Chapter 6
Competition and the Development of Authorised Heritage Discourses in a Re-emergent Scottish Nation

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Introduction

In seeking to understand the nature and development of cultural resource management in the Britain, it is common to explore the form and nature of heritage legislation—that is, the specific drafting of legislative sections and their intentions, and how legislation develops and changes over time. These are valuable studies, frequently identifying and contextualising the key drivers (social, economic, intellectual and others) for change in the legislation and accompanying policy. In recent years we have also seen the emergence of the interdisciplinary field of *heritage studies*, investigating how government-initiated activities supported by official regulation create a particular type of "heritage" and heritage practice (see for example Sorenson and Carman 2009; Smith and Akagawa 2009; Labadi and Long 2010) and which explores how competing discourses between the "official" heritage and others are operationalised and experienced.

In heritage studies, there can be a simple view of the "official discourse". This sees the existence and use of legislation and policy, activities such as planning appeals, scheduled monument consent hearings, and public local inquiries, and the activities of heritage professionals, as *the* mechanisms by which the prevalent discourse—termed the *authorised heritage discourse* (AHD) (see Smith 2006, 2008)—takes effect. However, for those working in the context of an authorised heritage discourse, the world frequently does not work in the simple way that Smith and others suggest. Legislation and policy may be applied in significantly different ways depending on its context—politicians at local, regional and national level may make decisions which ignore or reinterpret legislation and policy, and many groups and individuals seek to influence politicians and heritage professionals directly or through levers such as direct pressure, lobbying companies or the media

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(see Cooper 2008). The prevalent discourse is also open to significant levels of influence through broader changes in political philosophy relating to social, economic and cultural activities (see Cooper 2010; Waterton 2010). While there has been a strong focus on competing discourses between the AHD and, for example, local community discourse about heritage, there is similar competition between heritage discourses and other discourses such as those arising from development and economic development activities.

Less well recognised and studied though is the existence of competitive discourse behaviour within the discipline itself in terms of the creation and replacement of AHDs. This can be seen on occasions, for example, between archaeological and building professionals where their casework overlaps, but it may also exist between senior non-heritage professionals and their heritage staff within the same organisation. The relationship between the professional civil servant and the heritage professional within the UK's state heritage organisations has rarely been the subject of study, perhaps because of its sensitivities and the vulnerability of the heritage professionals in such circumstances.

Overall, it seems to me that the creation, development and operation of an AHD—or the operation of competing AHDs at any one time—is a complicated subject but one worthy of study if we are to fully understand the nature of cultural resource management and its operation.

The various Ancient Monument Acts in Britain are of interest because the same primary legislation has been in force across England, Scotland and Wales for long periods of time (this contrasts with listed building legislation, for example, where Scotland and England/Wales have differing primary legislation). One might expect therefore that the legislation would be implemented in a uniform manner. However experience suggests that there are very significant variations in approach and emphasis between Scotland and England/Wales, both before and following the establishment of devolved governments in Scotland and Wales.

There are many possible reasons why might this be. As the nature of the sites or monuments being protected and their significance vary geographically, so differing approaches are adopted. Also where different organisations are responsible for implementing legislation and developing the policy by which legislation is operationalised, they may develop their own approaches and priorities. Given this, it seems reasonable to expect that broader cultural perceptions about heritage and its meaning within *particular nations, communities or geographical areas* will directly influence how legislation is *implemented* on a day-to-day basis even where this legislation is identical in form and original intention. This is perhaps a less monolithic and far more "permeable" view of how legislative frameworks are operated than is often reflected in texts about heritage legislation and heritage studies (see Cooper 2010, 150–52). This seems to me to be important though in terms of seeking to analyse and theorise the areas of activity which lie between such frameworks on the one hand and the reality of every day cultural resource management and its relationship to broader society on the other.

