

## FIVE SCOTTISH LAW LIBRARIES

# The Advocates Library, Edinburgh

**Abstract:** In this article Sara Berry provides an account of some of the history relating to the Advocates Library in Edinburgh. She explains how the Advocates Library played a key role in the Scottish Enlightenment and acted as Scotland's national library up to the foundation of the National Library of Scotland in 1925. The article also looks at the library's integral role in supporting Faculty Members and the Scottish justice system through history to modern day. The last section looks at some of the effects of the Covid-19 pandemic on Members, library staff and working practices.

**Keywords:** law libraries; legal profession; Advocates Library; Scotland

## INTRODUCTION

This article details some of the history attached to the Advocates Library, which dates (officially) from 1689 but started as a library collection housed in a specific building off the High Street (part of the Royal Mile) in 1682. It is a private membership library for Members of the Faculty of Advocates and is currently situated in the same complex of buildings as the Supreme Court, in the heart of Edinburgh next to St Giles' Cathedral in Parliament Square. Parliament Square and Parliament House are named as such because the King and Parliament met in the hall there before the Act of the Union in 1707; very different from the modern Scottish Parliament building near Holyrood Palace at the end of the Royal Mile!

The Advocates Library forms part of an unofficial library quarter as it is close to four other notable law libraries as well as the National Library of Scotland (NLS), and Edinburgh Central Library. The four law libraries are the Signet Library, belonging to the Society of Writers to Her Majesty's Signet (or WS Society); the Library of the Society of Solicitors in the Supreme Court (the SSC Library); the Scottish Courts and Tribunals Service Library of the Supreme Court (known as the Judges' Library); and the Law Library of Edinburgh University. So close are some of the buildings that if you unlock a certain door in the Advocates Library you walk into the NLS's entrance lobby!

The Advocates Library played a key role in the Scottish Enlightenment and acted as the Scottish national library up to the foundation of the NLS in 1925. This article also outlines some of its integral role in support of Faculty Members and the Scottish justice system up to the modern day. The final section looks at some of the effects of the pandemic on Members, library staff and working practices.

The history and traditions of the Library are worthy of a book, however, that's already been written (see *The Advocates' Library: 300 Years of a National Institution 1689–1889*). Therefore this article sets out to provide a flavour

of the Library's rich heritage, through some descriptions, a few explanations and certain anecdotes, rather than a detailed exposition.

A good place to start is that the Advocates Library now does not have an apostrophe after the 's'. No-one really knows why it was dropped in the period since the above-mentioned book was published, which is a common theme for some of the traditions and practices in the Faculty of Advocates (FoA).

## ADVOCATES

Advocates in Scotland have to be Members of Faculty to practice their profession and would mostly be known as barristers elsewhere. There are five office bearers who are all senior Members of Faculty, and they take on the governance of the Faculty; these are the Dean, Vice Dean, Treasurer, Clerk of the Faculty and the Keeper of the Library. The incumbents are elected by their fellow Members, and they continue to be working Advocates while occupying these roles.

The Keeper of the Library, as a title, was often interchangeable with the title of Librarian during the 17<sup>th</sup>, 18<sup>th</sup> and 19<sup>th</sup> centuries and the post was held by Advocates and by academics. It became more distinct in the 20<sup>th</sup> century and there is currently a Keeper of the Library and a Head of the Library, where the Keeper advises on Members' feedback and concerns as well as their conduct, and the Head manages the library staff, the collections and the day to day running of the library.

The FoA has the responsibility, as delegated by the Lord President, to regulate the training and professional practice, conduct and discipline of Advocates, with people who express an interest in becoming an Advocate studying as 'Intrants' initially. An Intrans needs to matriculate and then pass required exams before they can be admitted to the Faculty as 'Deviils'. They then undergo a formal training period followed by several months

shadowing their 'Devilmasters'. Once they pass this period they are called to the Scottish Bar and become Members of Faculty. The term Devils has long been used in the Faculty with one theory claiming it goes back to printers' apprentices being known as Devils because of the black ink staining their skin.

The Faculty of Advocates has both practising and non-practising Members. Practising Members of Faculty are instructed in accordance with the cab-rank rule, set out in the Court of Session Act 1532 and ratified in the Court of Session Act 1540. The non-practising membership includes, among others, members of the judiciary, law officers, parliamentarians, academics, retired advocates and advocates who are employed in various capacities.

