

*Diffinizione successionis ad regnum Scottorum:*

**Royal succession in Scotland in the Later Middle Ages**

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The history of succession to the Crown of medieval Scotland is dominated by the crisis of inheritance of 1286 to 1292, events which in turn provoked the bitter Wars of Independence against England (or the ‘Wars of Scottish Succession’ as scholars now usually style them) from 1296 to 1357. When this dynastic calamity struck, the Scottish experience was one which arguably mirrored that outlined in this volume for other European kingdoms, including England, France and Hungary: that is, that although by the late eleventh or early twelfth centuries, it had generally become accepted that royal inheritance patterns should be determined by male primogeniture without division of patrimony, no further normative custom or law had been determined or recorded which would deal definitively with any of the more complex direct or collateral male (or, if necessary, female) inheritance variables which might arise within that general principle.<sup>1</sup> Indeed, no Crown succession crisis of sufficient difficulty had arisen in Scotland before 1286 to demand such a resolution. It followed that this very uncertainty about royal succession precedents in Scotland contributed to the crisis when, within the space of nine years from 1281, the two sons of King Alexander III both died, followed by the king himself in a drunken riding accident and then, in October 1290, his only designated heir,

his infant grand-daughter, Margaret ‘the Maid of Norway’, whom Alexander’s own daughter of that name had perished bearing in 1283.<sup>2</sup>

This absence of precedent, and the resulting legal adjudication (later known as the ‘Great Cause’), overseen and exploited by Edward I of England from spring 1291 to 30 November 1292 to determine the Scottish succession, have been the focus of a recent study by A.A.M. Duncan.<sup>3</sup> The heart of the disputed succession now lay between, on the one hand, John Balliol of Galloway and Barnard Castle (born c.1249), the eldest surviving son of the daughter of the eldest daughter of Earl David of Huntingdon (d. 1219), a brother of King William I of Scotland (1165-1214), Alexander III’s grandfather; and, on the other hand, Robert Bruce of Annandale (born c.1220), the son of the second daughter of the same Earl David. The fundamental difference within the primogeniture process by 1291 thus lay between Balliol’s claim by seniority, as the *grandson* of a king’s eldest niece (or as Earl David’s great-grandson), and Bruce’s claim through nearness of blood or degree, as the *son* of the same king’s younger niece (or Earl David’s grandson) Admittedly, much of the sixteen months which took up these Scottish succession hearings can be explained by politically motivated adjournments by Edward I, as well as some of the rival claimants. Nevertheless, the majority of Scots and other participants felt the claim of the man eventually chosen, Balliol, by seniority, to be the strongest. However, as Duncan reveals, such was the widespread uncertainty and ignorance of the historical past of Scotland’s royal succession that Bruce of Annandale in particular may have had a stronger claim than recognised at the time or since and, further, Bruce may also have missed a historical precedent or two which might have helped his cause.

For example, once it became clear during the course of the ‘Great Cause’ that no firmly established custom could be identified for the Scottish succession, legal opinion was sought from the University Faculties of Paris. The advice of this international community – with Scottish clerics among both their professoriate and student body – was that in the absence of a recorded native custom for Scotland, then Roman Imperial law should be reverted to and that this favoured nearness by degree, i.e. the claim of Bruce.<sup>4</sup> Such a default position might have been acceptable to the court constructed to hear the Scottish dispute: the 104 auditors nominated by King Edward (24), Balliol and Bruce (40 each) were themselves based upon the *iudicium centumvirale* of Roman law, and Scottish common or customary law already contained strong aspects of that legal tradition.<sup>5</sup> Furthermore, if Bruce had employed Scottish clerical lawyers educated in such practice, his camp might have made profound use of two recent written agreements of Alexander III and the Scottish political community. In 1281 the Scots’ treaty of marriage for the king’s daughter with Norway’s Eric II, and then in 1284 a parliamentary act of entail holding all prelates and nobles of Scotland to recognise Alexander’s grand-daughter, Margaret Maid of Norway, as heir presumptive to the throne, both included subsidiary clauses which not only recognised the right of female royals to succeed to the Scottish throne but also made provision – in the event of the birth of further children (boys or girls) – for succession by the nearest by degree, rather than seniority: for example, the said entail (or *tailzie*) of 1284 would allow any child – son or daughter (thus one degree removed) – which Alexander III might yet produce by a second queen, to succeed before his grand-daughter, the Maid (two degrees removed, through Alexander’s first queen).<sup>6</sup>

In a sense, it might be added, the Scottish community had already acted in this fashion in 1195. In that year, King William I had tried to persuade his subjects to recognise his daughter, Margaret, and her husband, Otto of Brunswick, as his heirs. But a Scottish assembly had insisted on the right of William's brother, Earl David, and his son (John, later earl of Huntingdon and Chester (d. 1237)), to succeed before Margaret (whose rights after David's line were not denied, only her 'foreign' spouse rejected).<sup>7</sup> William would go on to have a son late in life, Alexander (born 1198), but the incident of 1195 might have been an extremely advantageous precedent for Bruce of Annandale to place before Edward I in 1291-2. Moreover, the latter's grand-father, John I, had succeeded his elder brother, Richard I, in 1199 as his nearest adult heir by degree and as a younger son of Henry II (1152-89), thus denying the rights of his and Richard's nephew, Arthur, the son of their middle brother and therefore only a grandson of Henry II (although as J.C. Holt has shown, the legality of this succession was challenged in various quarters of the Angevin Empire and John remained sensitive to criticisms of his legitimacy).<sup>8</sup>

That Bruce and his advisors do not seem to have been aware of the Parisian University advice or these possible late twelfth-century precedents is underlined by Robert of Annandale's commitment on another tack of claimed custom, namely designation of the heir-in-waiting, which might also be achieved through a witnessed act by an incumbent king and his subjects (or 'statutory succession' as the late Historiographer Royal of Scotland described it).<sup>9</sup>

The best-known incidence of designation of a royal heir in Scotland had occurred in 1152 when Henry, the only son of King David I (1124-53) had died and the monarch

had moved to have his eldest grandson, Malcolm, declared and recognised as heir on a circuit of the kingdom: this youth inherited as Malcolm IV (1153-65) and was in turn succeeded by his brother, William I.<sup>10</sup> A.W. Lewis has shown convincingly that in France the custom of anticipatory designation of the king's heir was deployed until the time of Philip Augustus (1180-1223), accompanied by association of this heir in active government and even coronation within the lifetime of the designating king: however, this was not undertaken merely as security against challenge – it had positive dynastic and legitimising value.<sup>11</sup> In Scotland, this was not perhaps the case, for there remained a pressing need to stave off armed challenges from the rival Mac William (Mac Uilleum) line of the ruling house. Indeed, this line, descended from the children of Malcolm III (1054-93) by his first (native) wife, had been denied the throne by Malcolm's designation as his heirs of his sons (including David I) by his second wife, the Anglo-Saxon princess, Margaret. The legitimate rights of the senior dispossessed Mac Uilleums were regularly pressed from the north of Scotland, inevitably at the deaths of Malcolm III's second line of descendants (1097, 1107, 1124...). This pressure may have played a large part in the likely designation of heirs by incumbent kings in 1100 (Alexander I) and 1107 (David, recognised by his elder brother and probably given the region of the Lothians in south-east Scotland somewhat in the (French) form of an *appanage*), as well as in the attempted designation of 1195 by the aging and then son-less William I.<sup>12</sup>