To explore these issues further, this paper looks at the subject of castle and tower-house restoration in Scotland. This subject has formed the most persistent and high

profile debate relating to the historic environment in the country over the past two decades and is fertile ground on which to see the workings of competitive discourse behaviour in action. At times this debate has been highly charged, has seen the use of passionate (indeed intemperate) language and wide public comment. There have been significant levels of criticism of the public sector heritage managers seeking to apply the relevant legislation and policy. This in turn has threatened to damage the credibility of cultural resource management as a whole. And yet over a similar period in England and Wales this subject has attracted relatively little public debate. This is despite the fact that the legislation, policies and general approaches are similar and that there are sites which exhibit reasonable similarities in each country.

The Historical Context in Britain

It is perhaps helpful at this point to travel back exactly a century. In 1912, a joint select committee of the House of Commons and the House of Lords was appointed at Westminster, London, to consider three proposed bills—the Ancient Monuments Consolidation and Amendment Bill, the Ancient Monuments Protection Bill and the Ancient Monuments Protection (no. 2) Bill (see HMSO 1912). These rival Bills were the culmination of an important debate in Britain over the protection of its ancient monuments and the acknowledged weaknesses in the existing protective legislation at that time (see, for example, Champion 1996).

The detailed transcripts provide a wealth of information which illustrate why the legislation came forward in the manner that it did and the issues which had led to the move to strengthen the legislation. The evidence given also showed that there were significantly differing views about the acceptability or otherwise of "restoration" and that the views being expressed were influenced to some degree at least by the nature of the surviving monuments and an underlying recognition of these differences in terms of the differing nations making up the United Kingdom. For this reason, it is worth looking at some of the evidence in detail.

Key witnesses appearing before the select committee included Charles Reed Peers, the Government's Inspector of Ancient Monuments. For Peers, the discussion focused on the weaknesses of the existing legislation, the need for some form of "preservation order" and also the financial consequences of protecting monuments. Peers was clear in his views stating that "Powers practically do not exist for preserving ancient monuments at the present time, the system being purely voluntary". He went on:

> …we have absolutely no power—as, for instance, in the case of Tattershall Castle, which happened last year—to intervene to save what is obviously a most important monuments, and it is perfectly clear that things will not get any better until the Acts are extended in that direction.

As so often has been the case in Britain over the last century, the amendment and strengthening of heritage legislation has given significant momentum by highly publicised cases where sites, monuments or buildings were threatened

or lost. In 1912 significant momentum for strengthening protection had come from the problems surrounding the protection of Tattershall Castle. This mid-fifteenth century brick-built castle in Lincolnshire, England was in private hands and in 1911 the owner announced his intention to sell the decorative stone chimney-pieces for transport to America. There were also rumours that the rest of the castle would follow in due course! Lord Curzon who subsequently rescued the site and gifted it to the nation was a key player in the move to strengthen the ancient monument legislation in 1913 (Mosley 1961).

The Joint Select Committee's broader discussions ranged across areas which will be unnervingly familiar to historic environment professionals and cultural resource managers a century later and makes for illuminating reading: what should the scope of preservation orders be? Would owners be disadvantaged were a site to be scheduled? If the State spend money on repairs to a historic structure, would it be appropriate that the owner could then sell the structure for financial gain? Was too much money being spent on the management of properties such as the Tower of London, thereby removing funds to preserve sites in private ownership? Should the State be able to purchase such sites?

In their deliberations, the Select Committee drew on a wide expertise including witnesses from the Office of Works, organisations such as the Society for the Protection of Ancient Buildings, landowners and architects. Key witnesses were the secretaries of the newly-formed Royal Commissions on Ancient Monuments which had been created in Scotland, Wales and England in 1908. Despite their stated purpose of undertaking survey work across Britain, the early minute books show that they were drawn into a range of advisory casework in their early years (but this reduced after creation of the Department of Ancient Monuments and Historic Buildings under the Ancient Monuments Consolidation and Amendment Act in 1913).

In the Select Committee there was a detailed discussion of the desirability or otherwise of restoring ancient buildings such as abbeys, churches and castles. The evidence given by the Secretary of the Royal Commission on Ancient Monuments in Wales and Monmouthshire, Mr Edward Owen sets the tone for this debate. Committee member Mark Sykes raised the permissive approach to restoration of castles in Germany and sought Owen's views on how the proposed legislation might work in this context. Owen raised concerns over the authenticity of restorations and the need to protect the surviving character of a ruin. In a telling exchange of views, Sykes asked:

> I want to have it quite clear. Suppose for example, there is a castle that could be restored to what it used to be like, and it was thought that it would be useful for educational purposes to have one sample castle to show people what a castle was like at a certain period, you would object to it being restored in that way. Would you even object to restoring one tower as an object lesson to people to give an idea of what a castle of the period was like?

