeen University (1650),"¹⁴ for which there are records confirming this date. Most scholars who have written on Mackenzie in the recent decades take 1636 as Mackenzie year of birth, however follow Lang's biographical story to sketch the broad strokes of his life.¹⁵

In 1650 Mackenzie entered King's College, Aberdeen, and graduated from St Leonard's College, St Andrews on 13 May 1653, after having moved there several years later. For the next six years, he was in the continent. In 1656 he entered the University of Bourges, in France, to study law. He gradu-

12. Ibid., 310.

13. Barty, *Ancient Deeds*, 7.

14. Lang, *Mackenzie His Life and Times*, 22.

15. See Allan, "In the Bosome of a Shaddowie Grove"; Jackson, Latitudinarianism in Mackenzie's *Religio Stoici*"; and, D. Havenstein, "Religio Writing in Seventeenth-Century England and Scotland: Sir Thomas Browne's *Religio Medici* (1643) and Sir George Mackenzie's *Religio Stoici* (1663)," *Scottish Literary Journal* 25 (1998): 17-33.

ated from Bourges on 24 October 1658 with a diploma *in utroque*, which meant competence in both civil and canon law.¹⁶ He later described Bourges as “that Athens of Jurists”¹⁷ and the time he spent there was particularly formative.

Soon after his return to Scotland, Mackenzie applied to the Faculty of Advocates in Edinburgh in 1659. He claimed in his petition to the Faculty that he studied law in universities in both France and the Netherlands.¹⁸ The reference to a Dutch university should account for the years between his graduation from St Andrews and his matriculation in Bourges three years later. It is interesting to see that he does not make much mention of his time in the Netherlands.

In all, information about this early but formative period of Mackenzie’s life is limited. It is still helpful to take note of a point that his biographer makes regarding his time on the continent: “In a Catholic country [Mackenzie] was remote from Presbyterian influences.”¹⁹ It is not easy to ascertain the accuracy of this claim. In fact, there is reason to question it, because Scottish

16. “Mackenzie, Sir George, of Rosehaugh (1636/1638–1691),” Clare Jackson in Oxford Dictionary of National Biography, ed. H. C. G. Matthew and Brian Harrison (Oxford: OUP, 2004); online ed., ed. Lawrence Goldman, January 2007, <http://www.oxforddnb.com/view/article/17579> (accessed August 15, 2015).

17. George Mackenzie, *Works*, 1.7, quoted in “Mackenzie, Sir George, of Rosehaugh (1636/1638–1691),” Clare Jackson in Oxford Dictionary of National Biography.

18. “Mackenzie, Sir George, of Rosehaugh (1636/1638–1691),” Clare Jackson in Oxford Dictionary of National Biography.

19. Lang, *Mackenzie His Life and Times*, 25.

Presbyterianism was, for the most part, theorised and cultivated by an émigré group in continental Europe. Most, if not all, of Scottish Reformation's big names—the likes of George Buchanan, John Knox, and Andrew Melville for example—, were educated, and/or taught and lived abroad at some point in their lives. Furthermore, Mackenzie holds these same “Reformers coming from *Geneva*, and the Republics of *Switzerland*”²⁰ responsible in not only reforming Scotland by force and violence, but also inspiring in their converts a special aversion to monarchy.²¹ It would be odd to think it was in their absence that Mackenzie developed his distaste to the advocates of Presbyterianism.

Moreover, Scots had the tradition of attending continental universities for professional training, regardless of where they were situated. This was the continuation of what the likes of Buchanan, Knox and Melville did during their lifetime. Therefore, one cannot take it for granted that because Bourges was in Catholic France, one would necessarily be remote from the influence of Presbyterianism. Furthermore, among learned men of this period, there existed a certain sectarian fluidity—that is to say, movement between different confessional or denominational orientation. It is more likely that the monolithic sort

20. George Mackenzie, *A Memorial for His Highness the Prince of Orange, in Relation to the Affairs of Scotland: Together with The Address of the Presbyterian Party in that Kingdom to His Highness; And Some Observations on that Address* (London: n.p., 1686), 1.

21. Mackenzie, *A Memorial for His Highness the Prince of Orange*.

of sectarian divisions among European states while Mackenzie was a student at Bourges belong less to Mackenzie's and more to his biographer's times.

Bourges of the time has been described as “the most exciting institution for legal study not only in France but in all Europe.”²² However, since most of the university records were destroyed during the French Revolution, not much can be discerned about Mackenzie's academic experience at Bourges.²³ In light of his legal career and the philosophical inclinations that are indisputable in his writings, David Allan professes that “it is tempting to try to assess the university's likely impact on Mackenzie from what is understood in general terms about the law curriculum to which he was exposed.”²⁴ Bourges was committed to instruction in the *mos docendi Gallicus* (the French way of teaching), the legal humanism initiated by Andrea Alciati in the 1520s. The teaching of the canonical texts of Roman philosophy and history amended the emphasis to the study of the *Justinian's Code*,²⁵ which offered students a better understanding of law in its ancient and classical context.²⁶ The result of

22. Allan, “Mackenzie and the Consolation of Retirement,” 253.

23. Ibid.

24. Ibid.

25. “Mackenzie, Sir George, of Rosehaugh (1636/1638–1691),” Clare Jackson in Oxford Dictionary of National Biography: “At his death Mackenzie left an unfinished commentary on Justinian's Digest which indicated his wish for ‘time to make a scheme of Laws and vertues’.”

26. Allan, “Mackenzie and the Consolation of Retirement,” 253.

this deep familiarity with classical literature and Roman history was an equally deep appreciation by the alumni of the classical political and philosophical thought.²⁷

This appreciation on part of its alumni is better understood when we recognize that many students had no intention of practicing law.²⁸ Mackenzie, it seems, did not belong to that group, yet his public career extended from his legal one and inhabited a domain in which this mentioned appreciation most clearly came into play. In any case, one may at least claim that Mackenzie's so-called humorous commitment to neostoicism matured during the time he spent in Bourges. Similarly, such commitment could not have been affected in any way but positively in the Netherlands, which is the birthplace of neosticism.

The decade from Mackenzie's return to Scotland in 1659 to his election to the parliament in 1669 present two engagements on Mackenzie's part that deserve being noted: (1) his literary activity and publications that date from this time; and (2) his appointment as justice-depute at the height of one of the most intense periods of witch-hunts in Scottish history.

²⁷. Ibid.

²⁸. Ibid.

The year following his return to Scotland, Mackenzie published *Aretina, or the Serious Romance* (1660). This was a work of fiction—"a striking political allegory"²⁹—, and is now quite often referred to as the first novel to be written by a Scot.³⁰ The following from Lang's biography is sufficient in order to establish an informed opinion:

Writers on Mackenzie have been daunted by *Aretina*, and none of them has observed that in an episode, 'The Wars of Lacedæmon,' he gives a veiled account of the Civil War, or rather of the history of Scotland from the Union of the Crowns to the rejoicing at the Restoration. Thus *Aretina*, published in the year of the Restoration, was a 'topical' and 'up to date' novel, and its extreme rarity is due to the fact that it must have been thumbed to rags in such circulating libraries.³¹

It is once again not easy to confirm Lang's conviction about *Aretina's* circulation that *Aretina* enjoyed.³² One may more confidently say, on the other hand that his next publication, *The Religious Stoic* (1663), put Mackenzie on the map of literary activity in Scotland, and possibly also in the greater context of the British Isles.

The treatise contains about twenty or so essays that range from as little as two hundred words to up to over three thousand, amounting to slightly over thirty thousand words in total. These essays explore various philosophi-

29. Allan, "Mackenzie and the Consolation of Retirement," 253.

30. Ibid.; Havenstein, "Religio Writing," 18.

31. Lang, *Mackenzie His Life and Times*, 27.

32. See Irene Basey Beesemyer, "Sir George Mackenzie's *Aretina* of 1660: A Scot's Assault on Restoration Politics," *Scottish Historical Review* 4, no.1 (2003): 41-68.

cal, religious and somewhat political topics, all quite relevant to Mackenzie's contemporary world. Mackenzie is addressing contemporary matters and he is addressing his fellow Scots, but also the English. If it has a stoic agenda of any sort, it is not necessarily one that is brutally explicit; and it is worthwhile to note this because it is also true of Mackenzie's life in general.

An interesting footnote at the concluding section of *Religious Stoic's* first edition reads: "The Author intended this Discourse only as an Introduction to the Stoicks morals, but probably, he will, for many years, stop here."³³ Mackenzie had three more publications come out under his name before the end of the decade: *A Moral Essay, Preferring Solitude to Public Employment* (1665), *Moral Gallantry* (1667), and *A Moral Paradox: Maintaining That It Is Much Easier to be Vertuous then Vitious* (1667). All these tracts explored, quite indisputably, Stoic themes, or offered what may be seen as a Stoic perspective or sensibility on contemporary moral, religious, and political issues.

Most of what one may find on Mackenzie's life concentrates on the former when it comes to his engagements in the 1660s. These accounts often do not at all mention Mackenzie's occupation with the witch trials, to which Mackenzie later devoted a chapter in an influential legal study he authored.³⁴ I contend that in the long run, his involvement in the witch trials proved as

33. Mackenzie, *Religious Stoick* (1663), 159.

34. Mackenzie, *Laws and Customes of Scotland in Matters Criminal* (1678), 80-108.

formative as his literary efforts. However, one reason why his justice-deputeship fails to attract mention is because Mackenzie was involved in a high profile state trial that marks an important moment in the history of the period itself.

Upon his return to Scotland, Mackenzie was admitted to the Faculty of Advocates on January 18, 1659. When Charles II was restored to the throne on 12 May 1660, he was re-admitted (5 June 1661). His first important case was that of Archibald Campbell, the Marquis of Argyll. Mackenzie was among the three advocates assigned to the Marquis, among whom he was the second 'junior.'³⁵ The Marquis was being accused of treason, and according to Lang, his defense, "though they knew it not, had a hopeless cause to plead."³⁶ In his account of Mackenzie's conduct in Argyll's defense, George Omond claims that "He had, all through life, the courage of his opinions; and his speech, which was delivered just before judgment was given, was so bold as to excite much surprise."³⁷

As to the content of Mackenzie's speech, we have at offer the court records:

Without complying at the time, no man could entertain his dear wife or sweet children; this only kept men from starving; by it only men could preserve their ancient estates, and satisfy their debts, which, in honour and conscience, they were bound to pay; and without it, so eminent a

35. Watt, *Terrors of the Law*, 46.

36. Lang, *Mackenzie His Life and Times*, 33.

37. Omond, *Lord Advocates of Scotland*, 201 (emphasis in original).

person as the Marquis of Argyll, and so much eyed by these rebels, could not otherwise secure his life against the snares which were daily laid for it. [...] My Lords, as law obliges you to absolve this noble person, so your interest should persuade you to it. What is now intended against him may be intended against you; and your sentence will make that a crime in all compliers, which was before but an error and a frailty. Your Royal Master may, with our Saviour, then say to you, *Thou cruel servant, I will condemn thee out of thy own mouth...* Who in this kingdom can sleep securely this night, if this noble person be condemned for a compliance, since the Act of Indemnity is not yet past?"³⁸

In almost all of the accounts of this trial that one has at offer, it is implied that Argyll's defence had done enough to save the Marquis. However, Argyll's supposed compliance was proven—in dramatic fashion—to be complicity. While the parliament deliberated its decision, the prosecution presented some new evidence, which was, in its own right, procedurally dubious:

'One who came post from London knocked most rudely at the Parliament door,' [Mackenzie himself tell the story] He carries a mass of papers, he is a Campbell, surely he has help for the Marquis? So his counsel inferred, else had they protested with might and main against this addition to the Crown case. The packet was opened, it contained letters in Argyll's handwriting proving that he had actively supported, not passively acquiesced, in the Protectorate. They were addressed to Monk, who, himself in safety, had at last moment thrown them into the scale, turning it decisively against Argyll. He was forthwith condemned, and on May 26, 1661, was executed.³⁹

As the bearer of the packet was a Campbell, Middleton himself naturally supposed him to be an envoy, (probably from Lord Lorne, who was pleading for his father's life in London,) with a pardon for the Marquis. But this Campbell was a retainer of MacNaughton, whose ruined castle of Dunderawe stands on the shore of Lochfyne, near Inveraray, and

38. Ibid.

39. Watt, *Terrors of the Law*, 48-49.

whose lands lay between those of Argyll and whose of the Campbells of Ardkinglas.⁴⁰

Argyll had used MacNaughton, and this was MacNaughton taking his revenge.