As in France, though, the dynastic threat was forcefully reduced by the early thirteenth-century and the ruling line was underpinned by an aura of legitimacy enhanced through association with royal and saintly ancestors and through carefully developed ritual and royal space.<sup>13</sup> In Scotland the Mac Uilleum threat was effectively crushed by

1230.<sup>14</sup> In that context Alexander III's designation of his grand-daughter or his own future unborn children as heirs presumptive through the aforementioned act of parliament of 1284 was a precaution designed to offset potential squabbles among loyal descendants of his lineage, not an external challenge. However, despite this apparent stability, Robert Bruce of Annandale thrice claimed in the course of the succession hearings of 1290-2 that there had still been a need to designate an heir as an action of security, about 1238. At that time, Bruce claimed, Alexander II (1214-49) had been set to make a military expedition to the western isles of Scotland but had as yet no son: Bruce, born about 1220, claimed to be the heir presumptive named.<sup>15</sup>

As A.A.M. Duncan has rightly emphasised, this claim is highly questionable. It was never supported by documentation by a Bruce family which often fabricated other forms of evidence. Moreover, even before it became apparent during the 'Great Cause' that John Balliol's cause would prevail, the Bruces were quick to make suspect offers to other claimants based on alternative succession customs: they were by no means consistent in their higher claim that the Scottish kingship should be subject to natural or royal law. For example, about late 1290, the Bruces' so-called 'Appeal of the Seven Earls' also asserted the right of 'election' of a new king by seven of the ancient earls of Scotland: this at least had the virtue, perhaps, of Imperial overtones and of harking back to the late dark ages when Scotland's kingship rotated, often violently, between alternative cadets of the royal line and adult, male claimants had to prove themselves 'king-worthy'.<sup>16</sup> But in the months leading up to Balliol's designation as king by Edward I in November 1292, the Bruces also considered arguing that the kingdom should be treated as a fief divisible among the heirs of Earl David (with Bruce cutting a deal with

the Earl's third daughter's descendent) or simply horse-traded for lands with another possible claimant (Florence, count of Holland, who claimed to inherit through designation of his mother, an illegitimate daughter of William I).<sup>17</sup>

Nonetheless, it would surely be unwise to dismiss the Bruce claim about 1238 as 'fiction' concocted during the succession hearings of 1291-2. As Duncan himself acknowledges, some such verbal designation of Bruce may have made cautious sense c.1238-48 not only in the context of Alexander II's western campaigns but also, it might be added, firstly following the death in 1237 of Earl David's last childless son, John earl of Chester and Huntingdon, Alexander II's heir-presumptive, and secondly following the birth in 1241 of the king's own son, Alexander (III), by his new second, French noble wife: the vulnerability in infancy of any royal child would arguably be heightened by Alexander II's near-war with England in 1244 and his ongoing naval expeditions c.1244-9 to the western Isles (where he would die aboard ship of an unknown illness).<sup>18</sup>

Given these circumstances it would have made perfect sense for Robert Bruce to be recognised as heir-presumptive either in an official or semi-official manner: the same contingencies might have seen the political community recognise guardians for the realm in the event of a premature minority for Alexander III. That some such designation of Bruce may have occurred is at least hinted at by two circumstantial incidents. In June 1249, on the early death of Alexander II, the Comyn family – the leading political house of the day – seemed to gravitate, momentarily, towards Bruce, who was then 29 and certainly the leading *adult* heir.<sup>19</sup> Then in October 1278, when Alexander III was required to do homage to Edward I for lands he held in England, his oath was given by proxy by none other than Robert Bruce, earl of Carrick, Bruce of Annandale's eldest son: at that

precise moment in time, Bruce of Carrick (whose mother was born in 1226, married at 13 and thus may have given birth to him *c.*1243-50) was *perhaps* also the eldest surviving great-grandson of Earl David with Alexander Balliol of Galloway (born *c.*1243) having just that month (October 1278) perished of battle-wounds and with his surviving heir and brother, John Balliol (born *c.*1249), as yet to disentangle himself from his clerical career, take up his landed inheritance and wed.<sup>20</sup> Certainly, it is the case that about 1278 the Bruces were the nearest collateral *male* heirs to the throne *by degree* through Robert of Annandale, following the principle of succession later followed in Alexander III's aforementioned marriage treaty with Norway in 1281 and his act of parliament designating his grand-daughter his heir in 1284.

The simple passage of time from 1238, the birth of Alexander III's children (Margaret in 1261, Alexander 1264, David 1273) and that king's re-marriage (1285) may have obliterated the need to retain any formal record (if there ever was one) of a designation of Bruce of Annandale as the royal heir presumptive. In the same way, the 1281 treaty and 1284 entail (or 'tailzie') were primarily concerned to underpin the rights of the most obvious candidates, Alexander II's children and grand-children, rather than any collateral heirs. Still, it is striking not only that the Bruces were unable *c.*1286-92 to produce any proof – documentary or otherwise - of their earlier designation, but, perhaps even more remarkably, that Alexander III, following his children's deaths by 1284, did not see a pressing need to name a contingency heir in the event of the death of his infant grand-daughter, at that time barely a year old and who would die of illness at sea in September-October 1290. One possible explanation for this seeming lack of foresight is the king's awareness of tensions between likely male adult noble claimants and a desire



to avoid internal strife. However, a point of contradiction as yet not commented upon by modern historians may also have stayed the king's hand and the community's desire for a clearly-defined succession.

For, if Alexander III sought to name an heir presumptive to the Maid, then, given the very recognition afforded to inheritance of the crown *by* (and not just *through*) a female in the tailzie of 1284, some consideration might have to have been given, too, to Devorguilla, Lady of Galloway (born *c.*1209), the mother of John Balliol and the granddaughter of Earl David (through his eldest daughter), and thus the nearest collateral heir by both seniority and by degree *if* inheritance by any female was to be permitted. Of course, the king might simply have ruled that amongst indirect collateral claimants, strict primogeniture should prevail, with the nearest male always given precedence over any female. But this would have resulted, most likely, in a judgement in favour of Bruce of Annandale in 1284-5 (as per the nearest by degree logic of the 1281 treaty and 1284 entail) something the king was not willing to give to such an aged, and perhaps untrustworthy, figure. In other words, given the uncertainty of succession precedent, compounded by the elderly age of both Devorguilla (who would die in January 1290, eight months before the Maid) and Bruce of Annandale (d.1295), it may simply have been the case that Alexander III hoped to re-wed and have further offspring, or at least to outlive both these elderly heirs presumptive: with both dead, the position of collateral heir presumptive would then have clearly had to pass to either John Balliol or Robert Bruce of Carrick, either by seniority (Balliol) or by degree (Bruce, if he in fact remained the elder great-grandson of Earl David even though he was descended through a younger royal niece).

However, any such projected claims by the Bruces would have depended upon that family's awareness that a claim through Imperial law of nearness by degree should have been a compelling argument even if uncustomary in Scotland: but Annandale's party clearly did not act in this fashion. Besides, once Alexander III had bound his community to recognise the Maid's right through the sealed act of parliament of April 1284, another possible route to secure the throne opened up, and one which would very neatly avoid narrow and disputable legal distinctions or bitter argument over old men's hazy memories of events earlier in the thirteenth-century: that is, marriage.

Historians surely too readily assume that from March 1286, the only possible match for the Maid, as 'Lady of Scotland', was Edward I's eldest surviving son, Edward of Caernarvon, born in April 1284 (a year after the Maid).<sup>21</sup> This was a betrothal first hinted at in a letter by Alexander to the English king in the same month of 1284 as the succession entail and one which would have continued an established pattern of Anglo-Scottish matches from 1221 (or even pre-1124).<sup>22</sup> Yet the rival noble house claimants to the Scottish throne, Balliol and Bruce (and other eligible families), had male children suitable as a match: John Balliol had a son tellingly named Edward and born in 1283 (the same year as the Maid); Bruce of Annandale had a grandson, Robert, born in 1274, who also had four younger brothers. These alternatives and others surely explain not only why Bruce of Annandale was permitted to join the marriage negotiation embassy of Scots to Norway in 1289, but why the resulting treaty of Salisbury of November 1289, which paved the way for a full marriage treaty by July 1290, insisted that the Maid should arrive in England or Scotland 'free and quit of all contract of marriage and betrothal'. Arguably, Edward I was just as fearful of a baronial match for the Maid preventing a future Anglo-

Scottish regnal union, as leading Scots themselves were wary of English exploitation of their realm if an Anglo-Scottish royal marriage came to pass.<sup>23</sup>

The death of the Maid in late September-October of 1290, of course, ended all such manoeuvrings and returned the succession competition to the arena of law. Historians have largely concurred that all interested parties accepted that, no matter how underhand or forceful Edward I had been in first securing recognition of English overlordship of Scotland from the various claimants, the final decision reached in November 1292 was the correct one in law.<sup>24</sup> The leading affinity of nobles and prelates from the Scottish political community – headed by the Comyn family – were content to win a decision which favoured their Balliol candidate (and close relation by marriage): Bruce of Annandale, besides, managed to make his claim look increasingly desperate by offering the aforementioned partition deals at the eleventh hour.

However, not only do we now have a far stronger picture of the Balliols as dedicated English Crown servants throughout the thirteenth-century, but, as A.A.M. Duncan has shown, the actual selection of John Balliol was surely a far more political and pragmatic act of will on Edward I's part. The English king had the backing of the Scottish and English auditors hearing the Cause only as to his general ability to make a decision based on the evidence heard, but not as to what exact customs or laws of succession should be applied to shape that decision: these guiding customs simply remained unidentified. Edward besides chose to ignore the Paris legal advice which favoured Bruce (by degree) and elected instead to treat the Scottish kingdom as an English fief yet – and this was an unprecedented application of law sought by Balliol – nonetheless not a divisible inheritance.<sup>25</sup> This allowed Edward to choose Balliol, a man

readily bent to Plantagenet designs, and to turn to more important matters (Wales, France, the Holy Land) after a year of physical control of Scotland.

At this juncture it is, though, worth dwelling on additional evidence which may further explain why the Scots (except Bruce) were acceptant of Balliol's elevation – by seniority - as a vassal king. For it may be the case that all parties involved already knew Edward I's likely views on a royal succession issue regardless of what possible solutions claimants and lawyers might tender in the course of the Great Cause. In April 1290, an English royal family gathering in Wiltshire – without input from the wider political community - recognised the right of succession to the indivisible kingdom and its dominions of Edward I's only son, Edward, and then, failing that prince and his heirs, the right of Edward I's five daughters and their heirs in turn by seniority (making no stipulation about male children who might be born out of sequence, as it were, to any of these daughters and thus alter the picture in terms of relation by degree).<sup>26</sup> In this context, Edward I's selection of John Balliol as successor king of Scots in the senior line – dismissing Bruce's claim by degree, the advice of the Parisian law faculty and any notion of a partition of the Scottish kingdom - was as much a reflection of this recent precedent as it was the direct result of the English king's political agenda.

There was, then, some measure of consistency in Edward I's interpretation of succession law. However, when King John was captured and forfeited after his rebellion in 1296 and English conquest of Scotland, Edward did not allow the Scottish throne to revert to the next senior male collateral line, the Bruces, instead treating the realm as a forfeited fief. As a result, a Bruce kingship in Scotland had to be achieved through direct

action and force, a bloody struggle begun by Robert Bruce, earl of Carrick, grandson of the original Competitor of Annandale, in 1306.

Once Robert I had gained a foothold in power, however, he and his advisors moved to legitimise the Bruce succession retrospectively. As early as March 1309, in its first recorded Parliament, the Bruce government engineered a collective statement of support for Robert I in the name of the clergy of Scotland to the effect that Bruce of Annandale's original claim to the throne had always been viewed by the majority of the Scottish political community as more lawful than that of Balliol.<sup>27</sup> This was not an explicit statement that the Imperial Law principle of nearness by degree should have prevailed in Scotland in 1292 but an awareness of these authorities may have begun to condition Bruce thinking. In the same year, 1309, Robert had received a qualified recognition of his title from the French king, Philip IV, an acknowledgement which may have reflected close, enduring Franco-Scottish ties, not merely based upon their alliance of 1295 but longer-term, economic, social, cultural and, above all, ecclesiastical-educational links.<sup>28</sup> Highly influential Scottish clerics in Robert's regime, indeed, surely retained alumni links with the French Universities and law schools – and perhaps even participated in policy advice to the Capetians as law graduates.<sup>29</sup> In sum, the Scots are likely to have been aware that by 1311, French legal opinion and the *Parlement* in Paris had already expressed a preference – in anticipation of Philip IV's passing without a son – for the succession of the late king's brother, Louis – the nearest male heir by degree – instead of Philip's daughter.<sup>30</sup>

It would be relatively easy to read the example of such a cautious community decision from France in Robert I's first parliamentary act of succession of April 1315.

This entail – sealed by the clergy, high nobility and baronage of Scotland – recognised Robert’s younger adult brother Edward Bruce and his direct male descendants as heirs presumptive to the throne in the event of Robert I’s death without sons, ahead of Robert’s daughter, Marjorie Bruce, and her direct descendants to whom the throne would only ‘revert’ after the passing of Edward and his sons, grandsons etc. If all these individuals and their immediate lines were to expire then the entail stipulated that Thomas Randolph, earl of Moray (who was also to act as a Guardian of the realm in the event of a minority succession) was to assemble the community to ‘arrange and discuss the lineal succession and government of the realm’, presumably choosing between the male descendants of Robert I’s four sisters.<sup>31</sup>

However, closer consideration of the context of this 1315 act reveals no simple following of the French or Imperial line. Robert I had just recovered his queen (his second wife) as well as Marjorie (born of his first wife) from English captivity following his victory at Bannockburn in June 1314 and surely thus anticipated sons of his own whose birth would displace Edward Bruce and his line from the succession. Edward was besides just about to disembark for Ireland on a campaign of conquest in which Robert I would also come very close to losing life and limb before 1318.<sup>32</sup> In that sense, the 1315 entail’s identification of Edward as ‘an energetic man abundantly experienced in deeds of war for the defence of the right and liberty of the realm of Scotland’ perhaps mirrored in part the son-less Alexander II’s alleged nomination of Bruce of Annandale c.1238-1249 as his heir presumptive just before he too left on a campaign: Edward Bruce was similarly recognised as being king-worthy at a time of risk for the ruling dynasty and a king who was still, nonetheless, expected to father sons.

Yet an awareness of the vulnerability of the royal house also perhaps speaks to pressure placed on a then son-less Robert I by his subjects to designate an heir presumptive which provided the greatest stability at a time of war, an adult male rather than a female (which risked a return to the crisis of 1286-90). But if this were the case it is important not to lose sight of the reverse side of the coin: while Robert I may have agreed (and been happy enough to do so) that his brother be named heir presumptive, his parliament did not fully deny the succession rights of his daughter and her as yet unborn direct heirs. In this sense the Scots stopped short of the increasing tendency in France towards the complete exclusion of female succession.<sup>33</sup> After all, Robert's daughter, Marjorie, was at the time of 1315 act already set to wed a Scottish noble, Walter Stewart, and Bruce could anticipate alternative male heirs from this match. It was this betrothal, indeed, which surely encouraged Robert not to waste time in using the 1315 entail to specify living, or anticipated unborn, collateral individuals in line for the kingship beyond Edward and Marjorie Bruce; that, and the fact that to do so would have been to open a potentially divisive controversy at a time of uncertain support for his regime, asking the community to accept either Robert I's nephews born in the 1310s and 1320s to his sisters and their husbands (the king of Norway and the Scottish noble houses of Campbell, Fraser, Mar, Seton, Murray and Ross) or the male children of Robert I's three later daughters (who were surely only born *c.*1315-29 and married in the 1330s and 1340s anyway).<sup>34</sup>

These various offspring, furthermore, underline the fact that Robert surely intended the 1315 act as provisional, to be amended at a later date in the light of deaths and births (ideally that of his own sons). Edward Bruce's slaughter in battle in Ireland in

October 1318 dictated such a restatement of the succession anyway. But it is interesting to speculate what might have happened had he lived. By 1318, unless Edward could sire a legitimate male heir he would be succeeded as king in turn by his grand-nephew Robert Stewart whom Marjorie Bruce died bearing in mid-1316. Edward did have a son, suggestively named Alexander, but he had not married the boy's mother (of the earldom of Atholl): however, Edward may have had firm plans to do so and/or to legitimise the union and child in the future once Scottish relations with the Papacy had been repaired: Alexander Bruce would certainly go on to take up the Bruce patrimony of the earldom of Carrick, a possible sign that he was legitimised at a later date.<sup>35</sup> If this had come to pass, Robert I, still without a son, might have had cause to recast the royal entail to name Alexander, just as the birth of Robert Stewart – and his survival through infancy – would prompt such a restatement before the community.

However, Edward Bruce's death actually meant that the succession had to be restated not out of confidence at the increasing security of the dynasty but as a safeguard against impending crisis, for the only identified heir to the Bruce throne was now a minor. It is striking that the fresh entail issued by Parliament in December 1318 (called immediately after Edward's death) is prefaced with what amounts to an oath by all subjects to obey the Crown's 'ordinance' in this matter or face charges of *lèse-majesté*. Moreover, the act now actually defined the Roman legal principle to be applied to the succession (nearness by degree, as identified by A.A.M. Duncan) in the absence of an established custom of the realm:

Furthermore since sometimes in the past some people (though not many) have expressed doubt regarding the rules by which the succession to the kingdom of



Scotland should be decided and defined if perhaps it was uncertain, it was declared and defined in the same parliament by the clergy and people that the said succession ought never in the past nor in the future be defined with reference to the custom observed in the kingdom regarding inferior fiefs and inheritances, *for no custom of any sort had as yet been introduced regarding the succession to the kingdom*; but that when a king dies, the nearest male in the direct line of descent, or if a male was not available the nearest female in the same line, or if that line is entirely lacking then the nearest male in the collateral line, ought to succeed the king in the kingdom, with concern for the right line by blood by which the right to rule applied to the dead king, the succession to whom will hopefully be achieved without challenge or any kind of obstacle, because it will be thought to be sufficiently in accordance with imperial law.<sup>36</sup>

The Bruce regime was thus now probably aware of the principle behind the Parisian legal advice of 1291-2. But the closing line of this clause hints at the degree to which the 1318 re-entail was a response to crisis and uncertainty and for many Scots an unconvincing one. The act only named one individual, Robert Stewart (with two Guardians listed in the event of a minority), without the security of ordaining which of Robert I's nephews (who were also minors or, in one case, captive in England) was next in line (Ross, Campbell, Mar etc). The king himself seems not to have been comforted by the entail and the royal seal was not attached: Robert's internal enemies were encouraged to conspire with John Balliol's son, Edward, then in England in a wide ranging plot which the Bruce government struggled to destroy and cover up in 1320.<sup>37</sup>

The only development which would reduce such succession doubts and dangers was direct primogeniture through a son and this Bruce managed belatedly on 5 March 1324 with the birth of twin boys, David and John. John's death about 1326 probably prompted the fresh parliamentary entail of that year in which Robert Stewart was confirmed now as David's heir presumptive.<sup>38</sup> Crucially, then, when David had his own sons, or if Robert Stewart died, a further succession statement by the community would presumably be justified: however, no further statutory statement of inheritance would be ordained throughout David's reign although this was not for want of succession crises.