Owen replied:

> Quite because I think the object lesson that would be given would be one that in itself be a very defective and unfortunate one. Take for instance Conway Castle. There is quite enough of Conway Castle at the present time to provide an object lesson to anybody who desires to know what an ancient castle was like, although Conway Castle is in itself a ruin.

But in order that somebody might have the benefit of seeing a perfectly—if I might use the term—brand new mediaeval castle, I should very strongly object to seeing one of the towers tampered with for that purpose. Indeed it would spoil the castle completely.

Later in this session Committee Member Mr Charles Price returned to the subject of restoration:

In restoring a building do not you also preserve the building in a better way than if it were left as it is, and simply putting in cement and such like things, to keep the walls together. Is there not a greater likelihood of the building being preserved, even as a ruin, through a restoration, than if you leave it just as it is, and simply cement the walls together?

Again Owen seeks to raise the issue of authenticity:

It all depends upon the length to which restoration is carried, and if the restoration alters the character of the building.

Price then turns to the case of the partly restored Dunkeld Cathedral [sic] in Scotland (restored by the Office of Works). Owen suggested that Wales did not have as many buildings of cathedral type and he noted the common practice of architects "recommending that an ancient church should be swept away. It has happened over and over again"; Asked if he approved of the restoration of St David's and Llandaff cathedrals in Wales, again Owen endeavoured to make the same point:

I do not know if I approve of it. It would be a question really of how the restoration would be carried out. If it was going to be a drastic restoration, such as the classical instance of St Albans, I am not quite sure that I would approve of it… where a church is roofless, how are you to know what kind of roof was on the original building, particularly where, as in Wales, we have very little architectural tradition and not records of medieval constructions or reconstructions.

Whilst the discussions about restoration itself are of great interest, it was also pertinent that Owen sought to contrast the surviving Welsh monuments with those in Scotland. This topic was picked up again by Alexander Curle, the Secretary to the Royal Commission in Scotland, who argued that there should be an Ancient Monument Board for Scotland because:

Scottish monuments differ essentially from English monuments, and we have monuments in Scotland not represented in England at all…. Our castles, as a rule, are of a different type. The social differences of life in Scotland during later medieval times were so rough and unsettled that the people adopted a type of building which is not represented in England so much—the small Border Keeps… We have a very much larger number of castles in Scotland to which the Bill is applicable than there are in England in proportion to our size.

This was a view that was reinforced by the architect Sir Robert Rowand Anderson, a highly experienced architect who had worked closely with amongst others, the 3rd Marquess of Bute, and had been involved in major restoration projects in Scotland such as at Iona Abbey and Dunblane Cathedral (McKinstry 1991). About Dunkeld Cathedral, Curle stated:

I believe that it has been well done, but the whole question of the advisability of restoring ancient buildings depends upon the man who is going to do it. It is not so much a question of principle. One knows that in almost 99 cases out of 100 restoration has spelt ruination;

the thing has been spoilt. The principle may be wise enough… I think there is many a castle that would stand restoration if it was done by competent hands. On the other hand there are many buildings in England too that have suffered sorely from the work of eminent architects—cathedrals that have lost all their charm and romance externally.

The Select Committee report is a mine of information for those interested in understanding the development of the philosophy of historic environment management in Britain as well as the parallel development of the legislative framework. For the purposes of this paper however the key point arising out of the discussion was the subject of restoration: was it acceptable at all; when was it acceptable; what level of intervention was acceptable and who should decide? A separate but linked issue was that of the nature of structural monuments and whether national distinctiveness might lead to a different approach in the different countries which made up Britain.