Whatever his natural feelings, Archibald Campbell remembered in that supreme hour what was due to his Kirk, his Clan, and his Ancient House. In after days men glorified him as the Protomartyr of the Covenant. Mackenzie's potent advocacy had the compliment of reproof; he wittily turned it off with 'It's impossible to plead for a traitor without speaking treason.'⁴¹

Wodrow, who is very copious in his account of the trial of the Marquis, does not know, or cannot bring himself to tell, the cause of his condemnation (May 25). The real facts were doubted or denied by his partisans in later history, though they were briefly indicated by Bishop Burnet in his *History of his Own Times*. The truth came out when, in 1821, a fragmentary historical work, *Memoirs of the Affairs of Scotland*, by Sir George Mackenzie, was published, and since that date, some of Argyll's damning letters have been given to the world.⁴²

In all, getting involved in this legal controversy helped Mackenzie to illustrate his talents, which subsequently aided him in advancing his career. Yet there was something unusual about the whole affair in terms of Mackenzie's involvement:

What was so unusual about this case was not its unsuccessful outcome for Mackenzie (which, given that it was a state prosecution before the Committee of Estates, was scarcely in doubt) but the fact that, as the former leader of the Covenanters and Scotland's leading Presbyterian politician, Argyll was an enemy not only of the Stuart dynasty but also of the young advocate's own family. Despite this, Mackenzie estab-

40. Lang, *Mackenzie His Life and Times*, 36.

41. Watt, *Terrors of the Law*, 50.

42. Lang, *Mackenzie His Life and Times*, 34.

lished a reputation for his forensic eloquence and for his unusual determination in seeking justice for a political opponent.⁴³

Moreover, Argyll later became a martyr for the Covenanters, and despite having defended him, and many others in the succeeding years, Mackenzie came to be remembered as the iron-fist of the law that persecuted the true believers and the true Church.

Beyond the drama of Argyll's trial and how it helped Mackenzie's career, there is something more to be appreciated in the substance of Mackenzie's defence. Seemingly trivial, but Mackenzie's warning—viz. "What is now intended against him (Argyll) may be intended against you [...] Who in this kingdom can sleep securely this night, if this noble person be condemned?"⁴⁴—encapsulated a concern that transcends beyond the interests of his client. It points to the sanctity and indispensability of the rule of law—that is to say, in perspective of the preceding decades of turmoil and instability, law and legal proceedings are prone to abuse.

Accordingly, it is possible to appreciate the seemingly cynical comment by Mackenzie that is often quoted with regards the defence of Argyll: "It's impossible to plead for a traitor without speaking treason."⁴⁵ It seems unlikely that Mackenzie would have thought Argyll to be innocent; yet, whether or not

43. Allan, "Mackenzie and the Consolation of Retirement," 253-4.

44. Omond, *Lord Advocates of Scotland*, 201.

45. Watt, *Terrors of the Law*, 50.

there was enough evidence to prosecute him and whether or not the proceedings occurred properly is wholly different matter. Accordingly, Mackenzie is also passing judgment on the state and practice of law in this Scottish context. For, is it not telling of such circumstances if council for those accused of a crime cannot plead without defending—or without being accused of defending—that crime?

When he served as MP and later also as Lord Advocate, Mackenzie laboured to reform Scottish law and juridical custom. As any good lawyer, he also pushed it to its limits. However, when his allegiances were not an issue, he consistently strived to improve the existing state of affairs. For instance, he fiercely opposed, the year he entered the Scots Parliament, an Act that made it possible for trials of those accused of treason to proceed in their absence.⁴⁶

In the fall of 1660, Mackenzie was appointed to the judicial post of Justice Depute.⁴⁷ Although poorly paid, this post gave Mackenzie experience, and according to Lang, “enabled him to do good service to the cause of common sense, and of a humanity then very uncommon.”⁴⁸ According to the *Privy Council Register, 1661-1664*, Mackenzie and two other Justice Deputes were or-

46. Omond, *Lord Advocates of Scotland*, 207.

47. Lang, *Mackenzie His Life and Times*, 39.

48. Lang, *Mackenzie His Life and Times*, 39.

dered to try, in Courts they were to hold in towns around Edinburgh, “cases of a great many persons, both men and women, who are imprisoned as having confessed, or witnesses led against them, for the abominable sin of witchcraft.”⁴⁹

A more recent scholarly consideration than Lang’s makes the claim that this so-called good service is evidence to why Mackenzie deserves to be acquitted on many of the charges levelled against him:

‘If we are to have a ‘killing time’ in Scottish history the name would much more appropriately belong to the period immediately after the Restoration, when the English and their courts were got rid of, and several hundred old and unpopular women were put into prison, tortured, tried and condemned for witchcraft.’ Indeed it is interesting to look at Mackenzie’s role in the witch trials in Scotland. Certainly this sophisticated lawyer, obedient subject and Christian never publicly declared a disbelief in witches. Yet he did everything he could within the limits of the law to save as many of the poor victims as possible. Christina Lerner in her book *Enemies of God: The Witch-Hunt in Scotland* calls him ‘a key figure in stemming witch-hunting’. She considers Mackenzie’s *Laws and Customs of Scotland in Matters Criminal* (1678) as the first comprehensive legal commentary on the Witchcraft Act of 1563.⁵⁰

In this regard, Mackenzie’s first hand experience of the witch craze exposed him to the realities of how prone ordinary people were to misguidance. The zeal and fanaticism of the ministers was frighteningly abundant. Moreover, the control they seem to have had on their congregations appeared absolute. An instance that exemplifies this pertains to a woman who, says Mac-

49. Quoted in Lang, Mackenzie His Life and Times, 39.

50. Havenstein, “*Religio Writing*,” 17.

kenzie, asked whether a person could be a witch and not know it. Mackenzie's above-mentioned chapter is fertile in examples:

Those poor persons who are ordinarily accused of this Crime, are poor ignorant creatures, and oft-times Women who understand not the nature of what they are accused of, and many mistake their own fears and apprehensions for Witchcraft; of which I shall give you two instances, one of a poor Weaver, who after he had confessed Witch-craft, being asked how he saw the Devil, he answered, *Like Flies dancing about the Candle*. Another of a Woman, who asked seriously, when she was accused, if a Woman might be a Witch and not know it? And it is dangerous that these who are of all others the most simple, should be tried for a Crime, which of all others is most mysterious.⁵¹

Also:

I went when I was a Justice-Depute to examine some Women, who had confest judicially, and one of them, who was a silly creature, told me under secresie, that she had not confest because she was guilty, but being a poor creature, who wrought for her meat, and being defam'd for a Witch she knew she would starve, for no person thereafter would either give her meat or lodging, and that all men would beat her, and the World; whereupon she wept most bitterly, and upon her knees call'd God to witness to what she said. Another told me that she was afraid the Devil would challenge a right to her, after she was said to be his servant, and would haunt her, as the Minister said when he was desiv-ing her to confess, and therefore she desired to die. And really Ministers oft-times indiscreet in their zeal, to have poor creatures to confess in this. And I recommend to Judges that the wisest Ministers should be sent to them, and those who are sent, should be cautious in this."⁵²

Mackenzie's diagnosis reads:

51. George Mackenzie, *The Laws and Customes of Scotland In Matters Criminal. Wherein is to be seen how the Civil Law, and the Laws and Customs of other Nations do agree, and supply ours* (Edinburgh: James Glen, 1678), 86.

52. Mackenzie, *Laws and Customs of Scotland*, 87.

Many of them confess things which all Divines conclude impossible, as transmutation of their bodies into beasts, and money into stones, and their going through walls and closs doors, and a thousand other ridiculous things, which have no truth nor existence but in their fancy.⁵³

The series of advancements in his public career from 1669 onwards would make one expect a better-recorded history of this period in Mackenzie's life. Although there is, relatively speaking, considerably more information about Mackenzie than is the case for the preceding period, one is nonetheless obstructed by another historiographical problem: "His life is mixed up with the history of the period; he held high place, and as official actor he wears the official mask."⁵⁴ So, from a methodological point of view, one encounters another sort of problem in this instance.

Lang claims that "Of Mackenzie's private life, at any time, very little is known. The extreme scarcity of Mackenzie's private letters, and the deplorable loss of his *Memoirs* for 1663-1669, makes it impossible to follow his career during these years."⁵⁵ Clearly, this does not necessarily mean that the same is still

53. Ibid.

54. Watt, *Terrors of the Law*, 44.

55. Lang, *Mackenzie His Life and Times*, 77.

the case after 1669; however, Clare Jackson does comment on Mackenzie's habit of advising his correspondents to burn his letters after reading them.⁵⁶

In 1669, Mackenzie entered the Scottish Parliament as one of the two members for the shire of Ross, where his clan was predominant. Mackenzie's entrance to the parliament marks the true beginning of his public life. From this date onwards, until he was appointed as Lord Advocate, two things in particular appear particularly significant of this period in Mackenzie's life: (1) Surviving Lauderdale (1669-1674); and, (2) Advocates' secession (1674-76).

The parliament of 1669 was the second Scots parliament that Charles II called to session after his restoration in 1660. In 1661 Charles appointed John Maitland, then the Earl, later the Duke of Lauderdale, as his Secretary of State for Scotland. It was Lauderdale who almost exclusively carried out Charles's wishes for Scotland, and for the next two decades, Lauderdale dominated Scottish politics.

However from 1661 to 1669, Lauderdale's office mandated him to constantly attend the King's person. He, therefore, did not always sit in the parliament, but used others for the management of affairs in Scotland. Based at the king's court, "Lauderdale oversaw all aspects of policy and had come to ex-

56. "Mackenzie, Sir George, of Rosehaugh (1636/1638-1691)," Clare Jackson in Oxford Dictionary of National Biography.

ert almost complete control over the Scottish administration.”⁵⁷ This was to change the year Mackenzie entered parliament. For in 1669, Charles appointed Lauderdale to also serve as Lord High Commissioner to the Parliament of Scotland. The Lord High Commissioner was the King’s personal representative in the Scots parliament, and it meant that Lauderdale would personally be present in Edinburgh from then on when parliament met to carry out the royal wishes. And Lauderdale traveled to Edinburgh in October 1669 with a hefty agenda he was ordered to carry out by Charles II.

The first thing on Lauderdale’s agenda was to negotiate an act to recognize the king’s supremacy over the kirk. Lauderdale successfully manoeuvred the parliament to pass such act. “Never was a king,” Lauderdale wrote to Charles upon the act’s passage, “so absolute as you in poor old Scotland (Airy, 2.164).”⁵⁸ ⁵⁹ Although Charles II promised in his *Declaration of Breda* that once restored he would not interfere with Church organisation already established

57. Gillian MacIntosh, *The Scottish Parliament under Charles II, 1660-1685* (Edinburgh: Edinburgh University Press, 2007), 75.

58. “Maitland, John, duke of Lauderdale (1616–1682),” Ronald Hutton in *Oxford Dictionary of National Biography*, ed. H. C. G. Matthew and Brian Harrison (Oxford: OUP, 2004); online ed., ed. Lawrence Goldman, May 2006, <http://www.oxforddnb.com/view/article/17827> (accessed August 14, 2015)

59. The accuracy of this observation notwithstanding, such is a particularly remarkable claim on Lauderdale’s part; because, it seems that for the next decade, Lauderdale himself was, effectively, the absolute ruler of Scotland. Recognizing this in her book on the Scottish Parliament under Charles II, Gillian MacIntosh entitled the chapter on the 1669 session, “Arise King John.” (MacIntosh, *Scottish Parliament under Charles II*, 75.)

in his kingdoms, one of his first acts was to abolish presbytery in Scotland for episcopacy. His efforts through Lauderdale in 1669 were therefore part of a long-continuing policy on his part to consolidate his authority in Scotland, for which the control of the Kirk was crucial. There is no evidence of opposition from Mackenzie in this matter. Yet, Mackenzie is often situated among the opposition at the outset of his parliamentary career, because he opposed—and did so quite passionately—another item in Lauderdale’s agenda for the 1669 parliament: the union of the kingdoms.

One of the major issues debated in 1669 was Scotland’s union with England. There is ample reason to question why Charles II might have wanted this as the existing situation gave him the opportunity to play one kingdom against another. There is sufficient evidence to show that he indeed did so.⁶⁰ However, during the Civil War, it became evident that not only the English Parliament, but also the Kirk in Scotland managed to play Charles I’s kingdoms against each other. So, perhaps it was in his effort to consolidate his authority further that Charles II pursued such a union; or perhaps he was testing the limits of his influence.

The proposition did not pass the Scots parliament, and Mackenzie quickly made him noticed in the debates regarding it. This was to Lauder-

60. Clare Jackson, “Restoration to Revolution: 1660-1690” in *The New British History. Founding a Modern State 1603-1715*, ed. Glenn Burgess (London, New York: I.B. Tauris, 1999), 92-114.

dale's great dislike, which he turned into action by attempting to rid Mackenzie of his seat in parliament by challenging the legitimacy of his presence in the first place. This came to naught. In any case, the fundamental problem with the king's proposition was that it demanded the Scottish parliament to waive its right to negotiate such a union with England to a commission that the king would appoint. Reasonably enough, the Scots were not prepared to do this just yet.