The Faculty also has a service company, Faculty Services Ltd (FSL), which provides administrative and support services to those Advocates who choose to subscribe to those services. Advocates can belong to one of nine 'Stables' which are set up under the service company. Unlike barristers' chambers in England for example, each stable has its own identity but the clerks are all employed by the service company.

## THE COLLEGE OF JUSTICE

The Faculty of Advocates dates back to the foundation of the College of Justice by James V of Scotland. The Scottish Parliament passed an Act in 1532 which stated the King's intention to '*institute ane College of cunning and wise men... For the doing and administracion of justice in all civile actionis*'. The same Act provided for '*ane number of Advocates and procurators chosen..*' thus starting the path to the formation of the Faculty of Advocates.

If you visit Parliament Hall, part of the complex of buildings that houses the Supreme Courts (which came into being two years after the Act was passed), the Advocates Library and the Society of Solicitors in the Supreme Courts, there is a magnificent 19<sup>th</sup> century stained glass window commemorating that foundation event (albeit with a 19<sup>th</sup> century interpretation of 16<sup>th</sup> century court dress!). The king appointed a President and 14 Lords, half of them spiritual, and in the window the first Lord President of the Court of Session, Alexander Mylne, is depicted kneeling before the king.

The term Advocate was not unknown prior to the formation of the College but often referred to a more general role of someone speaking for the accused in Court but not necessarily with what would be recognised as legal qualifications today.

At first the College dealt with civil law, with criminal matters reserved to the King, who appointed Justiciars, who gave their name to the High Court of the Justiciary. The High Court was only included in the College of Justice in 1672.

The Lords were and are to this day known as Senators of the College of Justice, and as of 2016 there

are a maximum of 35 judges in office. Judges appear in civil cases across the Inner and Outer Houses of the Supreme Court in Edinburgh, and in the High Courts which are based in Edinburgh, Glasgow and Aberdeen. There are 13 senators forming the Inner House which acts mainly as a Court of Appeal in Civil and certain criminal matters.

There are certain agreements in place between the different law libraries due mainly to their proximity and a long history, and urgently-required texts may be briefly borrowed by the various Advocates, Judges, SSC or Signet Library staff for their Members to use in their libraries. Access to resources is shared out across the four libraries and supports the Scottish justice system.

Advocates traditionally still wear wigs and gowns in court, although not always when appearing in virtual hearings nowadays. There is a long tradition of Advocates pacing up and down Parliament Hall with their gowns flying around them, talking to colleagues or clients. Walking in this fashion is believed to be so that their conversations can't be overheard. Nowadays many are making phone calls as they walk, because they cannot use their phones in the library.

## BUILDINGS AND LAYOUT (AND MURDERERS...)

Like Rome, Edinburgh was built on seven hills one of which is Castle Rock. These are described as part of an ancient volcanic plug but they made Edinburgh a very hilly city to build on. The Advocates Library extends over three floors which start with the main entrance at level 0 and then descend down to -2 due to the slope of the land.

There are also two small satellite libraries that are not staffed, based in the High Courts at the Lawnmarket in Edinburgh and the Saltmarket in Glasgow. A separate building nearby on the High Street is used for training events and has two floors of rolling stacks mainly holding superseded titles and old Session Paper volumes.

The Library has been housed in various locations over the years, starting in a tenement house east of the present Parliament Square. This house along with other residences in the Square was destroyed by fire in February 1700, though fortunately most of the books then held in the library were saved by the librarian, James Stevenson. Some of the older books still show the marks of the fire.

After the fire, the Library was eventually housed in part of the Laigh (Lower) Hall which is underneath Parliament Hall, during which time apparently it also housed the town's guillotine. Fortunately, not required, it was eventually moved to the National Museum. The existing halls were built in the early to mid 17<sup>th</sup> century on the site of an earlier hall, and it is said Cromwell's army stabled their horses there.



Figure 1: Parliament Hall.

The present main part of the library known as the Corridor was designed by William Playfair and commissioned in 1832 but not completed until the 1850s. It was intended to lead to a new grand building but that plan was not finished. It is a popular place to sit and study as it is close to our Scottish Law and Reference materials as well as the library enquiry desk and has more natural light, which some of the lower levels do not.