Castles and Tower Houses in Scotland

Given both the problem of definition and also of survival, it is difficult to establish with confidence how many castle and tower house sites once existed in Scotland. Geoffrey Stell has brought together various early and modern sources who seek to calculate these and the figures vary from under one thousand to over two-and-a-half thousand (Stell 2011). Of the sites that we know currently exist there are some 953 protected castle and related sites in Scotland, comprising 186 scheduled monuments, 483 listed buildings and 284 structures both scheduled and listed.

One problem both for calculation of numbers and also for the broader restoration debate is that there is a tendency for the term "castle" to be seen as referring to a clearly defined and singular entity but, as is commonly understood within the discipline, "castle" is frequently used as general term which brings together a very wide range of different types of sites, with different forms and intentions, and with significantly different periods of usage. In Scotland these can vary from motte-and-bailey type castles from the twelfth century through stone-built tower houses of the fifteenth century and later, medieval and later hall houses, and can even include eighteenth and nineteenth century houses. There is also a wide variation in terms of the nature, scale, purpose and history of these structures with some long-lived sites combining a range of defensive and other structures showing significant development and change over time.

While some sites exhibit continuous occupation and use, many others fell out of use at some time in the past. The reasons for abandonment are often complex and each site needs to be studied in its own right. There are though some common currents. Abandonment may have been the result of war or the need to move to sites with better strategic advantage. By the late seventeenth century broader changes of taste and convenience led to many earlier buildings being abandoned in favour of newly built country houses. In Scotland some structures, such as at Dundas Castle to the north of Edinburgh, were modernised or incorporated into the new houses, some were re-used

Fig. 6.1 Kinnaird Head, Fraserburgh (copyright, Malcolm A. Cooper)

as farm buildings, such as at Collairnie in Fife, some such as at Burghie Castle in Moray were used as features in the creation of wider romantic landscapes, and some found extraordinary new uses such as at Kinnaird Head, Fraserburgh, Aberdeenshire, where the tower house was used for a lighthouse (Fig. 6.1).

Reconstruction, Restoration and Adaptation

In the intervening century since the 1912 Select Committee, the debate about restoration has continued both within the discipline and more broadly. We have seen international charters such as the Venice and Burra charters specifically refer to restoration and provide definitions and guiding principles for such work. The Burra Charter makes a helpful distinction between the terms "reconstruction", "restoration" and "adaptation".

Reconstruction means returning a place as nearly as possible to a known state and is distinguished by the introduction of materials (new or old) into the fabric. This is not to be confused with either recreation or conjectural reconstruction, which are outside of the scope of this charter.

Fig. 6.2 Fenton Tower, East
Lothian (copyright, Malcolm
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Restoration means returning the existing fabric of a place to a known earlier state
by removing accretions or by reassembling existing components without the
introduction of new material.

Adaptation means modifying a place to suit proposed compatible uses.

In the last century or so there have been a large number of restoration, recon-
struction and adaptation projects in Scotland. Cases involving castles and, in
particular, tower houses have been common with a significant number of projects
taken through to completion (see Walker 1984, 2000; Fawcett and Rutherford
2011). Between 1953 and 1985 Historic Scotland's predecessors grant-aided 53
restoration cases (Walker 1985) and a further 20 structures were brought back
into use without drawing on public funds. Between 1990 and 2001 Historic
Scotland grant-aided the restoration/re-use of a further 13 sites at a cost of c.
GBP2.5m and subsequent to this offered a further c.GBP1m to four sites which
were under consideration. The most recent successful restoration has been that of
Fenton Tower in the Scottish Borders (Fig. 6.2).