Lang describes the first period of Mackenzie's parliamentary career in the following manner:

He is no longer the gay philosopher and stylist; no longer the poet; and he is not yet the picturesque persecutor, still less the mournful Jacobite and premature Socialist. In him we see a familiar figure; the earnest young Liberal member of Parliament, whose mind is full of 'the House,' of divisions and debates about questions settled long ago.⁶¹

Putting aside its accuracy aside, such portrait says more about late nineteenth- and early twentieth-century Whig historiography's manner of contemplating historical figures like Mackenzie. The historiographical tradition that produced Lang's perspective is ultimately a continuation of the one that demonized Mackenzie, Lauderdale and innumerable other public officials of the Restoration period in Scotland.

61. Lang, Mackenzie His Life and Times, 83.

The above description is premised by Lang's claim that "[Mackenzie's] parliamentary career is perhaps the least interesting and characteristic."⁶² I maintain, contrarily, that the time from his parliamentary election to the Advocates' Secession (1674-76) proves valuable and instructive. From his parliamentary election to the resolution of what came to be known as the Advocates' Secession mark a significant period in Mackenzie's career: "As Omond later opined, for Mackenzie the dispute represented 'the turning point' of his career, prompting both his subsequent attachment to Lauderdale and his eventual appointment as Lord Advocate in 1677."⁶³

On the one hand, 1669 saw the publication of *Jus Populi Vindicatum*, which was a highly fanatical manifesto which called Charles II "to hand all the bishops, and all his ministers who aided and abetted them, to renew the Covenant, and to unite England and Scotland by forcing Presbytery on England."⁶⁴ It was the dogma and mindset one may observe in *Jus Populi* that Mackenzie had witnessed while Justice Depute, and was to combat in the succeeding decades. On the other hand, by 1674-76, the never-ending bickering among the Scottish nobility—of which the Kirk had made use previously, especially during the Civil War and interregnum—became evermore obvious and insur-

62. Ibid..

63. Jackson and Glennie, "Advocates' Secession," 95; Omond, *Lord Advocates of Scotland*, 211.

64. Lang, Mackenzie His Life and Times, 86.

mountable to Mackenzie. This is why, I believe, his life-long ideological war was fought not only against the Covenanting type, but also against people of higher social stature. So, somewhat impervious to these nuances, Lang depicts this period as one of changing sides. There is accordingly an element of cynicism in his tone, but even he cannot deny the legitimacy of Mackenzie's concerns:

A person enamoured of 'solitude' and avers to 'public employment,' like Mackenzie in his essay of 1665, would not now have acted like Mackenzie. We shall see that he changed sides partly in the irritation caused by what he deemed the unjust treatment of himself by his associates; partly in wrath against his insolent rival, Sir George Lockhart; and, again, (if the partiality of a biographer does not delude me,) because he resented English interference in the affairs of his counter; and mainly because popular passions, on the Presbyterian side, seemed to threaten great dangers to public peace, and to Royal prerogative, then regarded by him as the only bulwark against disorder.⁶⁵

Mackenzie's behaviour during the events of the so-called advocates' secession provides reason for speculation about what might have been motivating him in the way he acted. Yet, what I propose is not speculation for its own sake. From a methodological point of view, such exercise often proves little than rhetorical effect. However, let us assume that such speculation's intent is really to test the overarching comprehensive thematic that I observe in Mackenzie's life—in both word and deed—in this professedly significant moment.

65. Ibid., 109-110.

In early 1674 when the dispute between the faculty of advocates and the lords of the session broke out, Mackenzie was a relatively minor figure in Scottish politics. He had recently been reelected to the Scots parliament after having made himself a bit of a name in opposition to Lauderdale. He also continued to practice law as a member of the faculty. Although due to commitment to his peers he was among the advocates who were debarred, he proved instrumental in the resolution of the conflict in the spring of 1675. He was then the first to be re-admitted to the Bar on 29 June 1675 upon Lauderdale's personal request. Subsequently, Mackenzie advanced rapidly in public office and political stature. On 28 June 1676 he was appointed as understudy to Lord Advocate Nisbet. A year later, on 23 August 1677, he was made Lord Advocate.

All biographical accounts recognize the events of the Advocates' Secession to be a turning point in Mackenzie's life. As indicated, such observation seems hard to dispute. Yet there is a certain lack of finesse and diligence in such considerations. So much so that in a considerable number of these accounts, this moment in Mackenzie's life is construed as an invitation for the author to share some interpretive commentary. As indicated above, Lang qualifies it as Mackenzie not acting like himself.⁶⁶ Omond implies that Mackenzie performed a 180-degree turn as events unfolded. In both authors' accounts, one gets an impression—and why not proscribe them the same medicine—of a

66 Ibid., 109-110.

forced and insincere sense of surprise. For Watt, on the other hand, this was the chance Mackenzie had been waiting for all along. Watt is convinced that Mackenzie's entire early life and career—including his opposition to Lauderdale in parliament *and* his defense of the Marquis of Argyll and other covenanters—was planned and executed to make way for public office.

The events of the Advocates' Secession are straightforward. It may prove instructive, however, to make a number of observations before accounting for their sequence. 1674 proved to be a challenging year for Scottish authorities. There were, according to Lang, a remarkable number of conventicles, which were illegal religious gatherings.⁶⁷ Moreover, in the fall of the previous year, Duke of York married Mary of Modena, a catholic, after having failed to take the Anglican Communion on Easter Day in the previous spring, thus publically confirming his conversion to Catholicism. This was the year in which the seeds of the Exclusion Crisis were sown.

Additionally, the Third Anglo-Dutch War (March 1672-February 1674) was in the process of unfolding. The reason for this war is traditionally taken to be economic—namely, as an episode in the fight for dominance of trade routes in the seas. Nonetheless, this conflict did have its political implications for Charles II. Especially in England, the king was perceived in conflict with the increasingly popular protestant prince of the Netherlands, William of Or-

67. Ibid., 112.

ange, who was putting up a fight against Louis XIV's Catholic and universalist France.

It was in this context that the Lords of the Court of Session debarred the majority of the members of the faculty of advocates in the mid-1670s upon pressure from Charles II and Lauderdale. The issue that provoked the quarrel that in turn led to the debarring of the advocates pertained to appellate jurisdiction. As Clare Jackson and Patricia Glennie explain, modern understandings of appellate jurisdiction involve "substantive judicial determination," which was not necessarily so in sixteenth- and seventeenth-century.⁶⁸ There was more ambiguity and "the issue that had provoked the dispute remained, at best, open to interpretation."⁶⁹ As the events unfolded, the jurisprudential nature of the dispute was in time completely overshadowed by politics. Lockhart admitted, according to Jackson and Glennie, that the quarrel that ensued did not bring about 'any new or particular opinion' about the appellate jurisdiction.⁷⁰ In fact, first with William's reversal of Charles II's former directives and then with the union of 1707, the cause of the legal problem was never truly addressed before becoming obsolete as a result of these developments.

68. Jackson and Glennie, "Advocates Secession," 77.

69. Ibid.

70. Ibid., 78.

Clare Jackson and Patricia Glennie note that the events of 1674-76 were termed by contemporaries as the “Advocates’ Secession”. The word secession had connotations that were more pressingly negative in the early modern period. It implies dissent. Moreover, the advocates did not, at least initially and technically secede. They chose not to appear at court in protest to a decision of the Court of Session. Their resistance was not against a decision of the Session, but to the manner in which it forced that decision on what was essentially a matter of appellate jurisdiction. This led to their debarment on Charles’ instruction, which was really due to his support not to the session but to Lauderdale. It was when the advocates did not submit upon the threat and actual event of debarment that the impasse emerged, which then lasted eighteen months.

It is therefore possible to call this chain of events an outing as much as a secession, because the majority of the members of the faculty of advocates were debarred, i.e. ousted. From a strictly legal point of view, the question is whether or not the advocates were justified in protesting and not submitting to the decision and conditions of the session. It seems to be the case that there were technically grounds to their proclaimed concerns, as appellate jurisdiction in the sixteenth- and seventeenth-century context was rather ambiguous to say the least. A number of ‘courts’ with jurisdictional status served and/or had a history of serving as a court of appeal in Scotland. Moreover, the English parliament did provide an example as a legal avenue to seek appeals or remedy law. However, the point in all this for the purposes of this investigation is that

neither the session nor the advocates conceived their opponents to be motivated by legal concerns. Jackson and Glennie notes that a contemporary be-moaned by likening the situation to “the years before the destruction of Jerusalem, when Titus the emperor came to besiege it.”⁷¹ Like they comment, what is ultimately a dispute between the bench and the bar should be likened to the days before the destruction of Jerusalem may give one pause.

The procedural mechanism of remeid law was such that it did not halt court processes that were continuing. Protestations for remeid law did not prevent decrees and proclamations that could be subject of such protestation from being implemented and executed either. This was not the case, apparently, with appeals, which, according to Jackson and Glennie, “advocates involved in the mid-1670s’ dispute sedulously distinguished” from remeid law.⁷² So, in a way, Gilbert Burnet was accurate when he later accounted for the debate as having been “about the sense of the word *appeal*.”⁷³

Protest for remeid law could be lodged to the parliament, Privy Council, the general assembly of the Church of Scotland, *and* to the Court of Session. All of these institutions except for the parliament were, without much leeway for dispute, under Lauderdale’s firm grip. In early modern Scotland, the par-

71. Ibid., 76-77.

72. Ibid., 78.

73. Ibid., 77.

liament “was still commonly construed as the ‘high court of parliament’. Appeals and similar types of protestation could be lodged to the parliament, as well as, to the Privy Council, the general assembly of the Church of Scotland, and the Court of Session.”⁷⁴

The dispute transformed into a stalemate because it was in essence due to a shortcoming of the law. However, the underlying issue was that it was exploited for political ends, which is precisely how Lauderdale and in extension Charles II treated it. While one may say they technically made a technically a legally sound argument, the Session and political authority in Edinburgh was successful in overcoming the actions the Faculty of Advocates. Mackenzie played the key role in the resolution, because it became clear to him that the so-called leaders of the advocates in this affair literally abandoned Mackenzie and their peers in Scotland to wait until the outcome of the debacle.

Consequently, Mackenzie decided to undertake negotiations on behalf of the Advocates to cut a deal by first uniting the disbarred advocates in stepping back. What lay at the heart of his argument was that even if their actions were justified, they posed the risk of becoming disloyalty to the authority of the king. The danger and evil of this—apart from the obvious—was that it would render the advocates not only the losers of the struggle, but also insig-

74. Ibid., 77-78.

nificant subsequently.⁷⁵ They were, in essence, being played by the men with political ambitions that put personal gain before that of the state; and “it was no dishonour to submit to their Prince.”⁷⁶

Mackenzie was successful in directing the advocates to submission—and without necessarily being humiliated—and he was first to be readmitted in June 1676. This was according to Lauderdale, writing on the King’s behalf, because Mackenzie was the first to return to his duty.⁷⁷ Lauderdale also noted that Mackenzie “will be so exemplary in his duty for the future as may render him capable of our further favour.”⁷⁸ Also having managed to win the upper-hand against his professional and personal rivals in the meantime, Mackenzie’s ascend to high office was made irrevocably possible. His biographers interpret this episode as being rich with moments of opportunism; however, there is as much, if not more, evidence to think that Mackenzie not only acted out of principle, but also illustrated a mastery of administrative and political skill.

In June 1676, Mackenzie was appointed as Lord Advocate Nibet’s understudy. Roughly a year later (August 23), he was appointed as Lord Advocate in

75. Ibid., 88.

76. Lang, Mackenzie His Life and Times, 119.

77. Jackson and Glennie, “Advocates Secession,” 88.

78. Ibid.

Nisbet's place, who was forced to resign. Before formally receiving into the office of Lord Advocate, he became Privy Councillor. In the meantime Mackenzie continued to retain his seat in the Scots Parliament. Soon after, he became a member of the Cabinet for the Management of Scottish Affairs, which is also known as the Lords of the Articles of the Parliament.⁷⁹ This so-called cabinet was responsible for drawing the actual legislation that the parliament passed. In other words, Mackenzie was directly involved in the actual writing of legislation in this period.

There is one event in the personal history of Mackenzie dating from this period that cannot go unmentioned, particularly in respect to the aim of this investigation. Although there is a bit of an ambiguity regarding its date, Mackenzie was attacked by an angry gang of religious fanatics sometime in 1676 or 1677. As a result, he suffered a broken leg, which left him lame.⁸⁰ He limped thereafter and earned, among his peers, the nickname, Vulcan. I will return to this event, and the nickname Vulcan in due time.