For a short time, the library shared a building with the Signet Library, just next door. After the building of the corridor the books were moved up from the Laigh Hall. It wasn't until around twenty years ago that the Laigh Hall once again was re-configured to house our EU and European collection alongside more modern seating for Members.

In the early 19<sup>th</sup> century the courts expanded, creating a new court room alongside the Advocates Library. That room was eventually no longer required and became part of the library. It is now known as the 'Law Room' and while it contains normal library shelving, books and modern desks it has an interesting history. It was here that the famous Burke and Hare trial took place in 1828.

Burke and Hare were the infamous body snatchers and are amongst the most notorious murderers in the



Figure 2: The Laigh Hall, South Side.

world, selling at least 16 corpses to Dr John Knox for £8 or £10 each. When caught, Hare was promised immunity in return for disclosing all the crimes, which he did. Burke and his partner Helen MacDougall were then tried. The case against MacDougall was found to be not proven but Burke was found guilty and hanged in Parliament Square in front of a crowd of 25,000.

In a little known link with the Edinburgh University Law Library, the body was smuggled through underground passages from the courts that eventually led to the then Medical School on that site, where part of the sentence was for the body to be dissected as so many of his victims had been.

## HOW THE LIBRARY GREW

The library was formally instituted in 1689 by Sir George Mackenzie, known as 'Bloody' Mackenzie for his pursuit of Covenanters (very simplistically, 17<sup>th</sup> century opposition to the idea that the Stuart kings could be spiritual heads of the Scottish Presbyterian Church, whose adherents suffered persecution, torture and execution for many years). However, though history has given him a 'Bloody' nickname, Mackenzie was also a man of many talents, as besides being a very successful lawyer and Advocate, he was also a poet, an expert on heraldry and a writer. There remains something of a dilemma about how to regard such a man as 'Bloody' McKenzie.

The library during its early years carried out some purchasing but relied on gifts from Faculty Members. In a catalogue produced in 1692 there were around 3,143 items listed, about 56% of which were legal texts while the remaining non-legal titles covered philosophy, heraldry, poetry, geography and theology amongst other subjects. The legal texts were published in many of the great European centres of learning and law including Amsterdam, Cologne, Paris and Venice.

However, the Queen Anne Copyright Act of 1709 gave the Library the right of legal deposit and this enabled the Library to collect extensively by claiming free copies of all books and journals published in the UK and Ireland. It was the only library in Scotland to be granted this right and it became the de facto national library, used by great scholars, writers, philosophers and thinkers throughout the Scottish Enlightenment.

As the volume of publishing grew throughout the 18<sup>th</sup> and 19<sup>th</sup> centuries so did the demands placed upon the privately funded Advocates Library, particularly around space. Eventually, in 1925, the National Library of Scotland was formed and the Faculty gifted around 750,000 non-legal books to the Scottish nation. The building of the new National Library was delayed until 1952 and the Faculty's role in founding the NLS is commemorated in the stained glass windows on the stairs up from their main lobby.

The privilege of being able to claim all law books was, however, retained and remains to this day, enabling the Advocates Library to have a comprehensive collection of



law books covering all UK nations and other materials aimed at legal practitioners; and is unrivalled elsewhere in the country. Nowadays, books acquired by legal deposit are supplemented by the purchasing of extra print copies as many prefer to continue using these.

The range of material is extensive and forms the basis for legal research carried out by Advocates across a range of legal topics. In particular, the over 4,000 volumes of Session Papers dating from the late 17th century are still seen as a valuable resource. Session Papers are documents used in the presentation of cases in the Court of Session, Scotland's supreme civil court. They are the written pleadings of contested cases, plus associated documents such as drawings, plans and maps. From the mid 17th century until the mid-19th century, these papers were printed, with copies being provided for all those involved with the case.

## ARTWORKS

The Faculty has a great tradition of collecting, and not just with regard to books. It also has many artworks due to the long established practice of commissioning portraits of notable Members. This tradition also ensured that portraits mostly follow a certain pattern and some of the earlier ones perhaps lack high artistic merit. This tradition continues to this day though not so much in oils or marble busts; rather with photographs taking their place.



Figure 3: The Law Room.

There are two portraits by Sir Henry Raeburn which are of interest in the history of the courts (Raeburn is known for the picture popularly known as the *Skating Minister*). In the main part of the library there are two portraits of noted judges, one of Sir David Rae of Eskgrove, Lord Eskgrove. Lord Eskgrove, in his later years, was considered to be an eccentric example of an 'old school' Scottish judge. There were many anecdotes about him including his face varying in colour 'from a scurfy red to a scurfy blue', and having a 'huge clumsy chin which moved like the jaw of an exaggerated Dutch toy'. He was renowned for keeping his court going until the small hours of the morning, mumbling on while those around him were fast asleep. His son William was the presiding judge at the trial of Burke and Hare and had similar traits, with the trial extending into the night.

There is also a portrait of Lord Braxfield. Braxfield was the last judge to insist on using the Scots vernacular. He is reputed to have said to one poor accused man 'Aye, you've a fair tongue in yer heid, laddie, but you'll be none the waur for a hangin'. Braxfield's character is said to have been the basis for Robert Louis Stevenson's *Weir of Hermiston*, his last and unfinished novel. Stevenson briefly practised as an Advocate but his heart was never really in it.

The Faculty's oak panel memorial carries 26 names and is dedicated 'To the memory of those Members and intrants of the Faculty of Advocates who died in the service of their country during the War 1914–1918'. It has pride of place in the centre of the main corridor and was designed by the architect Sir Robert Lorimer. Lorimer also designed the Scottish National War Memorial in Edinburgh Castle.

## SOME NOTABLE NAMES ASSOCIATED WITH THE LIBRARY

### *Advocates*

Sir Walter Scott, whose statue stands at the entrance to the library, practiced successfully as an Advocate. He was also a Sheriff in the Borders while pursuing his literary career in his house at Abbotsford, near Melrose. In a rather long winded tale, his library of over 9,000 books eventually came into the possession of the Faculty in the 1970s. It was kept in the Library for several years until Abbotsford House was opened to the public whereupon the books came home to his library once again.

These books are all catalogued in the Advocates Library catalogue and can be requested by scholars and viewed in the NLS's Special Collections Reading Room after retrieval from Abbotsford by Advocates Library staff. Interestingly there were other items as part of the bequest and I imagine there are few libraries that once held swords, armour, duelling pistols and a South Sea war club – Sir Walter was an eclectic collector.

James Boswell (1740–1795) was a biographer and diarist as well as an Advocate, though not a wildly

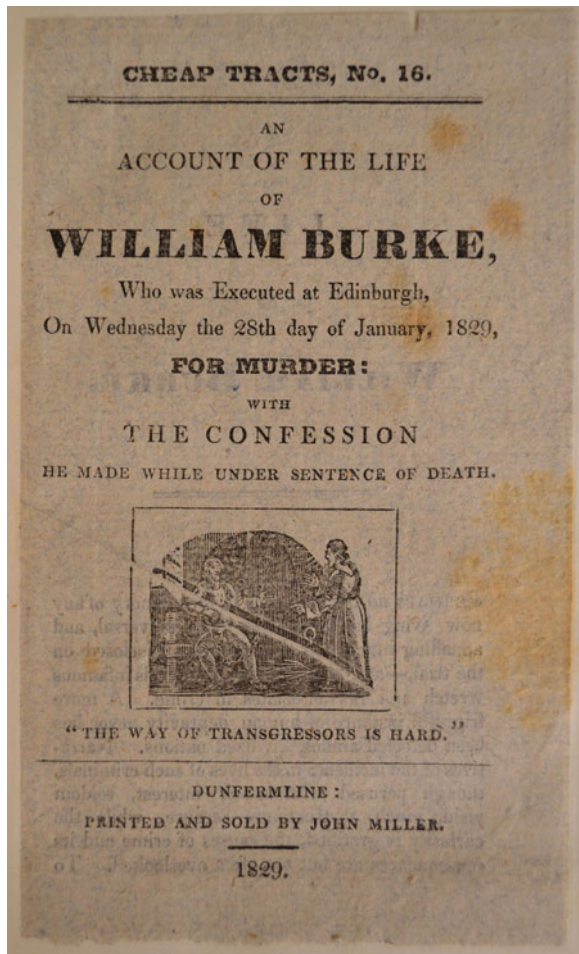


Figure 4: Contemporary reporting of Burke's execution.

successful one. He showed his friend Dr Johnson around the Library prior to them setting out on their tour of Scotland and the Hebrides.

### Librarians

David Hume, the philosopher and historian, was appointed Keeper of the Library in 1752 and left in 1757.



Figure 5: The Corridor.

He was a controversial Keeper, having the reputation of a dangerous radical, and used the contents of the library to his own advantage, researching extensively while in post. He eventually resigned after making some questionable purchases of 'indecent' French books.

Thomas Ruddiman was Librarian and then Keeper between 1702 and 1752. He was a noted linguist, who was an expert in Latin, Greek and Hebrew as well as most major European languages. One of his main contributions to the Library was the publication of the second library catalogue in 1742 which had over 30,000 entries.

Adam Ferguson was appointed librarian after David Hume and had been a chaplain in the Black Watch regiment, a deliberate consideration on the part of the Faculty who had been troubled by David Hume's atheism. He was also a noted historian and philosopher.

## COLLECTIONS

There are 8 distinct named collections of rare books held in the library, for example:

### Macmillan Collection

The law library of Lord Macmillan of Aberfeldy (1873–1952) was gifted to the library after his death. Lord Macmillan was Lord Advocate at the time when the National Library of Scotland was founded and had been a prime mover in the pursuit of the goal of a national library. His library contained several versions of Justinian's *Corpus Iuris Civilis*, the founding Roman text on civil law. Other texts were from other noted jurisdictions including French and Dutch.

### Alva Collection

The Alva collection comprises 260 16<sup>th</sup> and 17<sup>th</sup> centuries law volumes from the library of James Erskine of Alva, Lord Barjarg (1723–1796).

### Dieterichs Collection

The Dieterichs Collection was purchased by the Faculty in 1820 from the estate of Georg Septimus Dieterichs of Regensburg (1721–1807) and contains about 100,000 items, of which around 32,000 are academic theses of the 17th and 18th centuries.

In the 1950s, with the establishment of the National Library of Scotland, the collection was divided, with the Faculty retaining the legal material. After a cataloguing project in 2001, many beautiful and rare bindings were discovered on some of the volumes. There are also a great many elaborate and highly detailed engravings of the 17th and 18th centuries and bookplates composed of the complex coats-of-arms of the nobility of the Holy Roman Empire.

## Session Papers Collections

The Advocates Library holds over 4000 volumes of such Session Papers, many of which take the form of collections named after the Advocate who was involved in the cases and collected the papers. There are 50 distinct series, covering the period 1666–1868. Collections held include those of Henry Home (Lord Kames), Robert Dundas (Lord Arniston) and Sir Ilay Campbell. The library also holds a general collection of Session Papers, covering the period from 1821 to 2013, which match the cases covered by the published Session Cases series. One of the long term goals is to somehow digitise some if not all of the collection to make it available to historians, genealogists, sociologists, globally as well as for the people of Scotland and the Scottish diaspora.

## WHAT HAPPENS NEXT?

### Legal information databases

The move to online subscription resources has been developing over the last few years albeit slowly and with group deals rather than Faculty-wide subscriptions. A few years before the pandemic however, it was recognised that the increasing importance of having online access to certain key resources, especially to those Members who were travelling across Scotland to appear in different Sheriff Courts, meant it was necessary to have access to one of the major databases across the Faculty membership.

A subscription was agreed, and Members were trained in its use, though many still rely on the Library enquiry team to do the expert searching. This database, along with a couple of others, subsequently proved invaluable to staff and Members after 23<sup>rd</sup> March 2020, as they enabled the work of the Library to continue, even if greatly reduced in volume. The majority of the library team went on furlough in April and over the summer a small group of five kept the enquiry service going, supplying those Advocates still working with materials.

At the end of the summer, the library had several staff on partial furlough, with a limited number of staff visiting again. The focus of these visits was on copying and scanning requests for material not available online, dealing with the resumption of legal deposit deliveries and administrative tasks such as shelving. There are many Scottish titles still not available online so the breadth and depth of the library's printed collections proved its worth again.

After the second lockdown earlier in 2021 and the subsequent race to catch up with the backlogs and missing issues and updates, the library staff have adapted in part to a hybrid working pattern which is still in development. The number of Members visiting the library is still down by around 50% on the numbers in 2019, and the requests for scanned copies has risen by more than that.

The questions for 2022 and beyond are not yet answerable, as it is uncertain whether virtual hearings will become the norm, and how that might impact on the work of the library.

## 'Virtual' Justice

Currently the debate in Scotland is over the consultation by the Scottish Civil Justice Council into how civil justice should be administered in the future. The different arguments broadly centre on the feasibility and desirability of holding all hearings virtually or just the procedural ones.

The pandemic has brought remote hearings to the fore, where they were previously rare events due to illness or other reasons. The concerns that are being expressed cover several points including:

- (a) It is acknowledged that initial procedural hearings do benefit from being done virtually as it saves travel time in particular and can be slotted in to busy diaries more easily.
- (b) There was also already a movement away from printed court bundles with pink tape around them to electronic submissions, which again helps with time pressures and saves trees!
- (c) The technical hiccups that can happen are time-consuming, especially where different parties attending might have different levels of electronic expertise, and these can prevent the smooth discussion of points raised or the viewing of essential documents
- (d) The levels of stress caused by conducting conversations online, without being able to take into account body language clues that might point towards the truth of what is being said.
- (e) A reduced engagement with the process as remote nature of the hearings can affect the immediacy of the proceedings and the perceptions of importance associated with it. In addition, distractions (for example, if working from home) can mean concentration is lost and important points can be missed.
- (f) There is the point about the importance of justice 'being seen to be done'. It is more difficult for the public to attend and if they do by virtual means, how can it be that what they see on camera be verified?

## CONCLUSION

For hundreds of years the Advocates Library has essentially remained unchanged in its traditions and practices. The full impact of the last two years on the working practices of Members and library staff is unlikely to be understood until well into 2022, if not for years after that. There are definitely more questions than answers at present and one of the challenges is anticipating how our Members' use of the library will change and how staff will need to adapt.

Currently there is a discussion around adapting some areas in the library to provide small enclosed and sound-proofed spaces with good IT connections and better lighting, where Members can take their laptop and attend hearings.

It is also likely, for example, that the staffing of a physical enquiry desk will still be necessary but potentially with reduced opening hours so as to accommodate having a remote enquiry service as well. At present some



processing work can be done at home but this is dependent on deliveries which may not be sustainable in the long term. The cost of subscription databases is also a big factor as it is not possible to keep on adding content or taking on new online resources to meet ever more specific wish lists.

In addition, a project to replace the dated library management system was started in January 2020 and after several delays the new one should be implemented during next year. This will also change the way we operate. The

goal is to streamline manual tasks and develop services to meet these new challenges.

The Advocates Library holds a special place in the history of Scotland, and skilled staff and the wide ranging collections have supported the work of Advocates for centuries. Technology holds the key to the future but access to and the ability to find legal knowledge and information remains the most important consideration for those involved in the justice system.

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### Biography

**Sara Berry** is Head of the Advocates Library in Edinburgh. She is also a member of the LIM Editorial Board. Sara was brought up in Edinburgh and obtained her Postgraduate Diploma in Librarianship at Strathclyde University. She subsequently worked for Hertfordshire Library Service where her role included work with children and a grounding in reference enquiry services. After this she worked in the Information Research department of a London advertising agency located in Fleet Street near St Paul's Cathedral, and then moved to the library of a large London law firm based latterly at Canary Wharf. After several years she moved to another London law firm back in Fleet Street, before moving back to Edinburgh to work at the Advocates Library in 2018. Contact email: [sara.berry@advocates.org.uk](mailto:sara.berry@advocates.org.uk)

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## The Signet Library

**Abstract:** In this article James Hamilton, Research Principal at the Society of Writers to HM Signet in Edinburgh, describes the history of the Signet Library as it approaches its 300<sup>th</sup> anniversary. He writes about some of the changes that have taken place over those three centuries and he also mentions some of the challenges for the library as the nature of the legal profession has altered, not least those presented recently by the Covid-19 pandemic.

**Keywords:** law libraries; Signet Library; Scotland

### INTRODUCTION: ANNIVERSARIES IN 2022

For the Signet Library in Edinburgh, 2022 will mark both the 300<sup>th</sup> anniversary of its foundation as a collection and the 200<sup>th</sup> anniversary of the famous 'Palace of Books' on

the Royal Mile which is its home. The library and the building are both the creations of one of the world's oldest legal organisations, the Society of Writers to Her Majesty's Signet (or WS Society for short), and the building also serves as the WS Society's headquarters and as a centre for legal activity for lawyers of all kinds from