Robert I died aged 55 in 1329: within just a few years of his passing, time, war and disease claimed most of the late king's key advisors thus creating a vacuum of leadership and historical memory. It is possible that this led to Robert I's contingencies for his succession being misinterpreted and taken to be binding, immutable parliamentary law, rather than general principles within which the individuals named could be re-prioritised after relevant births and deaths, continuing the regular restatements of 1315, 1318 and 1326.<sup>39</sup> During his reign, David II may have sought to act within the legal precedent or custom established by his father's acts of succession, and to apply the Roman law principle of nearness of degree to the evolving direct Bruce line. But a sizeable section of the king's subjects would repeatedly block his plans for the succession through a very literal loyalty to those named as heirs presumptive in Robert I's original entail acts.

David II was forced to endure seven years of exile in Normandy while his realm was invaded afresh between 1332 and 1337 both by Edward Balliol with other 'Disinherited' lords, and Balliol's superior, Edward III of England. David only returned

to his kingdom in 1341, four years after the English warrior monarch switched his military focus to Philip VI's France (and, of course, challenged the first Valois king's right of succession over Edward III's own claim through his French royal mother). But by this juncture it was clear that David and his close advisors were already at grave political odds with his heir presumptive, Robert Stewart, over titles, offices, resources and the succession.

That these tensions within Scotland reflected uncertainty about the royal succession despite the earlier entails is strongly suggested by an incident recorded in late medieval Scottish chronicles. In 1344, it is alleged, a man claiming to be the son of Edward Bruce, Alexander (who has actually been killed in battle in 1333), returned to Scotland to claim his inheritance. In the first instance this consisted of the earldom of Carrick but, if legitimised, Alexander could lay claim to be heir presumptive to the throne through his father under the terms of the 1315 act of entail. Little wonder, then, that it was reported that David II, Robert Stewart and others moved quickly to seize and hang this man who was clearly an impostor but whose claims touched an extremely sensitive nerve.<sup>40</sup>

For David, moreover, this scare may have threatened to upset even more pressing plans. In the natural course of events, David – aged just 20 in 1344 – would expect to sire his own sons and daughters to inherit the throne. Nevertheless, should this not come to pass (and David's relations with his English wife, Joan, sister of Edward III, seem to have been strained) David would expect, naturally, to outlive Robert Stewart who, although the king's nephew, was eight years older than the king. That being so, David could turn legally to other younger nephews he might have as heirs presumptive to the throne if

Robert Stewart died first. About 1342-6, just such a nephew was born. Margaret Bruce, David's full sister through Robert I's second wife, was married with David's help to William earl of Sutherland (who as a youth had been a ward of Robert I) and a son, John, was the result.

The choice of Christian name for this infant was in itself surely significant, promising – if he ever became king – to over-write the title of John I of Scotland (Balliol) and to revive the name of David II's twin brother. But, far more importantly, if it was accepted that Robert Stewart, David's half-nephew mothered by David's half-sister, Marjorie (d. 1316) through Robert I's first wife, would probably die before David himself, then John Sutherland as the king's *full*-nephew would be heir-presumptive to the throne ahead of Robert Stewart's sons who were in the senior line but were David's *half*-great-nephews and thus one degree further removed from the royal person. In other words, by taking the Imperial law principle of nearness by degree which lay behind the act of succession of 1315 and which was explicitly stated in that of 1318, David II might have transferred the position of heir presumptive to a baronial family more closely controlled by the Bruce regime, the Sutherlands. That during his reign David was familiar with the Roman laws which would enable him to do this is underlined not only by the lawyerly churchmen who worked in his government – most of them still graduates of French Universities – but the fact that in 1368 David is recorded as having intimidated one of his cousins, William earl of Ross, with 'many authorities of civil law' by which the king sought to force that noble to pass his inheritance and daughter's hand to one of David's favoured knights.<sup>41</sup>

Of course, holding out for or anticipating the death of a robust and (remarkably) fertile great magnate like Robert Stewart in the earlier part of the reign would have been extremely difficult. But it is possible that about 1346 David was contemplating the passage of just such a revised act of succession, as his control of patronage and Parliament increased: as much is suggested by his extensive patronage to the Sutherlands at this time.<sup>42</sup> Moreover, David seems to have had a further point of pressure to use against Stewart, namely that his four sons (with the eldest interestingly named John Stewart) and several daughters by Elizabeth More had been born from the mid-1330s out of wedlock. If this could be proven in law, David could conceivably also bypass this lineage descended from Robert I and his first wife and, again, shift the succession to his full sister's child descended from Robert I's second wife and queen. However, the military events of 1346 disrupted any such plans David may have had. The king was captured at the battle of Neville's Cross and was a prisoner in England for the next eleven years. Robert Stewart escaped the battle – probably quite deliberately abandoning David to save his own political and dynastic future – and within a year used David's royal seals to secure papal legitimisation of his marriage to Elizabeth More and thus their children. More crucially, however, David felt compelled to adapt his succession plans to offer Edward III or one of his sons a place in the Scottish royal succession ahead of the Stewarts in return for a free release.<sup>43</sup>

In sum, David's captivity – and the machinations involving the succession which he concocted to secure his freedom – tipped the balance of power towards Robert Stewart and the Scottish political community in Parliament influenced by Stewart, and thus towards an essentially literal interpretation and defence of Robert I's earlier acts of

succession. On at least three occasions over the next two decades, David's attempts to have a Scottish assembly recognise a prince of England as his heir presumptive (and presumably, if accepted, to then issue a fresh succession act) collapsed in the face of community rejection and a commitment to resist English interference in Scotland and to uphold the entails of 1318 and 1326. Indeed, in one debate in a parliament of March 1364 – in which the English succession proposal was again put before David's subjects – the majority opposition specifically insisted that 'by God's grace we have many nobles ready to be made our leaders', perhaps a reference not merely to the military capabilities of the Stewarts and others, but also to that family's right of succession through Robert I's parliamentary acts of entail.<sup>44</sup> By the 1440s, the Scottish chronicler, Abbot Walter Bower (admittedly writing under a Stewart king), could certainly look back on David II's attempts to alter his succession and assert that in 1364 parliament had 'criticised the king's proposals as blinkered, since men of splendid character and standing were available as heir apparent. The three estates were bound to stick faithfully to those heirs by virtue of tailzies which had been agreed with the most solemn oaths.'<sup>45</sup>

It must have been apparent by the mid-to-late 1360s, then, if not long before, that David was incapable of siring sons, legitimate or otherwise, and his second marriage to a Scottish noblewoman in 1363 (of the Drummond family), and even his annulment of that match in favour of betrothal to another young noblewoman after 1368, all seem increasingly desperate (akin to Bruce of Annandale's deals in 1292). This would have been understandable, for the other certain blue-blood option, John Sutherland, had died of plague, aged about 15, in 1361 while a hostage for David II in London. Thereafter, there could be no more full-nephews of the king to displace Robert Stewart or his own heirs,

John Stewart and his brothers, with Margaret Bruce having died in childbirth with John Sutherland: even if Robert Stewart's first four sons could be forfeited or declared illegitimate, Robert now had two further sons – David(!) and Walter – by a second wife. Thus in 1368 David granted John Stewart the earldom of Carrick and a Drummond marriage surely as a begrudging and semi-official designation of that lord (now in his early thirties) as heir-in-waiting. David himself died aged 47 in February 1371, unwed and childless, while his second wife pressed for a reversal of their marriage annulment at the Avignon papacy.<sup>46</sup>

Arguably, much of David II's political weakness when it came to the succession had stemmed not merely from his capture in 1346 but from the glaring fact that – even before he had returned from France as a boy in 1341 – Robert Stewart had fathered several sons. With the memory of the chaos resultant from the succession crisis of 1286-92 much more readily remembered and acted upon by Scots than any fine points of custom or Imperial law which David might have cited to have the succession changed, it would have been little wonder that a nervous political community, even David's supporters and churchmen schooled in law among them, should have repeatedly shied away from difficult and uncertain alterations of the succession: better to enshrine and uphold the entail of 1326 and, if David had no son, pass the throne to a fertile line with at least six sons – male primogeniture uncomplicated by degree or collateral status. Ironically, this was surely an inflexible use of these entail acts which Robert I – ever the pragmatist and realist – had never intended.

Robert Stewart's succession as Robert II at age 55 did, though, face political challenge. In February-March 1371, Robert had to pay a heavy price in terms of offices,

money and a royal marriage to the earl of Douglas who was willing to threaten the Stewarts' succession with the deals David II had sought to conclude with England.<sup>47</sup> In addition, in the first parliament of his reign, the new king – crowned a month late – may also have had to oversee the passage of an immediate act of succession simply naming John Stewart as heir presumptive, so as to allay any differences between father and son as well as rivalries between the Stewart brothers. But within this fresh tailzie, Robert II may have sought to confirm what he perceived as a custom which legitimised his inheritance. For the entail was passed at the same time as his coronation and reception of his subjects' oaths of homage and fealty:

after a declaration had been made of the law by which the same most serene prince succeeded, and ought to have succeeded, to the lord David, king of Scotland, his uncle and predecessor, as well by nearness of blood as in accordance with the declaration of certain instruments made in the time of lord Robert [I], king of Scotland.<sup>48</sup>

The 1371 act of succession was undeniably motivated in part by Stewart vulnerability. However, in a parliament of April 1373 the king was able to pass a second act which – while it may also have reflected internal family tensions – exploited a real dynastic strength, the Stewarts' progeny of male heirs. This act was passed, it was recorded:

to avoid to the best of [Robert II's] ability the uncertainty of the succession and the evils and misfortunes which, in most kingdoms and places, happen, and in times past have happened from the succession of female heirs, and to avoid these



for himself and his people...declared, ordained and enacted that the sons of the king, of his first and second wives, now born, and their heirs male only, shall succeed one after another, in turn..

The entail then listed each surviving brother in order, John, Robert, Alexander, David and Walter.<sup>49</sup> Nevertheless, it is important to note that this was not a categorical rejection of female succession: it established no Salic law equivalent in Scotland and would not stop the succession of Mary Stewart in Scotland in 1542. In 1373, moreover, even though the Stewarts had the luxury of knowing that they were not likely to run out of male heirs long into the future, the act still closed with an open and ambivalent clause to the effect that should:

the aforesaid five brothers and their heirs male descending from them happening finally and wholly to fail (which God forbid), the true and lawful heirs of the royal blood and kin shall thenceforward succeed to the kingdom and the right of reigning.

Clearly, at this juncture there was no perceived need – nor, more importantly a political will - to apply the Imperial law of nearness by degree to *all* the lines descended through Robert II's legitimate daughters (or Robert I's sisters and daughters) and thus to distinguish further heirs presumptive: this was a substitute's bench which would besides alter with births and deaths to come. Yet at the same time, as well as reflecting concerns about dynastic longevity and stability, the decision not to explicitly bar female succession after the five Stewart brothers and their male descendants reflected an immediate search for legitimacy: for to prohibit distaff inheritance – either in the direct or collateral lines –

would have been to deny the original lineal claims of both the Bruces and Stewarts to the throne.

Conversely, it can be argued that the unpredictable nature of David II's infertility and early death, and Robert II's long-life and great fertility, did at least place the Scottish Crown in a position to be relatively more decisive about its succession after 1371 than its neighbour realms, England and France. Michael Bennett has shown how, in 1376, an ailing Edward III – influenced by his third son, John of Gaunt - may have aborted consideration of an act limiting the English succession to male heirs only, favouring Edward's grandsons by his late first and living third sons, ahead of his grand-daughter, Phillipa, and her son. Then, in 1406, Gaunt's son, Henry IV, who had usurped the throne from Richard II, had to repeal an act of succession he had passed that year again limiting inheritance of the Crown to male heirs only: the right of female royal heirs to succeed and transmit the English throne was thus quickly restored.<sup>50</sup> It was about that time, of course, that the French royal government began to make committed use of the Salic Law, mythologizing this historic private law text into a French royal custom transposed back to the early thirteenth-century and applied in denying the English claim of seniority to the French title through Edward III's mother and great-grandfather as a counter to the Valois cousinship (nearer by degree!) to Philip V.<sup>51</sup> That the French had been seemingly reluctant to do so before the fifteenth-century may be explained not merely by the fact that the Valois claim also depended upon female transmission and that the Salic Law had no recorded judicial application to the kingship (and thus, at least in English eyes, remained unsubstantiated 'custom'). But it may also in some small part be the case that the French realised that to firmly deny female succession or transmission of a Crown

might also destabilise their allies in Stewart Scotland (through treaties of 1295, 1326, 1371 and 1383).<sup>52</sup> Indeed, the role of Scottish churchmen in continuing to receive and influence French legal opinion should not be underestimated. Not least, Richard Lescot (the Scot), a continuator of the *Grandes Chroniques* at St Denis and author of treatises for the Dauphin Charles about 1358 refuting England's claim to France, seems to have been aware of the potential value of the Salic Law contained in manuscripts held at his abbey, but he did not widely disseminate it.<sup>53</sup> In the end, the French only began to exploit this Law just as the Scottish Crown (though not the Scottish nobility) was seemingly neutralised as an ally with the English capture of Prince James [James I] swiftly followed by the death of Robert III in 1406.<sup>54</sup>

The Scots, however, seem to have reacted to these English and French succession developments by doing nothing. In 1406, there was no viable alternative to the Stewarts as kings and if James I was deprived to the realm then Robert II's extended family could provide ample male heirs under the terms of the 1373 entail. Indeed, that act was to be the last occasion on which a Scottish parliament was called to debate or legislate on the Scottish succession. Even when, by the 1440s, the Stewart male kindred had been gravely reduced by political crises and James I had had six daughters all married off to foreign allies, no remedial entail acts naming heirs were drafted. On that occasion, any potential crisis was averted by the then minor king, James II, growing to manhood and siring three sons. This seems to have been the solution to which Scottish kings and government seemed content to trust their future stability from the early fifteenth-century, even when the direct succession might lie with a single infant legitimate heir – as in 1512 (a 1 year old boy) and 1542 (a week old girl) – no collateral heirs presumptive were named by

statute. Nor were the Scots swayed by mounting French commitment to excluding females, or even by Lancastrian propaganda – issued from exile in Scotland in 1461 – which also shunned distaff inheritance.<sup>55</sup>

As such, perhaps the most important legacy of a king with a poor reputation, Robert II, was to sire a large family, replete with male heirs, which was enough to weather both the rumbling tempest of uncertainty surrounding the Scottish succession c.1284-1371 and any pressure for legal change which may have emanated from Scotland's more powerful neighbours.

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<sup>1</sup> J. Martindale, 'Succession and Politics in the Romance-speaking World c.1000-1140', in *England and her Neighbours, 1066-1453: Essays in Honour of Pierre Chaplais*, ed. M. Jones and M. Vale, London, 1989, 19-42.

<sup>2</sup> A.A.M. Duncan, *The Kingship of the Scots 842-1292: Succession and Independence*, Edinburgh, 2002, ch. 8.

<sup>3</sup> *Ibid*, chs. 9-13, with genealogical tables illustrating much of what follows at 168, 346-9.

<sup>4</sup> *Ibid*, 278-89; *Edward I and the Throne of Scotland 1290-1296*, ed. E.L.G. Stones and G.G. Simpson, 2 vols., Glasgow, 1978, ii, Appendix E.

<sup>5</sup> P. Stein, 'Roman Law in Scotland', *Ius Romanum Medii Aevi*, Pars V, 13b (Milan, 1968), 22-41; W.M. Gordon, 'Roman Law in Scotland' in *The Civil law Tradition in Scotland*, ed. R. Evans-Jones, Stair Society, Edinburgh, 1995, 13-19, 105-6; Duncan, *Kingship of the Scots*, 259-61.

<sup>6</sup> *Ibid*, 166-71; *Acts of the Parliaments of Scotland*, ed. T. Thomson and C. Innes, 12 vols., Edinburgh, 1814-75, i, 422b, 424.

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<sup>7</sup> Duncan, *Kingship of the Scots*, 106-8. Earl David was the nearer by degree living heir both to William I and to David I (1124-53), William's and Earl David's grandfather, than was Margaret as David I's great-granddaughter.

<sup>8</sup> J.C. Holt, 'The *Casus Regis*: the Law and Politics of Succession in the Plantagenet Dominions, 1185-1247', in idem, *Colonial England, 1066-1215*, London, 1997, 307-27.

<sup>9</sup> G. Donaldson, 'Reflections on the Royal Succession', in *Scotland's History: Approaches and Reflections*, ed. J. Kirk, Edinburgh, 1985, 103-18.

<sup>10</sup> Duncan, *Kingship of the Scots*, 70-1.

<sup>11</sup> A.W. Lewis, 'Anticipatory Association of the Heir in Early Capetian France', *American Historical Review*, 83, 1978, 906-27.

<sup>12</sup> Duncan, *Kingship of the Scots*, chs. 2-6 passim.

<sup>13</sup> *Ibid*, chs. 6-7; A.W. Lewis, *Royal Succession in Capetian France: Studies of Familial Order and the State*, Harvard, 1981, 81, 104-22.

<sup>14</sup> D. Broun, 'Contemporary Perspectives on Alexander II's Succession: the Evidence of King-Lists', in *The Reign of Alexander II, 1214-49*, ed. R.D. Oram, Leiden, 2005, 79-98.

<sup>15</sup> Duncan, *Kingship of the Scots*, 123-6.

<sup>16</sup> *Anglo-Scottish Relations, 1174-1328: Some Selected Documents*, ed. E.L.G. Stones, London, 1965, no. 14; Donaldson, 'Reflections on the Royal Succession', 103-5.

<sup>17</sup> *Edward I and the Throne of Scotland*, ii, 219-25

<sup>18</sup> Duncan, *Kingship of the Scots*, 123-6.

<sup>19</sup> A. Young, *Robert the Bruce's Rivals: the Comyns, 1212-1314*, East Linton, 1997, 49; R.D. Oram, 'Introduction: An Overview of the Reign of Alexander II', in *Reign of Alexander II*, 16.

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<sup>20</sup> A. Beam, ‘The Political Ambitions and Influences of the Balliol Dynasty, c.1210-1364’, unpublished Ph.D., University of Stirling, 2005, 56-63. Alexander and John had two elder brothers, Hugh (c.1238-71) and Alan (c.1240-d.a.1271): clearly, the lack of evidence for the exact birth dates of these Balliol and Bruce heirs can have a critical and changing bearing on historical understanding of the Scottish succession.

<sup>21</sup> E.g. G.W.S. Barrow, *Robert the Bruce and the Community of the Realm of Scotland*, 4<sup>th</sup> edition, Edinburgh, 2006, 36-7; Duncan, *Kingship of the Scots*, 182-93.

<sup>22</sup> *Anglo-Scottish Relations*, no. 13.

<sup>23</sup> *Foedera, conventiones, Litterae et Cuiuscunque Generis Acta Publica*, ed. T. Rymer, 20 vols., London, 1704-35, i, 719-20; *Documents Illustrative of the History of Scotland from the death of Alexander III to the Accession of the Robert Bruce AD1286-1306*, ed. J. Stevenson, 2 vols., Edinburgh, 1870, i, no. cviii; Duncan, *Kingship of the Scots*, 191-92.

<sup>24</sup> E.g. Barrow, *Robert Bruce*, 68-70; M. Prestwich, *Edward I*, London, 1988, 364-70.

<sup>25</sup> Beam, ‘The Political Ambitions and Influences of the Balliol Dynasty’; Duncan, *Kingship of the Scots*, 107, 288.

<sup>26</sup> F.M. Powicke, *King Henry III and the Lord Edward: the Community of the Realm in the Thirteenth Century*, 2 vols., Oxford, 1947, ii, 732-3.

<sup>27</sup> *Acts of the Parliaments of Scotland*, i, 460.

<sup>28</sup> *Ibid*, 459.

<sup>29</sup> *A Biographical Dictionary of Scottish Graduates to AD1410*, ed. D.E.R. Watt, Oxford, 1977; idem, ‘Scottish University Men of the Thirteenth and Fourteenth Centuries’, in *Scotland and Europe, 1200-1850*, ed. T.C. Smout, Edinburgh, 1986, 1-18; D. Ditchburn, *Scotland and Europe: the Medieval Kingdom and its Contacts with Christendom, 1214-*

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1560, 2 vols., East Linton, 2000-, i, 34-8; A.A.M. Duncan, 'The Declarations of the Clergy, 1309-10', in *The Declaration of Arbroath: History, Significance, Setting*, ed. G.W.S. Barrow, Edinburgh, 2003, 32-49.

<sup>30</sup> Lewis, *Royal Succession in Capetian France*, 149-56 ; P. Contamine, 'Le Royaume de France ne peut tomber en fille': Fondement, Formulation et Implication d'une Theorie Politique à la Fin du Moyen Age', *Perspectives Medievales*, 13, 1987, 67-81. In February 1317, a month after the accession of Philip V after the early death of his brother Louis X's posthumously born son, Jean I, the French assembly ruled that a female heir could not succeed to the throne.

<sup>31</sup> *Acts of the Parliaments of Scotland*, i, 464-5.

<sup>32</sup> Barrow, *Robert Bruce*, 381-2; C. McNamee, *The Wars of the Bruces: Scotland, England and Ireland, 1306-1328*, East Linton, 1997, 195-6.

<sup>33</sup> Although it should be noted that Robert I may have been very well aware of the ramifications of the exclusion of female succession: the agreement he concluded with Duncan, earl of Fife, in April 1315 provided for Duncan's pardon if he recognised the Crown's right to claim his earldom if he failed to have a son, thus disinheriting his only daughter [*Regesta Regum Scottorum, V: The Acts of Robert I of Scotland, 1306-29*, ed. A.A.M. Duncan, Edinburgh, 1985, no. 72].

<sup>34</sup> M. Penman, *The Bruce Dynasty in Scotland: David II, 1329-71*, East Linton, 2004, xiv.

<sup>35</sup> *Ibid*, 40-3.

<sup>36</sup> *Acts of the Parliament of Scotland*, i, 465-6.

<sup>37</sup> M. Penman, 'A fell conuiracioun agayn Robert ye douchty king: the Soules conspiracy of 1318-20', *Innes Review*, 50, 1999, 25-57

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<sup>38</sup> Duncan, *Kingship of the Scots*, 328.

<sup>39</sup> M. Penman, 'Parliament Lost - Parliament Regained? The Three Estates in the Reign of David II, 1329-71', in *Parliament and Politics in Scotland, 1235-1560*, ed. K.M. Brown and R.J. Tanner, Edinburgh, 2004, 74-101.

<sup>40</sup> Penman, *David II*, chs. 2-3 and 114-5 for Alexander Bruce.

<sup>41</sup> *Ibid*, 114-6, 362-5.

<sup>42</sup> *Regesta Regum Scottorum, VI: The Acts of David II of Scotland, 1329-71*, ed. B. Webster, Edinburgh, 1982, nos. 94, 96, 98, 100. One early sixteenth-century Scottish chronicle was certainly convinced that when he returned to his kingdom in 1357 David II passed just such an act of succession to recognise 'Alexander Sutherland' as his heir, surely a confusion of John Sutherland and Alexander Bruce [*The Chronicles of Scotland compiled by Hector Boece, translated into Scots by John Bellenden, 1531*, 3 vols., Scottish Text Society, Edinburgh, 1938-41, ii, 333].

<sup>43</sup> Penman, *David II*, 144-5, 153-74; *Vetera Monumenta Hibernorum et Scotorum*, ed. A. Theiner, Rome, 1864, 289, no. 577.

<sup>44</sup> A.A.M. Duncan, 'A Question about the Succession, 1364', *Scottish History Society Miscellany*, xii, 1994, 1-57, at 49 no. 45.

<sup>45</sup> *Walter Bower – Scotichronicon*, ed. D.E.R. Watt *et. al.*, 9 vols., Aberdeen, 1987-99, vii, 321-3.

<sup>46</sup> Penman, *David II*, 269-71, 280, 363-5, 368-78, 403-12.

<sup>47</sup> S. Boardman, *The Early Stewart Kings: Robert II and Robert III, 1371-1406*, East Linton, 1996, ch. 2.

<sup>48</sup> *Acts of the Parliaments of Scotland*, i, 546



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<sup>49</sup> *Ibid*, 549.

<sup>50</sup> M. Bennett, 'Edward III's Entail and the Succession to the Crown, 1376-1471', *EHR*, cxiii, 452, June 1998, 580-609.

<sup>51</sup> C. Taylor, 'The Salic Law and the Valois Succession to the French Crown', *French History*, 15, no. 4, 2001, 358-77; C. Beaune, *The Birth of an Ideology: Myths and Symbols of Nation in Late-Medieval France*, trans. S.R. Huston, ed. F.L. Cheyette, Berkley/Los Angeles, 1991, ch. 9.

<sup>52</sup> F. Autrand, 'Aux Origines de l'Europe moderne: l'alliance France-Ecosse au XIV siècle', in *The Auld Alliance : France and Scotland over 700 Years*, ed. J. Laidlaw, Edinburgh, 1999, 33-46.

<sup>53</sup> *Chronique de Richard Lescot, Religieux de Saint Denis, 1328-44*, ed. J. Lemoine, Paris, 1896; G.M. Spiegel, *The Chronicle Tradition of Saint Denis: A Survey*, Brookline, 1978, 98-9, 109-23; B. Guenée, *Un Roi et Son Historien : Vingt Études sur le règne de Charles VI et la Chronique du Religieux de Saint-Denis*, Paris, 1999, 35-9.

<sup>54</sup> Penman, *David II*, 52 ; N.A.T. Macdougall, *An Antidote to the English : the Auld Alliance, 1295-1560*, East Linton, 2001, chs. 2-3.

<sup>55</sup> *Ibid*, chs. 3-6; V. Litzen, *A War of Roses and Lilies: the Theme of Succession in Sir John Fortescue's Works*, Helsinki, 1971.