There is one case however which perhaps is iconic in terms of characterising
the challenges for all of those seeking to bring a ruined castle back into beneficial
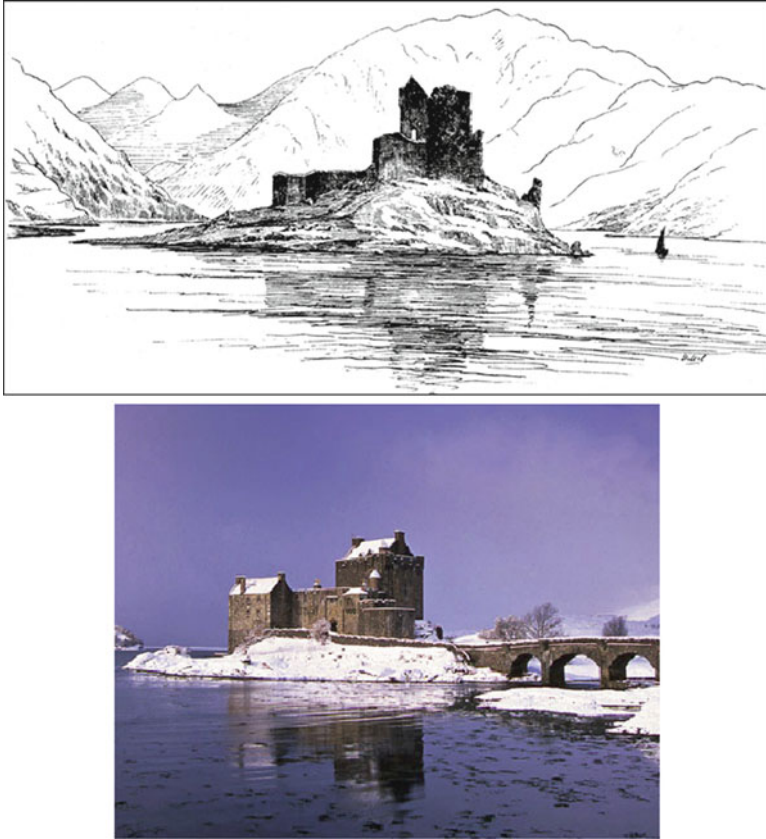
Fig. 6.3 Eilian Donan Castle prior to restoration (*top image*; from McGibbon and Ross 1889, 84) and after restoration (*bottom image* copyright Michael Macgregor)

use—this is Eilean Donan Castle on the west coast of Scotland near to Dornie and the Isle of Skye. This long-lived site saw the creation in the thirteenth century of a fortress which underwent significant modifications in fifteenth to seventeenth centuries. In 1719 the castle was blown up by three navy frigates prior to the Battle of Glenshiel, leaving the site damaged beyond use (see Fig. 6.3).

However by the late nineteenth and early twentieth centuries the Romantic revival and the re-celticisation of Scotland saw a renewed interest in such buildings and a desire to reconnect with Scottish history through reoccupation of key buildings with long-lived family connections (Anderson 2011, 284). John MacRea Gilstrap purchased the castle in 1912 and set about reconstructing the castle. The rebuilding was, however, undertaken by a mason, Farquhar Macrae who reconstructed the castle to a form that he "saw in a dream", albeit the architect involved in the project, George Mackie Watson, had worked with Sir Robert Rowand Anderson for 19 years.

This case raised significant criticism at the time and subsequently in terms of its authenticity (Anderson 2011, 293–6) and yet the castle in its modern form it is familiar to many as it is frequently used as an iconic image for Scotland as a tourist destination.

Issues Affecting Discussions of Restoration and Adaptive Reuse

As we have seen earlier, the complex history often exhibited by these sites—including their original nature and development and their subsequent adaptation, abandonment and/or reuse—undoubtedly adds to the challenges when seeking to arrive at appropriate decisions about their future. Some of the issues which become apparent when managing them are identified below and will be recognised by heritage managers dealing with such cases:

(i) *The use of the term "castle"*. As noted above, one issue for the restoration debate relates to the use of "castle" as a generic term. Discussions about castle restoration in Scotland—particularly those in the press and in political debates—tend to treat all sites as simple entities for which the issues around restoration are both straightforward and identical from site to site. However, the considerations relating to restoration are likely to vary depending on the nature, date, form, history and significance of a site.

(ii) *The intentions of scheduling*. The second issue relates to the nature of the ownership and statutory protection given to such sites in the past and the differing intentions of these. Returning to the 1912 Select Committee momentarily, one of the intentions of the proposed new legislation was to broaden the definition of ancient monument to allow medieval structural sites to fall within its scope (such sites had been excluded from the earlier legislation). Key to the legislation though was the idea that such sites could not form a permanent residence (other than as the home of a curator). Also the general assumption underlying this and subsequent ancient monument protection was that these sites would be protected and maintained "as they had come down to us" (see for example, Historic Scotland 2001).

(iii) *The intentions of listing*. However, as the twentieth century progressed there was recognition that some important structures were in permanent residential use and therefore protection through the ancient monuments legislation was not possible. This led to the introduction of a separate legislative scheme in the middle of the twentieth century for the protection of such buildings as listed buildings (see Mays 2009; Saint 1996; Walker 1994). The functioning of the listed building legislation tended to be more flexible in terms of what we would now call adaptive re-use, with change more likely to be allowed to take place in order to keep a building in beneficial use. This has caused issues in that in seemingly similar sites, in some cases the presumption appears to be towards "preservation as found" whereas with others there is a presumption that adaptive re-use would be acceptable in principle if historical merit was preserved.

(iv) *The problem of dual designations*. Given the above and the different dates of the implementation of the monuments and buildings legislation, the current situation is that some medieval structures might be scheduled as ancient monuments, other occupied or unoccupied buildings might be designated as listed buildings, and some sites might be both scheduled and listed (in which case the scheduling legislation takes precedence and certain part of the listed building legislation is dis-applied). This has led to some difficulties in understanding and transparency, particularly for the broader public, where structures which might appear similar in nature and significance had the potential to be treated very differently. Why was it, for example, that some sites gained permission for restoration and might also attract grant-aid for doing so, whereas others which might appear to the untrained eye to be very similar were seen as inappropriate for restoration and grant-aid was only offered for consolidation or not at all? This problem increases the vulnerability of heritage bodies to the accusation of treating applications differently on grounds other than heritage legislation, policy and best-practice. It also raises the spectre that if a heritage body, or its political masters, wish to change an approach to a designated site for non-heritage-related reasons, they can simply pursue a change to the site's designation to enable this.

(v) *State Owned Properties and Guardianship properties.*

(a) A further opportunity for confusion lies with the fact that a number of historic castle sites were either owned by the nation (often due to their role as seats of local administration which became courts or because they were sites with an ongoing military presence) or had been taken into guardianship by the State at some stage in their history. Two potential issues arise here. First, in days of pressure on public finances and the increasing demand on heritage bodies to achieve income from their properties in care, there is always the potential for arguments to be made that ownership should be surrendered to the private sector who might be able to both "reduce the burden of their running costs to the public purse" and also to achieve higher levels of income through more investment (which in some cases may mean redevelopment). This argument is commonly used by those supporting proposals for the restoration of scheduled and guardianship sites.

(b) The second issue is that, in the case of guardianship, the ownership of the site remains with the original owner but the State takes over the control and management of the site. The problem here is that while the site may have been voluntarily put in guardianship by an owner, it is possible that their descendants may wish to seek to reverse this decision and regain control of the site. Similarly, as the original owner or their descendants can sell the site to a third party, it may be that in these circumstances a new owner might wish to regain control of the site for their own purposes. Whilst the ancient monument legislation does contain provisions for the rescinding of guardianship, its intention had not perhaps been to allow new owners of a site to recover it for their own purposes, benefitting from the state investment which may amount in some cases to many hundreds of thousands of pounds. It does however open the way however for significant levels of political lobbying to this end.

Casework and Authorised Heritage Discourses

There have been a number of high-profile cases that have been discussed widely in Scotland over the past two decades. Of these two in particular have attracted considerable attention: the west coast site, Castle Tioram on the Moidart peninsula and Rowallan Castle in East Ayrshire (see Figs. 6.4 and 6.5 below). Both have been the subject of schemes for "restoration" and re-use and both have been the subject of public local inquiries.

Both sites are scheduled as ancient monuments under the provisions of the Ancient Monuments and Archaeological Areas Act 1979. The policy context within which these cases were considered was provided by the international charters and by Scottish Government policy. In 2001 Historic Scotland published *The Conservation of Architectural Ancient Monuments: Guidance on Principles* (Historic Scotland 2011) which gave guidance to potential applicants both on conservation approaches and on restoration. This set out the presumption that:

> In general, restoration rather than conservation would not be considered as acceptable for scheduled monuments that are regarded as the most outstanding examples of their kind or as being particularly representative of their type. There are many monuments that are so outstandingly important for the evidence they embody that nothing should be done which might compromise the integrity of that evidence.

> (Historic Scotland 2001, 51)

More recently, the policy framework has changed to the *Scottish Historic Environment Policy*. Here again we see a general conserve-as-found philosophy:

> Works on scheduled monuments should therefore **normally** be the minimum level of intervention that is consistent with conserving what is culturally significant in a monument.'

> (Historic Scotland 2011, 37, emphasis contained in original document)

Fig. 6.4 Castle Tioram, Moidart (copyright, Malcolm A. Cooper)

Fig. 6.5 Rowallan Castle, East Ayrshire (copyright, Malcolm A. Cooper)

This blanket provision is however tempered to some degree in the policy document:

> Extensive intervention will only be allowed where it is clearly necessary to secure the longer-term preservation of the monument, or where it will clearly generate public benefits of national importance which outweigh the impact on the national cultural significance of the monument. Such public benefits could come from, for example, interventions which make public access to scheduled monuments easier, or assist public understanding, or will produce economic benefits once the works are completed.
>
> (Historic Scotland 2011, 37)

Like Eilian Donan, Castle Tioram has been a ruined site since the early eighteenth century. Despite the outcome of the public inquiry and a later assessment of the site, the owner has continued to press his case to be allowed to restore the site and has gained very significant levels of support not only within Scotland but more widely from the global Scottish diaspora. The argument that the restoration will provide a renewed focus for the Clan Ranald McDonald has been well received by many and at times Historic Scotland has been labelled as "Hannoverian" in not supporting such proposals (seeking to tap into the strong feelings of national identity and feelings of oppression associated with the Jacobite claim to the throne and the associated historical events in Scotland before and after Culloden in 1716). As Mary Miers' charged narrative states:

> Stirring and impossibly romantic, the ruin of Tioram stands as a potent symbol of the power struggles and political differences that have fuelled emotions since the Middle Ages. Today it has become the cause celebre of a new brand of warfare—that waged between opposing factions of the conservation lobby. The debate centres around the owner Lex Brown's thwarted application to restore and reinhabit the castle; widely supported plans by A.R.P. Lorimer and Assocs were rejected in 2002, after a notorious public enquiry [sic]
>
> (Miers 2008, 112–13)

In the case of Rowallan Castle, a multi-period site, there is an additional complexity in that the site is not only a scheduled monument but is also one of the 345 historic properties in the guardianship of Historic Scotland (on behalf of Scottish Ministers). Unlike Tioram, Rowallan is a roofed structure but here again there has been a detailed case made for bringing the site back into residential use by the owner (who wants the Scottish Government to surrender guardianship under s.14 of the Ancient Monuments and Archaeological Areas Act 1979). The public local inquiry was of interest in that it was not only the first test of Scottish Ministers' policies set out in the *Scottish Historic Environment Policy* but it also explored whether, if Ministers' accepted the proposals for scheduled monument consent, they would therefore have to all intents and purposes have agreed to surrender the guardianship site under s.14 (3)(a) of the Act (that is, that "satisfactory arrangements have been made for ensuring its [the monuments] preservation after termination of the guardianship").

Despite the very clear decisions at public local inquiry, public and media pressure continues for "compromises" to be found and one might anticipate continuing pressure being placed on Historic Scotland to change its stance.

Regulation or Enabling

Historic Scotland examines some 3,000 consent cases every year involving historic environment assets. Almost without exception their work goes forward effectively and without controversy. However the two high-profile cases discussed above have nonetheless caused significant reputational damage for the agency despite its long track record of supporting and in some cases grant-aiding, restoration/re-use projects (for examples see Fawcett and Rutherford 2011 and Walker 2011).

The problem that a small number of politically-charged cases can cause for a regulatory body is not uncommon. The subject has formed a key part of the ongoing research programme undertaken by Malcolm Sparrow at Harvard University (1994, 2000, 2008). