

*The Kingship of the Scots 842-1292*. By A. A. M. DUNCAN (Edinburgh: Edinburgh U.P., 2002; pp. x + 381. £65).

This book is an important rethinking of the history of medieval Scottish kingship. Its point of departure is the Great Cause of 1291-2, in which Edward I of England had to determine which of a number of claimants was entitled to become king of Scots in succession to Alexander III (d. 1286). His direct line had failed with the death of his grand-daughter, Margaret the 'Maid of Norway', in 1290. The Cause essentially raised an issue between a claim based upon seniority of line from the common ancestor from whom right was ultimately traced (the claim of Balliol, as a descendant of the eldest of the ancestor's three daughters), and another based upon nearness of degree (the claim of Bruce, as son of a younger daughter rather than grandson of the oldest one). The effort to resolve the custom of Scottish regnal succession lasted from August 1291 to November 1292, and only came to an end then, Archie Duncan argues, because Edward had no more time to give the business, rather than because real answers had been found to the legal questions in issue. The decision that the custom of English tenures should apply to the kingdom of Scotland, making Balliol king, exemplifies "politics in the whited sepulchre of law, not for the first, and certainly not for the last, time" (p. 310); the law, if anything, may have pointed to another outcome.

Duncan's enquiry began, he tells us, as the search for those succession customs which was not adequately undertaken in 1291. His research then expanded to take in also the issue of English overlordship in Scotland before the Cause (since it was the long maintained claim to such overlordship which, for Edward if not the Scots, justified his presiding over the proceedings). Eventually Duncan's search brought him all the way back to the appearance of Cinaed mac Alpin king of Dalriada as also king of the Picts in 842, and the formation of the kingdom of Alba by 900, from which would develop the medieval kingdom of the Scots. It is here that the book actually starts, working its way forward to a climax in detailed analysis of the process of, and the evidence and arguments brought forward in, the Cause itself. En route, Duncan discusses issues about the nature of Scottish society during his chosen period, and its developing sense of a distinct tradition, identity and community, close to but independent of that of England, especially in the twelfth and thirteenth centuries. In this the book revisits much of the terrain which Duncan traversed in the first volume of the *Edinburgh History of Scotland*, published in 1975.

Never the less, *Kingship of the Scots* must be seen as a contribution quite distinct from the earlier book, and as one offering many powerful new insights and arguments in its chosen fields. Above all, where the 1975 book was essentially a narrative account of Scottish politics and society to 1286, *Kingship* is instead a detailed analysis of the contemporary sources of the period, focussed on very specific questions about Anglo-Scottish relations as well as the customs of Scottish kingship. Indeed, the book's dense and complex arguments can only be understood with an appreciation that it is an exercise in the criticism of sources. Duncan's genius as a historian lies in his masterly yet sceptical handling of the contemporary material upon the interpretation of which our historical knowledge must ultimately rest. He is never content to take texts simply at their face value. Instead the source is interrogated in every aspect, beginning with its physical condition and continuing with an analysis of why it was written, by and for whom and with what motivations, what other now

unknown sources may lie behind it, how the source was originally understood by contemporaries, and then transmitted and preserved, and how it is to be related to other, equally critically treated, material. If we no longer have the original, how do the copies by which we know the text mislead us as to what the original said, and how do they show what the original was understood to say? Once a hypothesis about the source is established in this way, further hypotheses can then be advanced and tested. It is testament to Duncan's consummate skills of analysis, argument and presentation that in this process one is never left feeling that castles are arising in the air. Sometimes one may wonder whether anything can ever be known with certainty about Scotland before 1300; but in the main, not only are genuine issues raised, but also persuasive, not to say convincing, answers are proposed. It will certainly take a critic possessed of at least equal skills to refute them.

In this book, the principal victim of such rigorous analysis is the records of the Great Cause (mainly the document known as the Great Roll), compiled by the notary John of Caen, and edited for publication in 1978 by Lionel Stones and Grant Simpson. Duncan pays tribute to the editorial work of Stones and Simpson, but departs radically from their view that the records are either factual or objectively compiled. Rather, the records were prepared after the event, as a way of proving to the Pope that Edward was lawful overlord of Scotland, accepted as such by the Scots, and that a judgement in favour of Balliol had been reached with all due process and consideration of the legal issues involved. "Hence the Great Roll, truly the Great Illusion, inflated with rhetoric, riddled with suppressions, misstatements and chronological absurdities" ( p. 230). The Scots had sought arbitration from Edward, who instead wished to hear the cause in his overlord's court; the initial form of the tribunal, with Bruce and Balliol, as the main claimants, nominating forty auditors each, and Edward twenty-four, was, contrary to the view of Stones and Simpson, modelled on the *iudicium centumvirale* of Roman law. This compromise, perhaps reached because the imperial laws of Rome were seen as appropriate precedent for reaching decisions on kingship, was later effectively superseded by Edward's council because the tribunal, divided in its views, could not decide quickly enough. That tilted the balance in favour of Balliol's argument, consistent with the view that Edward was overlord and that English law was the default if there was no Scottish custom, that the Scottish kingship should descend in accordance with the English law of tenures; although with the qualification that the kingdom itself, unlike an English or a Scottish barony, should not be divided amongst the descendants of the daughters of the common ancestor. Bruce's more coherent argument for nearness of degree and impartibility of the kingdom, however, was based upon the view that, in the absence of any Scottish custom, imperial (i.e. Roman) law should apply; and that view was supported by the majority of the Paris jurists who were consulted on the question in the summer of 1292. To Duncan's fascinating analysis of the Parisian opinions might also have been added some discussion of late thirteenth-century concepts of the *ius commune*, in which gaps in local custom (*ius proprium*) might be filled from the learned laws of the church and the universities. This would reinforce the argument that there was more to Bruce's case than emerges from the records of the Great Cause, compelling revision of the established view of modern historians, that, quite apart from its political convenience for Edward I, the judgement in favour of Balliol was legally correct.

Duncan's analysis of pre-1286 sources shows further that, directly or indirectly, some of the issues raised by the Great Cause had been considered

previously in Scotland. By 1100 succession to the kingship, which before 1000 had circulated amongst members of the royal kin, was to brothers only in the absence of sons; in 1153, the oldest grandson of the king succeeded, representing the deceased son. Before the end of the twelfth century the Scottish governing classes could also accept the succession of a daughter in the absence of a son, although preference of any surviving brother of the king was still argued for by influential figures. The issue did not arise thanks to the birth of the future Alexander II in 1198; and he succeeded in 1214 despite the survival of his uncle, Earl David of Huntingdon. In the 1280s, as the prospective failure of Alexander III's male line became ever more likely, so again there was contemplation and acceptance of the possibility of female inheritance. The difficult documents showing this, so Duncan argues, also suggest that the Scots then preferred nearness of degree to seniority of line, so that a younger daughter of the king would be preferred to a daughter of his oldest daughter.

But if all this was so, then, as Duncan himself remarks, why did the pleadings for Bruce the Competitor place so much emphasis upon a claim that he had been made heir presumptive by Alexander II – a claim which, incidentally, Duncan dismisses as fiction – when he apparently had much more recent (if not so strong) supporting material to hand? An explanation must also be found for the apparent Scottish acceptance of the outcome of the Great Cause and of Balliol as lawful king, even after his deposition by Edward in 1296. It was not just a matter of accepting the politically acceptable. After all, until the 1360s continuing belief in the legitimacy of the Balliol claim underpinned powerful and enduring internal as well as external challenges to the post-1306 Bruce regime. The Declaration of Arbroath 1320 (another message to the Pope, but not discussed by Duncan) based Bruce's right to be king as much on the consent of the people and his determination to defend Scottish independence of England, as on his (unspecified) "right of succession according to our law and customs". Only in 1318, after the death of his brother Edward, had the then son-less Robert I himself accepted that he might be succeeded by his daughter, and that the principle of greater nearness of degree should govern inheritance of the kingship.

Professor Duncan's book is founded upon the asking of questions and scepticism about easy answers. He succeeds in teaching us to be wary of the apparent authority of the records of the Great Cause, and to see more clearly how the customs of Scottish regnal succession developed in response to various circumstances over the two previous centuries, including the question of relations with England and her kings. ....