The first case Mackenzie undertook as King's prosecutor was that of Rev. Mr. Mitchell. According to Lang, Mackenzie reopened the case because

79. Omond, *Lord Advocates of Scotland*, 219.

80. Lang, *Mackenzie Life and Times*, 117.

“new discoveries had been made of a design to kill Archbishop Sharp.”⁸¹ By opening this case, Mackenzie also ended up opening a can of worms. However, it is understandable why he pursued this case, for it pertained to an attempted murder of an Archbishop, it followed an episode in which he was himself the target of violence, and finally, the Highland host was billeted on southwest Scotland to quell dissenters.⁸² In the backdrop, the CABAL government was gradually disintegrating as a result of the confirmation of the Duke of York’s conversion to Catholicism. York was next in line to the throne, and the mid-1670s onwards saw the contention between the king and the parliament concerning James’s succession. Appropriately, this contention is called the exclusion crisis.

Mitchell attempted to kill Archbishop Sharp in 1668 but failing to shoot him, injured Honeyman, Bishop of Orkney who was traveling with Sharp in the same carriage. He got away; however, Sharp recognized him on High Street six years later and got him arrested. The Council, to encourage him to confess and thus reveal what they thought to be a far-reaching plot behind all, offered Mitchell a plea bargain. Mitchell confessed but said he had no accomplices. He was brought to trial with the promise that he would not be punished capitally. At the trial, Mitchell refused to plead guilty, which complicated mat-

81. Ibid., 140; Mackenzie, *Memoirs*, 328.

82. Lang, Mackenzie Life and Times, 149-151.

ters. He was sent back to prison (Bass Rock) and the matter was dropped for a while.

Mackenzie had no involvement in all this—except that Mitchell, according to Watt, declared Mackenzie to be his counsel—until 1678, when he brought up Mitchell’s case as the recently appointed Lord Advocate. We know that upon entering office, one of the first things Mackenzie did was to reduce the number of prisoners who had not been properly/fully convicted. It seems reasonable that he brought Mitchell’s case back on the table because it was a Bishop who had been attacked; and, there was already a confession. Lang mentions that in Mackenzie’s *Memoirs* there is a claim that the Mitchell case was reopened because “new discoveries had been made of a design to murder the Archbishop.”⁸³

Mackenzie prosecuted Mitchell; and according to Watt, he got the council to delegate his rival, Lockhart, as Mitchell’s defence. It may be instructive to comment on why Lockhart becomes the counsel for the defence. Depending on one’s predisposition towards Mackenzie, it may be construed that he was using this case to continue an older or already existing struggle against a possible rival. However, I believe it is also possible to say that having respected and noteworthy legal figures as defence could have been intended to give the public a sense of a fair trial. Yet, whether or not that was effectively

83. Lang, *Mackenzie His Life and Times*, 140; Mackenzie, *Memoirs*, 328.

the case is open to question. The public opinion of Charles II, especially the Presbyterians, was that he was a tyrant. Ironically enough, though, Lockhart was murdered in 31 March 1689, and was buried in the tomb of Mackenzie.⁸⁴

Sharp clearly remembered Mitchell well. The keeper of the prison, with his son being a witness, testified that Mitchell had confessed the deed to him. That was probably enough for the conviction. Yet, the conditional confession of the previous proceedings was also produced during the proceedings. To substantiate this confession, the members of the previous council were called as witnesses. These included John, Earl of Rothes, Lord High Chancellor of Scotland; Charles Maitland of Hatton, Lord Treasurer Deputy; Lauderdale and the Archbishop Sharp himself. They all testified to Mitchell's confession but denied any promise of pardon. In turn, Lockhart produced a copy of a page from the Council records, which documented the promise of pardon. Mackenzie did not object to the contents to be read, in fact he gave express permission. Mackenzie subsequently argued thus: (1) council possessed no power to promise such a pardon; (2) the confession was made prior to the offer; (3) what was needed was the original books to be brought before the court; and (4) it did not discredit previously produced evidence to Mitchell's guilt. Interesting-

84. Wikipedia contributors, "George Lockhart, Lord Carnwath," Wikipedia, The Free Encyclopedia, https://en.wikipedia.org/w/index.php?title=George_Lockhart,_Lord_Carnwath&oldid=741970305 (accessed January 15, 2017).

ly enough, the judges accepted only the last two objections as decent. Mitchell was consequently found guilty and executed.

Why was the Mitchell case important? It seems that the main reason why the Mitchell case created such controversy was because numerous persons in high office—namely, members of the Privy Council—committed, or gave the impression of committing, perjury. Whether or not Mitchell had confessed the crime *and* how this happened—i.e. upon promise of pardon or not—when he was implicated for the first time in 1674 became an issue when he was retried in 1678 with Mackenzie as the prosecution. A number of persons gave testimony to Mitchell's confession, but denied any promise of pardon. The defence then produced evidence that suggested that some deal was in fact offered to Mitchell.

It seems that there can be little doubt that Mitchell carried out the crime. It is also likely that he confessed it. Lang footnotes Wodrow in this context: "He did freely confess."⁸⁵ A year later on 3 May, Archbishop Sharp was indeed assassinated by militant covenanters. In all, this was nonetheless an embarrassing episode, as persons like the Royal Commissioner appeared to have given questionable—to say the least—testimony. This gave quite an arsenal for Covenanter propaganda, not to mention how it made high officers of state

85. Lang, *Mackenzie His Life and Times*, 142; Wodrow, *Sufferings of the Church of Scotland*, vol II, 460.

look. In fact, we see in Lang an appeal to Lauderdale's Chaplain, who reported the behaviour of the supporters of Mitchell:

By usual good fortune, we catch a glimpse of the crowd in the Court during the trial of Mitchell. Dr. Hickes, Lauderdale's chaplain, was present, much to his discomfort, and writes (January 10, 1678), "You cannot imagine how the Presbyterian party, especially the women, were concerned for him. The Court was full of disaffected villains, and because of my dress and profession I had many affronts done me; for sitting high with my back towards that side of the Court where the zealous rabble were gathered together, near the bar at which the prisoner stood, they railed at my black coat, for so they called my gown, and bespit it all over, and pelted me now and then with such things as bits of apple and crusts of bread." This speaks ill for the tolerance and manners of the godly. Mackenzie, "almost the only great man in the country," says Hickes, "pursued Mitchell like a gallant man and a good Christian," in face of a letter threatening his murder.⁸⁶

Lang asserts that "Lauderdale was willing to grant a reprieve and refer the matter to Charles II, with whom Mitchell would have probably been safe enough."⁸⁷ This is interesting on multiple levels and deserves noting. First of all, it says something about the nature and extent of Charles' so-called absolute rule in Scotland. This is clearly a moment of incompetency on the Scottish officials' part and their appeal to the crown is to resolve the matter when the political implications of the situation are considerable and serious. Whether or not this exemplifies an instance of what Watt deems—that "at the Restoration the Scots authorities became extravagantly loyal, and everything made

86. Lang, *Mackenzie His Life and Times*, 143.

87. *Ibid.*, 144.

for absolute rule”⁸⁸—is a legitimate question. But I think such was not intentionally done, and it is wise to be cautious so that one does not accumulate a number of such instances, which are inaccurate in the first instance, to prove a comment like Watt’s as true.

On the other hand, referring the matter to Charles—even if it was not an extraordinary action in this period—would aid the resistance and distaste towards royal authority, which was ever present in this period, and was best represented by the Covenanters. Appeal to Charles’ person and prerogative would mean ammunition for already marginalized groups that saw Charles and monarchy as dangers of popery and arbitrary government. Mackenzie’s concurrent efforts, especially in jurisprudence, therefore mean a lot in this context because his career is in part devoted to remedy the situation in jurisprudence, and one cannot look over the fact that this same year was also the year he published *Laws and Customs*.⁸⁹

There are no recent or modern historiographical consideration of this case in terms of its importance in Mackenzie’s career and life—and why should there be one—but, one major point that the old historiography fails to mention or remind its reader with respect to Mackenzie’s conduct is the larger

88. Watt, *Terrors of the Law*, 56-57.

89. Mackenzie, *Laws and Customs*, 1678.

political context and the possible threat from the covenanters to public peace.

Lang opines, for instance, that

Mackenzie's whole conduct remains a puzzle to me, because, he ever tried to keep within the letter of the law, and his publication of his own pleading in the case, in 1681, shows that he was unconscious of having done anything that deserved reproach.⁹⁰

Yet, Mackenzie offers in the same account, some perspective to the context in which Mitchell and his crime carried its weight.

Mitchell's attempt on Sharp's life was not any singular or random event.

“These irreligious and hetrodox books called ‘Nephtali’ and ‘Jus Populi,’ had made the killing of all dissenters from presbytery seem not only lawful, but even duty,” writes Mackenzie in the *Memoirs*, and suggests that it was such principles by which Mitchell had been animated to assassinate Sharp. Mitchell had to be convicted, one way or another, not simply because he was guilty, but also because who he was. The difficulty for Mackenzie and prosecuting such cases with the royal support was that the impression of judicial fairness had to be sustained.

Perhaps in partial relation to this last point, it is necessary to ask about whether or not Mackenzie actually served as counsel for Mitchell in 1674. Lang says he might have done so. Watt is convinced that this was indeed so. It would not be the first time Mackenzie served as counsel for a covenanter—as

90. Lang, *Mackenzie His Life and Times*, 145.

was evident in the case of the Marquis of Argyll. It would probably be the only instance where he became the prosecutor of a person who he antecedently defended. There is also the issue concerning whether or not Mitchell was ever tortured, which is especially relevant due to the fact that there is a confession in contention. Lang claims that Mitchell *was* tortured.⁹¹ It would also prove instructive to not forget that 1674 was a year “remarkable for many conventions.”⁹²

Mackenzie was involved in many prosecutions of covenanters from the get-go of his lord advocacy. However, the Mitchell case can be taken to be emblematic of the spirit of what was happening at the time. Mackenzie became increasingly a target of hatred; although, one should not forget, as aforementioned, it was his statutory duty to prosecute on behalf of the King and Privy Council. Yet, one cannot overlook the fact that he was a privy councillor either. We know that Charles II endorsed Mackenzie’s conduct as Lord Advocate, proclaiming gratitude for “the care and faithfulness with which he had maintained the royal prerogative.”⁹³

91. Ibid., 140.

92. Ibid., 112.

93. Quoted in “Mackenzie, Sir George, of Rosehaugh (1636/1638–1691),” Clare Jackson in Oxford Dictionary of National Biography.

On the other end of the spectrum, a non-conformist minister, Rev. Cargill, excommunicated Mackenzie at a conventicle in Torwood in September 1680. In his sermon, he is recorded to have said:

I think, none that acknowledge the Word, can judge their sentences to be unjust; yet some, it may be, to flatter the powers, will call them unorderly and unformal, there not being warning given, not probation let. But for answer, there has been warning given, if not of all these things, at least of a great part of them: and for probation, there needs none, the deeds being notour and public, and the most of them, such as they themselves do avow and boast of. And as the causes are just, so, being done by a minster of the Gospel, and in such a way as the present persecution would admit of, the sentence is just; and there are no kings nor ministers on earth, who, without repentance of the persons, can reverse these sentences upon any (such) account: God, who is the Author of that ordinance, is the more engaged to the ratifying of them; and all that acknowledge the Scriptures, ought to acknowledge them. Yet some, perchance, will think, that though they be not unjust, yet that they are foolishly rigorous. We shall answer nothing to this but that Word, which we may speak with much more reason than they did who used it, 'should he deal with our sister as with an harlot?' Should they deal with our God as with an idol? Should they deal with his people as murderers and malefactors, and we not draw out His sword against them?⁹⁴

In summary, this means that the judgment is just, the person/institution administering the judgment is justified or legitimate, and there could really be no appeal whatsoever, for God is the highest appellate 'court' in this decree. There is therefore absolutely no place for parties to negotiate and compromise. And it was essentially this way of thinking that Mackenzie found most dangerous. Cargill was soon after arrested, tried and executed.

94. Thomson, *Cloud of Witnesses*, 507-510.

This line of thinking was in complete harmony with the dicta to be found in *Jus Populi Vindicatum* or *Naphtali*.⁹⁵ The former, for example, advocated that killing those who deserted from Presbytery to be lawful; but not only that, according to Mackenzie, it made it a duty. These treatises and advocacy of violence against non-presbyterians falls in line with the politics of the Scottish Reformers of the previous century, whom Mackenzie holds responsible in *Jus Regium* for the situation in Scotland.

Mackenzie's excommunication happened in the aftermath of Bothwell Bridge, a failed covenanting rebellion that followed some limited Covenanting successes in the western lowlands. Like the event of the attack on Mackenzie from which he suffered a broken leg, what followed Bothwell Bridge also marks an important moment in Mackenzie's personal history. For after rebel prisoners were brought to Edinburgh for trial, the city faced the problem of accommodating the captured. The existing prisoner proved insufficient in size. So for the remaining Covenanters, a section of the Greyfriars Kirkyard was arranged, and there many perished due to the elements. That very section later came to be known as the Covenanters' Prison. Incidentally, Mackenzie's tomb is located in the very same churchyard, not very far from the Covenanters' prison.

95. These were published anonymously by James Stewart, who later became Lord Advocate to William III.

The early 1680s saw Charles II successfully overcoming the most significant test for his rule. He survived the exclusion crises and held steadfast during the so-called Fanatic (or Popish) Plot. At the height of his power, at a time when he effectively consolidated his authority, he died in 1685. James II & VII's somewhat brief reign that followed entailed a sequence episodes of dire mismanagement of the three kingdoms.

In the summer of 1681, Charles II ordered his brother, then Duke of York, to leave for Edinburgh for safety as the exclusion crisis was escalating. Despite the problem of religious tensions in Scotland, there was as strong a royalist cause among the Scots. Accordingly, Mackenzie had the opportunity to deal with the next king, and it is recorded that he was quite the popular courtier.⁹⁶ Soon after James II's ascent, Mackenzie became disillusioned due to James' relaxation of penal laws against non-conformity, particularly against papists. Like many royalists, Mackenzie refused to comply and was dismissed of his office in May 1686.

No longer than a year and a half, James II reappointed Mackenzie as Lord Advocate, because neither Lockhart—who was President of the Court of Session and temporarily acted as Lord Advocate until next appointment—nor Sir Dalrymple managed to satisfy James II's wishes. However, it cannot go

96. Lang, Mackenzie His Life and Times, 225.

without noting that during the interlude, Mackenzie returned to his legal practice and defended many Presbyterian sympathizers.

On 5 November 1688, William of Orange landed in Torbay upon the invitation of some parliamentarians, which came to be known as the Immortal Seven. James II fled to France and the English, and the Scottish Parliaments decided that he had abdicated, leaving the throne empty. The Convention of the Estates at which this decision was made in the Scottish case was the very last time Mackenzie attended debates as a member of parliament. He was one of a minority of five who opposed the convention's decision that the Scottish throne was empty. It is possible to interpret this as in line with Mackenzie's royalism, however, it was also in part due to his consistent rejection of innovations in law. This latter point is important, because it resembles, fascinatingly, the manner in which many Reforming theologians (e.g. Calvin) opposed innovations in the Church.

One of the last and possibly the most significant contribution Mackenzie made was the founding of the Library of the Faculty of Advocates in 1689. The efforts to found a library preceded Mackenzie's appointment as Lord Advocate and later being elected the Dean of the faculty. However, it was due to his initiative and effort that the project came to a completion. At its opening,

Mackenzie gave an inaugural speech, in Latin, which provides crucial insight to why the approach proposed in this thesis is fitting.⁹⁷

Fearing for his life, Mackenzie fled to England. He first settled for a time in London, and then moved to Oxford. In 1691, he died in London, most probably after having a stroke. A few comments deserve being made before proceeding to a brief discussion about the literature on Mackenzie:

Outside political life Mackenzie ranks as a scholar and a noble gentleman, the founder of the Advocates' Library, a generous admirer of professional rivals, the friends of 'wit', a distinguished writer, an eminent lawyer, and a genuine patriot.⁹⁸

Mackenzie presents to those who are curious, reasonably ample material to consider with regards each above-mentioned category. For whatever reason, such classification may be useful for methodological purposes. However, I propose that we consider Mackenzie's scholarship, founding of the Advocates' Library, writings, legal career, dealings with his peers and contemporaries not outside his political life, but as crucial parts of that career. If one is not so willing, then at least, let us examine to what extent that which is categorized outside political life has shaped and helps to explain that life.

I believe Mackenzie's public career was a multifaceted endeavour in which politics was but only one dimension. His efforts that gave that career its

97. George Mackenzie, *Oratio Inauguralis. In Aperienda Jurisconsultorum Bibliotheca*, trans. J. H. Loudon (Edinburgh: Butterworths, 1989).

98. Williams, "Sir George Mackenzie of Rosehaugh," 144.

flesh intended to win what I would call an ideological war against what he considered as a source of his age's problems: fanaticism, bigotry, intolerance, self-entitlement and plain ignorance. For him, the most dangerous and numerous groups that scored high in this set of criteria were the Covenanters. Yet the point is to recognize that Mackenzie's assault was not essentially on the Covenanter as a person, but as symbolizing a certain mindset. This is why his was an ideological program, not a project of persecution. What was at play was not only politics, but also something more basic, epistemology.

The horror was not only, as Watt puts it, that "theological questions entered the sphere of politics."⁹⁹ A greater source of distress was that the rival in this struggle advocated a bad religion, which was populist, militant, zealous and uncompromising. Something to keep in mind in this contest is, as Williams put it, that "the memory of the Covenanting domination was a nightmare."¹⁰⁰ When we think of this in terms of the issue regarding liberty of conscience or religious toleration, the matter in which one's position regarding the limits of knowledge plays a determining force in the possibility and extent of such liberty and toleration. This is not a novel idea that belongs to Mackenzie; it has been the basis of arguments for religious toleration in the early modern period. Mackenzie is necessarily one of those voices.

99. Watt, *Terrors of the Law*, 57.

100. Williams, "Sir George Mackenzie of Rosehaugh," 145.

The paradox emerges when those for whom religious toleration would be a means of protection and continuation do not believe in such understanding in the first place. Ultimately, the Covenanters cannot be *prosecuted* and *convicted* because they cannot, by their own reasoning, be in the wrong. That is, ultimately, the very essence of the problem. It was, in the final analysis, this mindset against which Mackenzie struggled. Therefore, he was not only disturbed by the Covenanters, but was also utterly haunted by the possibility and clear probability of his equals' willingness to exploit the instability that the Covenanters created for personal advancement. It was because of this that the blade of his pen touched more than the mere Covenanter.

It is necessary in this context to perhaps comment on Mackenzie's absolutism—something which I will examine and evaluate more thoroughly in due time—: in the early modern context, absolutism is hardly synonymous with tyranny or arbitrary government. (In fact, reservations were probably far more prevalent with regards republicanism and democracy than with absolute rule of monarch. The former were more likely to bring about tyranny, arbitrary government, chaos and destruction.) It is in this context that law is so very important—not only for Mackenzie, but for this period—because it guarantees against arbitrariness. In similar fashion, tradition also assures legitimacy and authority, which in part explains Mackenzie's interest in history, genealogy, heraldry and so on. It should not be forgotten that in addition to religion, the other avenue for a sovereign's legitimacy is dynastic.

A Man cannot err here without being ruined to all eternity.

—Mackenzie, *Reason* (1695)

CHAPTER III

THE LITERATURE ON MACKENZIE

Reflecting on Mackenzie's life in light of the literature produced on it and the historiography that has recently shown interest in him proves to be a worthwhile exercise. Mackenzie's public life and literary output entail a rich and multi-faceted totality, which is not easy to reconcile, and unsurprisingly, the literature is showing.

Invoking the term, *virtuoso*, helps one to accurately depict the prowess Mackenzie showed in his public career and literary output. He was a virtuoso as understood in the period,¹ and the qualification is well deserved. Despite

1. David Lynch, *Scotland: A New History*, (London: PIMLICO, 1991), 298.

See Havenstein, "Religio Writing," 18.

“absurd stories circulated about him”² at his death, his funeral not only happened “with much pomp”³, but “Scotsmen of every political party and ecclesiastical sect united at his grave to do honour to the one who was certainly one of the ablest and most distinguished Scotsmen of that generation.”⁴ In the long run, I contend that such description attains a truer meaning when the entirety of his career is considered. This is in part contrary to the way recent historiographical interest manifested.

When one looks at the literature to be found on Sir George of Mackenzie as a noteworthy intellectual of Restoration Scotland, one sees an overwhelming concentration on his writings of the 1660s. As it has been illustrated in the previous chapter, the decade of the 1660s corresponds to the period prior to Mackenzie’s active public career, which was later recognised, for better or worse, as what constituted his historical significance. Although it was only from early 1670s onward that Mackenzie began enjoying ever-increasing political and juridical influence, recent historical scholarship has concentrated on this earlier and formative period from which numerous works on topics moral and philosophical can be seen to date. It seems that such division in concentration results in Mackenzie’s literary career to be split, as if his literary activity

2. Osmond, *Lord Advocates of Scotland*, 234.

3. *Ibid.*

4. Barty, *Ancient Deeds*, 32.

of 1660s entail an episode that may be thought as separate to his later life. In contrast, I propose a more comprehensive approach to Mackenzie's writings.

Amidst realities of civil war, sectarian conflict and social turmoil, a certain ideological battle was being waged, which required rigor in discursive practices. It is therefore reasonable to question the extent to which the writings and the actions of someone like Mackenzie can be dissociated. The aim of my thesis is to illustrate to how great an extent Mackenzie's writings and public career are in accord and compliment and each other. Mackenzie's literary activity and the decisions he made during his public employment are parts of one and the same grander project—i.e. a certain ideological and intellectual struggle against a certain group in Scottish society, the Covenanters. In the final analysis, the manner in which Mackenzie's literary output and his public office can stand together is made possible by Mackenzie's full use of the multi-various facets of neostoicism.

The work that put Mackenzie on the map of literary activity in Scotland—and possibly also in the greater context of the British Isles—, was *Religio Stoici* (1663). This was his first published essay, with only the exception of a romance novel, *Aretina* (1660), which preceded *Religio Stoici* by two years and is deemed by some to be the first Scottish novel⁵. As its title suggests, *Religio*

5. Allan, "In the Bosome of a Shaddowie Grove'," 253.

Stoici alludes to Sir Thomas Browne's *Religio Medici* (1643), and this puts Mackenzie's text within the context of the *Religio*-literature initiated by Brown and for which, Dryden's *Religio Laici* (1683) is the most famous example of discussions concerning the role of reason in religious matters⁶. This literature enjoys a noteworthy place in the history of pleas for religious toleration and peaceful coexistence in seventeenth- and eighteenth-century British Isles. Mackenzie accordingly enters the radar of scholars interested in the intellectual history of early modern Britain by virtue of this generic association.

For instance, in his article on the two works, D. Havenstein argues that Mackenzie was not only responding to Browne's work, but also imitating it in many ways.⁷ Havenstein argues that the personal similarities between Mackenzie and Browne provide material that serves as an interesting background to compare their respective *Religios*.⁸ Havenstein points to the fact that the two wrote their works in different, but similar periods. Moreover, both were young men when they authored their respective *Religios*, and this contributed to the character of their works.⁹ Also, their professions—Browne a physician, Mackenzie a lawyer—were considered with equal suspicion, and suffered from

6. Jackson, "Latitudinarianism," 73.

7. Havenstein, "*Religio* Writing," 27.

8. *Ibid.*, 19.

9. *Ibid.*, 18.

numerous stigmata including that of atheism.¹⁰ In many ways, their respective *Religios* may be read as responses to such accusations as well.

In a more recent article, Clare Jackson undertook a similar comparison for the purposes of illustrating *latitudinarianism*'s significance in seventeenth-century literature.¹¹ Jackson's aim is to show how these two texts represent pleas for religious toleration that their authors thought necessary in their respective contemporary contexts. For Browne, this was the pre-civil war period, and for Mackenzie, it was the time right after the Stuart king's return to the island.¹² Accordingly, the former was pleading to avoid conflict, while the latter was pleading to avoid a return to conflict.

A further observation that Jackson makes sheds light on how Mackenzie has become interesting for intellectual historians of early modern Scotland and/or Britain. Jackson points to Mackenzie's conviction that "the church inevitably comprised irreconcilable elements, rendering consensus impossible,"¹³ which in turn necessitated an external conformity in religious worship to be

10. Ibid., 19: "Few lawyers die well, few physicians live well."

11. Jackson, "Latitudinarianism in Mackenzie's *Religio Stoici*," 73-94.

Jackson also mentions the possibility that it was Mackenzie's tract that inspired Dryden's *Religio Laici*;

See also, Havenstein, "Religio Writing," 18; and, Smith, *John Dryden*, 62.

12. Havenstein, "Religio Writing," 18.

13. Jackson, "Latitudinarianism," 78.

imposed by the civil magistrate. The externally imposed and qualitatively formal aspects, which the secular authority is responsible in enforcing, are acceptable, in the final analysis, because they are essentially *adiaphora*—that is to say, they are not essential to faith and individual's salvation.

For instance, pursuing a sartorial theme, Mackenzie wrote in *Religio Stoici*:

The *Phanaticks* enveigh against Presbyterian Gowns. The *Presbyterian* tears the Episcopal lawn Sleeves, and thinks them the whore of *Babel's* shirt. The *Episcopist* flouts at the popish Robes, as the livery of the beast.¹⁴

Jackson observes in passing, with reference to this passage, that the young John Locke prudently kept such sentiments—thus publicly voiced by Mackenzie in *Religio Stoici*—private around the end of 1662.¹⁵ This clearly locates Mackenzie in the grander discussion of religious toleration, conformity and pluralism, in which the likes of Locke were also interlocutors, even if some chose to remain silent at times. In other words, Mackenzie should be taken to be partaking in a greater intellectual debate in which the *religio* literature thus

14. Mackenzie, *Religio Stoici*, 56

15. Jackson, "Latitudinarianism," 78: "In this context, Mackenzie's *Religio Stoici* publicly voiced sentiments prudently kept private by the young John Locke, around the end of 1662, when he upheld the civil magistrate's right to prescribe *adiaphora*, given the potential infinity of subjective distinctions able to be drawn between 'a gown own in the market-place and the self-made gown worn in church'."

Cf. John Locke, *Two Tracts on Government*, ed. Philip Abrams (Cambridge: Cambridge University Press, 1967), 229.

elucidated is only one moment. The fact that Mackenzie integrates the notion of *adiaphora*, a notion that has a stoic heritage—which was, undeniably known at the time—also indicates that his *Religio Stoici* was true to both qualifications of religious and stoic.

Its place in this *religio*-literature qualifies *Religio Stoici* and Mackenzie's succeeding publications to the extent they contributed to the debate over religious toleration, a place in the history of the origins of the Scottish Enlightenment¹⁶.

Whether public employment and an active life, or retreat and solitary existence, is more suited for man was a passionately debated topic in the early modern period. Such issue, by nature, is always relevant and enjoys certain universality, and it had been discussed in the ancient and classical worlds in the form of the problematic between *otium*-versus-*negotium*. What was at the heart of this debate concerned the moral superiority of either public life or of retreat and solitude over the other.

Historically speaking, this dispute became popular on a relatively regular basis as political, social, cultural or religious turmoil broke and affected life on a grand and immediate way. The early modern period—the sixteenth and

16. For the purposes of this thesis in general, it suffices to use the phrase “Scottish Enlightenment” to stand as an overarching term, denoting, essentially a set of Enlightenments (viz. counter-, radical-, conservative- etc.). When a specific Enlightenment is meant, it will be carefully pointed out.

seventeenth centuries in particular—was one such time, and this very debate was unsurprisingly revived. Ever since wars of religion and civil turmoil had become an ordinary characteristic of European life from sixteenth-century onwards, the choice—essentially hypothetical or not notwithstanding—weighed increasingly more on the consciousness of Europe’s intelligentsia. And the second aspect of Mackenzie’s writings that scholars have found interesting relates to its place in this essentially stoic/neostoic debate. This may be related more concretely to Mackenzie’s situation and writings in the following way.

The following footnote concludes the first edition of *Religio Stoici*: “The Author intended this Discourse only as an Introduction to the Stoicks morals, but probably, he will, for many years, stop here.”¹⁷ The same note appears in the 1685 edition of the same treatise, which is somewhat curious. This is because Mackenzie went on to exploring these so-called stoic morals after 1663 with numerous treatises, particularly within the framework of perhaps a more relevant and popular topic: retreat and solitary life versus an active life and public employment. Accordingly, the publications of *A Moral Essay Preferring Solitude to Publick Employment* (1665), *Moral Gallantry* (1667) and *A Moral Paradox: Maintaining that it is Much Easier to be Virtuous than Vitious* (1667) further

17. Mackenzie, *Religio Stoici*, 159

established his place among the intelligentsia of the first decade of Restoration Scotland.

Moral Essay, *Moral Gallantry* and *Moral Paradox* continue what Mackenzie begins in *Religio Stoici*, expanding further on its neostoic themes by revolving primarily around the *otium-negotium* dichotomy. As such, Mackenzie is found within the context of another seventeenth-century debate, which was, really, inherited from the sixteenth, or even the late fifteenth century. It must be noted, however, that this debate differs slightly to the one that was represented by the religio literature elucidated in the previous point. The difference lies in the fact that while stoicism offered only one position among many with respect to the set of issues to which the religio literature responded, the matter revolving around the *otium-negotium* dichotomy was itself a predominantly, if not quite exclusively, stoical one.

In other words, stoic morals—whether they are those of Mackenzie or any of his contemporaries—provided material for taking a position within seventeenth-century religious disputes, mostly in favour of attitudes embracing religious toleration and pluralism (e.g. latitudinarianism). Yet, there were numerous other ideological camps that provided their own set of morals substantiating different positions within the context of the same debate. On the other hand, the debate that questioned the moral legitimacy of choosing retreat and a solitary life over an active one of public engagement—or vice versa—was itself—both philosophically and historically—a very stoical debate. This is, in turn, quite significant for the purposes of this thesis, because it locates Mac-

kenzie within a current of thought belonging to the early modern period—that of neostoicism. Therefore, Mackenzie is not only found as a figure participating in particular intellectual debates of varying significance in the Restoration Scotland context, but also identified as a representative of a certain current of thought that enjoyed considerable acceptance in early modern Europe.

Historical scholarship of roughly the last half century has shown the paradigmatic significance of neostoicism for the European intellectual, cultural and artistic, as well as political endeavours.¹⁸ The stoic tone may also be seen in writings of historical and legal character. This scholarship has also established the English neostoic current within the grander phenomenon.¹⁹ Yet in comparison, the Scottish stoics have been somewhat neglected. It was only in the last couple of decades that historians of early modern Scotland have begun paying attention to Scottish neostoicism.

The work of David Allan has been particularly important to this effort. Allan's *Philosophy and Politics in Later Stuart Scotland*, for example, catalogues the most noteworthy Scottish neostoics of the sixteenth and seventeenth cen-

18. See William J. Bouwsma, "The Two Faces of Humanism: Stoicism and Augustinianism in Renaissance Thought," *Itinerarium Italicum* (1975): 401-421; and, Gerhard Oestrich, *Neostoicism and the Early Modern State*, trans. David McIntock (Cambridge: Cambridge University Press); and also, Margaret Osler, ed. *Atoms, Pneuma, and Tranquility. Epicurean and Stoic Themes in European Thought* (Cambridge: Cambridge University Press).

19. See Andrew Eric Shifflett, *Stoicism, Politics and Literature in the Age of Milton: War and Peace Reconciled* (Cambridge: Cambridge University Press, 1998).

turies.²⁰ Mackenzie finds himself a place in Chapter V²¹ with Robert Leighton and Gilbert Burnet. This recognizes Mackenzie's deserved place among the intellectual of Restoration Scotland. Moreover, Mackenzie's *Moral Essay* had also struck interest in England, where it was published in London in the same year it came out in Edinburgh. John Evelyn, a seventeenth-century English intellectual well-known to the period's historian, wrote an answer to Mackenzie with the opposite title, published in 1667.²² It is clear, then, that Mackenzie was in conversation with not only his Scottish, but also English contemporaries.

These abovementioned two reasons dictate the scholarly interest in Mackenzie's writings today. Conveniently enough, Mackenzie seems to have been anticipating this in the very first sentence of *Religio Stoici*: "I am, by Religion, a *Protestant*, and such confide little in merit, and by Humour, a *Stoick*,

20. Allan discusses four groups of Scottish neostoics, who he sequences in his work form the second through to the fifth chapter respectively, in thematic and chronological fashion: (1) sixteenth-century neo-Latin poets: George Buchanan, John Leech, William Barclay, Thomas Dempster, and David Wedderburn; (2) Early seventeenth-century Scottish aristocrats and courtiers: William Drummond of Hawthornden, Sir William Alexander, Alexander Seton, Sir Robert Ker and his son William, and David Hume of Godscroft; (3) Scottish royalists of the 1640s: Montrose, Sir Robert Spottiswood, Sir Robert Gordon, and Alexander Ross; (4) Restoration churchmen and politicians: Robert Leighton, Gilbert Burnet, and Sir George Mackenzie of Rosehaugh.

21. "Reconciliation or Retirement?: Philosophy and Political Activity in Restoration Scotland", in Allan, *Philosophy and Politics*, 176-213.

22. John Evelyn, *Publick Employment and an Active Life Prefer'd to Solitude, and all its Appandages, Such as Fame, Command, Riches, Conversation, &c. In Reply to a Late Ingenius Essay of a Contrary Title* (London: Printed by J. M. for H. Herringman, 1667).

and such are most unconcerned in censures.”²³ This autobiographical comment is that by which he prefaced his *Religio Stoici*, and essentially, his writings to follow. Centuries later, it is effectively these two aspects that he professed, which sustain the interest that intellectual historians have in his treatises.

Interestingly enough, this sentence belongs to the first preface of *Religio Stoici*’s first 1663 edition, and was excised from later editions. It is curious why it was left out from subsequent editions, yet the answer to such question might turn out to be very simple indeed. For Mackenzie might have thought, quite reasonably, that proclaiming his religious and philosophical position from the outset was rhetorically weak and possibly unwise as it might raise suspicion about what was to follow. It is, nonetheless, something to keep in mind and I will return to this point in due time.

Accordingly, Mackenzie is recognized in more recent scholarship as a figure that participated in the abovementioned debates, for the sake of which a noteworthy literature had been produced in the seventeenth century. As such, he is to be located in the British history of ideas and as situated somewhere within the transitory period from the late Renaissance to the early Enlightenment. His stoic philosophical disposition is also to be noted within neosticism’s highly respectable presence in the late seventeenth-century European context. The stoical philosophy and perspective had been increasingly influen-

23. Mackenzie, *Religio Stoici*, 5.

tial in conflict stricken Europe since Justus Lipsius' (1547-1606) revival of it in the sixteenth century. Montaigne, du Vair, Grotius and numerous other figures are to be identified in this current of thought belonging to the early modern period.

When it comes to the British Isles, the history of such phenomenon's English embodiment is relatively well established. In contrast, however, the Scottish counterpart of this movement—as indicated before—has not received the attention it deserves. There may be numerous reasons for this, and some are instructive in seeing how the above-discussed secondary literature may have developed, and in recognizing why Mackenzie has remained a relatively less studied figure of Restoration Scotland in terms of his literary activity. Two reasons appear particularly informative in this context.

Firstly, traditional historiography had deemed only the Scotland of mid-eighteenth century onwards as deserving the attention of the intellectual historian. Reducing Scotland to the backwaters of European arts and letters prior to this period had therefore remained the scholarly custom. This attitude has gone serious revision in recent historiography, although there still remains a lot to be done and there is consensus about this among most contemporary historians. Thus, such tendency on tradition historiography's part accounts considerably for the absence of works on the likes of Mackenzie. Most interestingly, this is to a considerable extent, the eighteenth- and nineteenth-century Scottish historical tradition's doing, which one might not necessarily expect.

Secondly, it is in line with this last observation that one recognizes the second reason to why Scots' intellectual endeavours prior to the eighteenth century, particularly those in a clear neostoic tone, have drawn limited attention in scholarship. The degree of appreciation for ancient and classical wisdom that the Scottish philosophe felt was rather limited in contrast to his/her counterpart of the prior century or two. This certain lack of appreciation seems slightly more felt for stoicism, especially for its expression in the Senecan spirit in which the more contemplative and solitary aspects of stoicism is emphasized. Moreover, even when appraisal of stoicism is required, it is performed with reference to a figure of the contemporary generation (or the previous last), who is not traditionally viewed as a stoic. This is seen, for example, in the case of Adam Ferguson (1723-1816), who commented on Francis Hutcheson's (1694-1746) avowed stoicism as exemplary in an age in which the word stoic almost became—supposedly—a derogatory accusation.²⁴ Pointing to stoicism's more Ciceronian intonations—the praising of an active life and pursuit of virtue in a public sphere—Ferguson commended Hutcheson's personal stoicism as deserving commendation in terms of such stoicism. However, Ferguson is adamantly critical on what would be the more Senecan intonations of

24. Richard B. Sher, *Church and University in the Scottish Enlightenment. The Moderate Literati of Edinburgh* (Princeton: Princeton University Press, 1985).

stoicism, which he does not really recognize as stoicism, and reduces it to a way of life that is to be unyieldingly denied.²⁵

Mackenzie's case requires a third factor to be added to this list: his infamous legacy as the king's bloody advocate and tool of tyranny. Traces of this reputation may be observed even centuries later. For example, one owner of *Religio Stoici* inscribed his copy, in 1846, with a skull, cross-bones and the injunction: 'Remember!'²⁶ So it was not a Mackenzie as a conscientious and concerned protestant Christian, a philosophic stoic, and author of numerous tracts on numerous matters, which was remembered. It was his legal and political career that stuck in the Scottish consciousness, and such memory was kept alive because those against whom Mackenzie struggled throughout his public career had, in the end, won.

The issue is not merely Mackenzie's infamous legacy, but also what it meant for the later generations of Scottish intellectuals. The sixteenth and seventeenth century Scotland was politically unstable, in social and cultural turmoil, religiously divided, and economically backward. The Scots of the eighteenth century knew this well. In their historical writings, there seems to be the tacit assumption that the contrast in their situation with respect to previous eras accounted for the intellectual flourishing of which they were a part.

25. Ibid.

26. Jackson, "Latitudinarianism," 73.

In this sense, the likes of Mackenzie, despite how many ingenious essays they might have published, could not qualify as worthy of inquiry simply because they were responsible for the cultivation of an atmosphere so unsuited for polite society and cultivation of the arts.



I have never entered your Churches, but now and then I have seen the hearers of your sermons come out like men possessed, with anger and rage painted on their faces. They come out like warriors, animated by the oration of the general to some mighty attack. Are not riots common among this evangelical people? Do they not for small causes take themselves to force?

— Erasmus, *Epistola contra quosdam* (1529)

CHAPTER IV

THE COVENANTERS

The notion of covenant—a contract or agreement—between God and his people is deeply embedded in Christian theology. Covenant is even to be found at the heart of the axiomatic Christian tenet of the fallen nature of mankind. Adam and Eve’s expulsion from the Garden of Eden was the consequence of their breaking a covenant with God. Their act of disobedience was their failure to adhere to the terms of the covenant God cut with them.¹ The

¹ In Calvinist theology, the covenant between God and humanity that Adam thus broke is referred to as the “covenant of works,” which is also known as the “covenant

primordial flaw and inescapable shortcoming of all their descendants essentially originate from this contractual violation.

Although fundamental to both biblical history and Christian theology, it was the emphasis on and the scrutiny of Scripture that the Reformation brought about which transformed covenant into a serious theological concern.² The notion of covenant was just one among numerous other fundamental tenets of Christian dogma that the Reformation put to the test of critical examination. However, in the Calvinistic tradition, covenant was transformed into possessing a fundamentally central role, which then had significant implications on the limits of political compliance.

In 1534, Heinrich Bullinger (1504-1575), the Swiss reformer and the contemporary of Scottish reformers like John Knox and George Buchanan, published *Of the One and Eternal Testament or Covenant of God*. This was the first treatise in church history on the covenant. In it, Bullinger proposed that the Abrahamic covenant—“in which God graciously offers himself to man, and in turn, demands that man ‘walk before him and be blameless’”³—predetermines the way all scripture is to be viewed. This was in line with the position of his

of life”. With the covenant of grace and of redemption, it forms the three theological covenants of Calvinist theology.

² Peter Lillback, “Calvin’s Interpretation of the History of Salvation,” in *A Theological Guide to Calvin’s Institutes. Essays and Analysis*, ed. David W. Hall and Peter A. Lillback (Phillipsburg, New Jersey: P&R, 2008): 168.

³ Ibid.

predecessor, Huldrych Zwingli (1484-1531), who insisted that the Abrahamic covenant to be found in Genesis 17 served “as the model of the relationship of the Christian with God.”⁴

It was, however, John Calvin (1509-1564) who “can be considered the forerunner of covenant and federal theology.”⁵ We know that he employed the notion not only extensively, but also in line to his adherence to Augustine’s thought, he situated it at the centre of his theology. The three fundamental theological—hence, not necessarily biblio-historical—covenants determine the ontology of the subject comprehensively. Due to his covenant with God, Calvinism establishes the duty of the individual to God before any other, and accordingly, it makes way for political resistance and disobedience.

The development of the notion of covenant and its scrutiny, and its intimate association with the development of protestant theories of political resistance and disobedience, provide the background in which one may contextualize early modern Scotland, which entailed a particularly phenomenal example in this regard: “The old theology of Scotland might be emphatically described as a *covenant theology*.”⁶ It may also be noted that the leaders of the

⁴ Ibid.

⁵ Ibid.

⁶ James Walker, *The Theology and Theologians of Scotland, Chiefly of the Seventeenth and Eighteenth Centuries* (Edinburgh: T. & T. Clark, 1888), 73.

reforming effort in Scotland, the likes of Knox and Buchanan, were contemporaries with Calvin and the likes of Zwingli and Bullinger.

The position of the Scottish reformer is perhaps most accurately captured in Andrew Melville's (1545-1622) famous "Two-Kingdom Speech," which, supposedly, proceeded after James I's interruption of his nephew, James Melville's, speech at the meeting of the elders of the General Assembly in Cupar, Fife in 1596. Melville, having supposedly taken hold of the king's robe by the sleeve—not to mention calling James "God's silly vassal"—proceeded to make it very clear where the sovereign really stood in the grander scheme of things:

Sir, as divers times before I have told you, so now again I must tell you, there are two kingdoms in Scotland: there is King James, the head of the commonwealth, and there is Christ Jesus, the King of the Church, whose subject James the Sixth is, and of whose kingdom he is not a king, nor a lord, nor a head, but a member. Sir, those whom Christ has called and commanded to watch over his church, have power and authority from Him to govern his spiritual kingdom, both jointly and severally; the which no Christian king or prince should control and discharge, but fortify and assist; otherwise they are not faithful subjects of Christ and members of his Church. We will yield to you your place, and give you all due obedience; but again, I say, you are not the head of the Church; you cannot give us that eternal life which we seek for even in this world, and you cannot deprive us of it.⁷

In terms of the actual historical formation of a religio-political movement or association by the name of 'Covenanters' in the Scottish context hap-

⁷ Andrew Melville quoted in W. M. Hetherington, *History of the Church of Scotland From the Introduction of Christianity to the Period of the Disruption* (New York, 1844), 105.

pened in the pretext of the English Civil War. The Scots entered a National Covenant against Charles I's attempt to introduce an English style prayer book for the Scottish Kirk. In the ensuing period, the Scottish Covenanters took control of the Scotland, and even invaded northern England. This constituted the prelude to the Civil War, and as events unfolded, Covenanters took side with the English Parliamentarians against Charles who had gathered the support of the Catholic Irish, thus confirming the fears of those of tender consciences that what was happening was a religious conflict. Scottish Covenanters were instrumental in the outcome of the ensuing conflicts, and during the interregnum, although under Cromwellian occupation, Scotland was effectively governed by a theocracy.

‘I also know,’ said Candide, ‘that we must cultivate our garden.’

‘You’re right,’ said Pangloss; ‘for when man was placed in the garden of Eden, he was placed there—*ut operaretur eum*—that he might work—which proves that man was not born to rest.’

—Voltaire, *Candide* (1759)

CHAPTER V

MACKENZIE’S LIFE-LONG WAR ON A BIGOTEAGE:

‘BLOODY ADVOCATE’ vs. ‘VULCAN’

Whatever your creed or party, you picture him [Mackenzie] other than the sugared Latin of his epitaph suggests. And presently for that epitaph you fall to murmuring the old schoolboy rhyme:

Bluidy Mackenzie come out if ye dar

Lift the snack and draw the bar

Do you wonder what manner of man was he that bore this legacy of hate to weigh down his name after two centuries? Let us try to picture him, to touch the human being long since turned to dust, to conjure for a little the bloody Mackenzie from out his tomb, and, whether or no we dare sit in judgment with this shadow at the bar, let us realise and understand its story.

Here is our first difficulty. His life is mixed up with the history of the period; he held high place, and as official actor he wears the official mask. In an occasional phrase, individual act, some noted trait of char-

acter, the man peeps out. Such are for us treasure, but most often we find them in hostile records.¹

These are the words of Watt, in whose *Terrors of the Law* we find one of the longer biographical sketches of Mackenzie. Watt is quite right in asserting that “(Mackenzie’s) life is mixed up with the history of the period” and that he operated behind what one may call an official mask. Yet, the implication of Watt’s words—that Mackenzie somewhat hides behind such mask—, which is reasonable for us to assume as having been intended by Watt, does not necessarily follow. The purpose of this thesis is not to produce what would be a more accurate biography of Mackenzie, and it is certainly not an exercise in what one would deem a psycho-history, which is professedly what Watt aspires to accomplish. The purpose of this thesis *is* however to entertain the possibility of a Mackenzie not of a split personality—as, for example, inhabiting Dr. Jekyll and Mr. Hyde simultaneously—but of a single, quite constant character shaped and qualified by a certain “stoick humour”.

There are in total five separate aspects of neostoicism that one may confidently evaluate with respect to Mackenzie. The first concerns his participation in the debate over the superiority of either public employment or retirement over the other. Although Mackenzie argues for a preference of soli-

1. Watt, *Terrors of the Law*, 43-44.

tude and retirement over public employment in his literary output from the 1660s, his life is clearly one that had been devoted to public service.

In the seventeenth-century context, at least, it is necessary to think of this debate with two points in mind. Firstly, retirement and public life—no matter how much they seem so—do not constitute a mutually exclusive situation. It is better to think of them in terms of a continuum or in degrees, where the extremities would entail complete detachment on the one hand, and unlimited involvement on the other. So, Andrew Shifflett writes: “In England, at least, Stoicism was seldom about ‘never resisting the prevailing government’ and blindly accepting things as they were. Even in its least resolute forms, it could be a subtle casuistry of political activism.”²

Secondly, and in relation to the first, both retirement and public life are means to an end. They do not qualify as ends in themselves:

The Stoic ethos involved several paradoxical literary and political concepts, most notably constancy accompanied by a fascination with violence, indifference mirroring extremities of anger, and retirement involving quests for honour and authority. While the ancient Stoic often turned away from war and politics toward inwardly directed battles of honour, the seventeenth-century Stoic directed those battles outwardly and symbolically in the literary ‘arena’.³

This is to say, then, that the seventeenth-century neostoical perspective partly conceives retirement and public life as almost states through which an indi-

2. Andrew Shifflett, *Stoicism War and Peace Reconciled*, 1.

3. *Ibid.*, 4.

vidual may go, while struggling in pursuit of a more fundamental cause: “The world is a living organism for the Stoic, and each person can serve it wisely and well when they recognise that, as humans, they share the same fate as all other persons.”⁴

The second concerns Mackenzie’s latitudinarianism and his position as somewhat an advocate of religious toleration. In this regard, Mackenzie’s neostoicism—or its formative effect in shaping his own position towards religious toleration—is not as clearly obvious. At first sight, it may seem as if there is no standard Stoic principle with which one may associate religious toleration in any straightforward fashion. In fact, the rather ambiguous and adaptable nature of the Stoic school may be seen to provide ample evidence in favour of toleration *or* lack thereof. Yet, Mackenzie’s Erastian disposition—and Erastianism is traditionally associated with toleration—is clear enough: “as every private Christian should be tolerated by his fellow-subjects, to worship God inwardly according to his Conscience; So all should conspire in that exterior uniformity of Worship, which the Laws of his Countrey injoyn.”⁵ It is not only possible to assess this stance by the use of neostoic criteria.

4. Ibid., 6.

5. Mackenzie, *Religio Stoici*, xvii.

There is one fundamental tenet of stoic ethical doctrine that qualifies as useful for the advocacy of toleration: *adiaphora*. *Adiaphora*, in a religious context, would refer to anything that is essentially indifferent to true belief and good conduct.

It is also possible to account for Mackenzie's neostoically stained religious toleration as having been inspired neostoicism outlook on the relationship between politics, religion and society, *and* the extent to which private judgment in matters of conscience may be practiced and the state's jurisdictional limits to interfere in such matters. In a neostoical order of things, family, community, society, the state or nation, and humanity as a whole, are agents that are justified in putting limits on the individual. When the ineptness of the individual against nature is considered, all of these social arrangements can be assumed to be to the benefit of all. This understanding is clearly in irreconcilable discord with the Calvinism.

The third concerns Mackenzie's absolutist politics. There could be no doubt regarding Mackenzie's royalism, his defence of hereditary monarchy and the absolutely necessary role the crown plays in the existence and perpetuation of the political nation and society as a whole. Clare Jackson observes that Mackenzie's "works of political theory later came to denote the apotheosis

of royalist political sentiment in the twilight years of Stuart absolutism in Scotland.”⁶

In the context of early modern political thought and in the particular circumstances of the Restoration period, the type of absolutism that Mackenzie advocated does not necessarily yield to the amply numbered negative connotations Enlightenment historiography came to produce. For the likes of Mackenzie, absolutism did not mean tyranny or arbitrary government. Quite contrarily, an absolute monarchy curbed the possibility of such evils. Mackenzie believed and argued that a politically stable, safe and prospering commonwealth was guaranteed by the crown operating within the limits of the rule of law. Accordingly, an absolutism deprived of an emphasis on the rule of law would misrepresent Mackenzie’s political stance. Furthermore, such absence would also prevent us from observing the underlying neostoical *Weltanschauung* sustaining Mackenzie’s word and deed. His royalism and absolutism is accompanied by a higher principle, legalism. Government, no matter in what form, is carried out through law.⁷

Expanding on Mackenzie’s legalism proves instructive and useful in understanding how neostoicism played a paradigmatic function in this period. It goes without saying that it has significant implications on the conception and

6. “Mackenzie, Sir George, of Rosehaugh (1636/1638–1691),” Clare Jackson in Oxford Dictionary of National Biography.

7. See *Oratio*, 22.

development of natural law theory⁸. When thought in contrast to the rigid, uncompromising and dogmatic position of the Covenanter, the appeal to natural law proves significant. Whether or not he intended may be debated, however one cannot deny that by virtue of this appeal, Mackenzie entertained the possibility of a higher order or meta-domain that may be used by conflicting legal jurisdictions.

Considering the above-mentioned three aspects in their historical context provides the grounds for the fourth: Mackenzie's lifelong struggle against the Covenanters.

The fifth and last neostoical aspect concerns the Advocates' Library and Mackenzie's long-lasting personal effort to found it. The speech he gave at the opening and the library's catalogue at its initiation provides sufficient grounds and ample reason to consider it in terms of Mackenzie's neostoicism: "Our library will be," he said, "a modern Lyceum and a new Stoa where brilliant wits will be exercised in harmless encounters." ⁹

An assessment of the Advocates' Library and what it meant for Mackenzie promises to offer further dimensions to his neostoicism. For one, it puts

8. Ibid., 65: "Men are not the author of human nature, but its embodiment."

9. Ibid., 64.

into play the early modern stoical fascination with gardens, which is, more traditionally, associated with Epicureanism. Yet, when reconsidered in light of the earlier interpretation of the *otium-negotium* dichotomy as constituting more a continuum than as offering two mutually exclusive choices, the garden—literally or metaphorically—offers something significant for an early modern figure like Mackenzie that is extensively in line with neostoic sentiment. The Advocates' Library is not only a garden of sorts for legal professionals to escape from the outside, but it is also a place where one can prepare for that very outside in which evils are harboured and perpetuated.

Scrutinising the case of the Library also further-diversifies Mackenzie's neostoicism and his agenda. For example, his discussion of the contents of the library illustrates an acute sensibility for linguistics and a desire for the utmost precision in language. There is an underlying epistemological conviction about the workings of language that sustains this sensibility and desire. Mackenzie's humanistic training at Bourges is without question an explanation to these tendencies. However, it proves worthwhile to inquire into stoic linguistics to further explain the details of a certain epistemological conviction underlying Mackenzie's struggle against bigotry and unreason, and to illustrate how certain theoretical principles ultimately translated into the concrete fashioning of the library.

Furthermore, the case of the library also exemplifies the fact that Mackenzie did not single out the Covenanters on merely doctrinal grounds. Without doubt, the Covenanting ideology was the most real and extensive threat,

and in light of the circumstances of the period, it is not unreasonable to single them out for the purposes of a historiographical exercise.¹⁰ In the *Oratio*, we see Mackenzie pointing the finger on, for instance, Scholastic thought. The events of the Advocates' Secession also offer good reason to talk about Mackenzie's distrust and disappointment in those who were his social equals or superiors. Bigotry and unreason was the standard, and it did not matter from whom it came. It needed to be refuted at all cost.



10. In the English context, what preceded the Restoration was a republic, and so, the doctrinal dichotomy is very much between monarchy and republicanism where the 'religious' comes into affect in issues like liberty of conscience. Scottish context is radically different, because what preceded the Restoration was effectively a theocracy operating under an occupation. Accordingly, using the Covenanters as *the* major social and political force Mackenzie aspired to curb is sufficiently reasonable.

Bluidy Advocate MacKenzie, who, for his worldly
wit and wisdom, had been to the rest as a god.
Sir Walter Scott, *Redgauntlet* (1824)

CHAPTER VI

CONCLUSION

This thesis does not pursue any apologetic agenda. I have no stakes in the legacy or infamy of Sir George Mackenzie, except for the slight admiration I have developed towards his person while inquiring into his writings, career and character. What has been most negatively evaluated regarding his actions, especially while in public office as King's Advocate, are not seen by me as things against which I intend a defence. On the contrary, my aim is rather to contextualize such actions in terms of historical circumstances *and* to account for them with an appeal to their contemporary intellectual and ideological foundations in light of these circumstances.

My reading of Mackenzie's life—public and literary careers combined—presents, in contrast to hitherto presentations of it, not a divided personality—a case of a Dr Jekyll and Mr Hyde as his first and only biographer likened it to be. I propose instead a unified and—to my taste—a dramatically constant

character conjoined in what Mackenzie has called his “Stoick humour”. In the final analysis, my argument intends to illustrate that it is possible to subsume the majority of Mackenzie’s life-long pursuits under an effort to combat a particular type of person or of thinking—that of the Covenanter, which he saw as symptomatic of the ills of his age. In this sense, I believe it is even possible to qualify him as a proto-Enlightenment *philosophe*. It is unreasonable to count Mackenzie among the giants of the seventeenth-century on whose shoulders the succeeding century’s influential thinkers stood. In the manner Sorkin has come to categorize numerous other influential figures, Mackenzie was perhaps a second-tier thinker; yet, he cast a far ranging and much more concrete sway than the likes of even Newton and Locke who were undoubtedly and often unreservedly gods to any eighteenth-century *philosophe*.

To return to the point of this excursion, let us pose a simple question regarding the contested legacy of Mackenzie’s dealings with the Covenanters: Did Mackenzie merely prosecute the Covenanters? Or did he persecute them? What is the threshold, in the first place, that requires surpassing for the former to transform into the latter? Is this threshold, as some have said for instance, that of torture? If so, it is possible to encounter in the sources of rumours that condemn Mackenzie for having regularly appealed to it.¹ Yet, historiographically speaking, it is not possible to establish the truth of this accu-

1. See Watt, *Terrors*, 56-60.

sation. In other words, the available sources are inadequate. However, even if one assumes the truth of such rumours, it does not necessarily follow that this was, in perspective of the historical context, unusual or extraordinary. Furthermore, it certainly does not mean that those who condemn Mackenzie of such crime did not exhort to the same means. In fact, Mackenzie himself reported it when accounting for the witch-craze.

Perhaps the more substantial factor at play here is the self-righteousness and supposed doctrinal incorrigibility of the Covenanter. There is an immense difficulty in combatting this type of thinking and the actions it bears, which requires recognition. This difficulty is that Mackenzie's antagonist is in categorical denial of the possibility of a common ground that allows disagreeing parties to negotiate. At least Mackenzie is convinced that this is the case. This observation is to be found in his first moral treatise, *Religio Stoici* of 1661, and in his last posthumously published moral treatise, *Reason* (1695). The former opens "with a friendly address to the phanatics of all sects and sorts", while the two parts that constitute the latter read in order: "How weakly men reason in matters of greatest importance"² and "Whence proceeds it that man is so unreasonable, and how to improve our reason."³

2. George Mackenzie, *Reason. An Essay* (London: for Joseph Hindmarsh, 1695), 5.

3. *Ibid.*, 80.

It does not follow that torture is justifiable against the covenanting type because the covenanting type thinks it right if it were him inflicting it. In the case of Mackenzie there is also the most pressing issue of the legality of the appeal to such method. The legal dimension of the issue becomes further complicated by the reforms that he was instrumental in enacting, one of which forbade the trying of indicted individuals if they are absent. But again, one may still remain sceptical, and I believe that one should. The essence of the matter for this thesis, as I pointed out at the outset, is not to convict or exonerate Mackenzie.

On the other hand, the issue of torture does help me to pose the important question concerning how one evaluates Mackenzie's inevitable contribution to the perpetuation of violence against the Covenanters and thus in general. This is the million-dollar question also because the appeal neosticism had in this period, especially according to the traditional historiography, has to do with its allure in periods of instability, unpredictability and violence. This is undeniably the case for Mackenzie as well. It is possible to explain his royalism—especially his vindication of absolutist and hereditary monarchy—and insistence on the fitness of an episcopal ecclesiology as having arisen in part due the same conjuncture that made stoicism appealing: the desire for peace, and for social and political stability.

One of the contributions that my research is potent to make becomes pressingly relevant in this context, and it has to do with the manner in which early modern neosticism considered and related to violence. It turns out, as

some recent historiography has shown, that early modern neostoicism has a far more intimate and intricate relationship with violence. The recent work of Andrew Shifflett illustrates this association in the English context, and it was this perspective that inspired me to consider the case of Mackenzie's crusade against the Covenanters.

The seventeenth century saw, especially in the British Isles during and after the Civil War, a shift from an interest from what would be associated with the likes of Cicero and Seneca to what would be associated with Tacitus and perhaps even Epictetus. This implies that there is conceivably another, hitherto unrecognized or under-appreciated, interpretive angle to be taken towards Mackenzie's actions that continued violence and conflict.

This makes it the case that Mackenzie's literary and political endeavours in the above-mentioned spirit is, ultimately, not very different to the theories of political resistance and action that were produced by the likes of Buchanan, Knox, Melville and so on. It is evident, however, that Mackenzie is well aware of this affinity: Hence, *Jus Regium* (1684)—the treatise in which Mackenzie presents a defence of monarchy against explicitly and precisely these persons.

Lastly, it is necessary to comment on the potential of Mackenzie's career and publications for the student of the Scottish Enlightenment. First and foremost, the ideological struggle he undertook against the Covenanters and the Covenanted mindset is exemplary to the way the Enlightenment project

came to be devised and pursued in the Scottish context. Mackenzie pointed to the dangers of religious fanaticism as outweighing the interests of the nation when uncurbed. His public or legal *and* literary careers were devoted to fighting Presbyterian zeal whether embodied in witch-craze or in open conflict against the monarch. He advocated religious toleration not for its sake, but to counter religious fanaticism. Political stability, religious uniformity in external worship, and the rule of law comprised the principles of his politics. Mackenzie defended the necessity of the rule of law as a check on the sovereign. His royalism and absolutist purview was hardly an advocacy of arbitrary government or tyranny. Monarchy was the most suited form of government primarily because it guaranteed peace, stability and wealth. As importantly, it was justified by tradition and history. His thinking does not make it all the way to an advocacy of natural religion; yet, his political philosophy as proposed in *Jus Regium*, when considered in tandem with his histories, tends to indicate an appeal to natural law theories. This is an approach that is categorically distinct from that of the Covenanters, despite its overall *ancien regime* conceptual framework.

We see in Mackenzie the beginning of the criticism of Protestantism's overt emphasis on true belief. He repeatedly asserts that a blind devotion to matters of conscience that cannot be proven should not obstruct good morals in terms of right behaviour. In other words, partaking in despicable acts while subscribing to "true doctrine" does not make an individual a good Christian or citizen. Mackenzie was already effectively calling for a kind of reformation of

manners decades prior the advocacy of which proliferated in early eighteenth-century Scotland, especially Edinburgh.⁴ Mackenzie constantly complained about the lack of civility that existed around him. It may seem strenuous but the moderate nerve of the Scottish Enlightenment proper may be traced in part back to Mackenzie and the likes of him.⁵

Ahnert's presentation of the importance of Richard Sher's account of the centrality of moderatism is instructive:

Richard Sher, too, in his seminal work on the 'Moderate' clergy of eighteenth-century Edinburgh argued that Francis Hutcheson had been the first to put forward a synthesis of Christianity with central tenets of ancient Stoicism. That combination of ancient Stoicism with a less rigid form of Calvinism was then adopted 'most enthusiastically and completely' by the 'Moderate literati' of mid-eighteenth-century Edinburgh, including Ferguson, Blair, and Robertson.⁶

One specific characteristic of Mackenzie's ideological orientation that justifies further its candidacy to being a precursor to moderatism pertains to his neostoicism. Recent decades have witnessed an indisputable growth in scholarship that accounts for the vital role religion had played in the European Enlightenment. "The term 'religious' or 'clerical Enlightenment' is firmly established in the historiography."⁷ This is very much the case for the Scottish En-

4. See Thomas Ahnert, *The Moral Culture of the Scottish Enlightenment* (New Haven: Yale University Press, 2014), 7.

5. Sher, *Church and University in the Scottish Enlightenment*.

6. Ahnert, *Moral Culture of the Scottish Enlightenment*, 5-6.

7. *Ibid.*, 1.

lightenment—in fact, the Scottish Enlightenment is possibly the ideal example.

The hero of Sher's intellectual-historical narrative is Francis Hutcheson, yet there is no recognition of the likes of Restoration figures such as Mackenzie, Gilbert Burnet, Robert Leighton and others with respect to how much they have produced in writing and in action what was in great part an advocacy of Stoic virtue or a properly Christian(ized) stoicism. David Allan catalogued the prevalence of neostoicism in Restoration Period Scottish politics, philosophy and culture in his *Philosophy and Politics in Later Stuart Scotland*. I maintain that there is much to be found in Mackenzie's literary output and public career to understand how the so-called moderate literati of Edinburgh—as Sher calls them—came into existence.

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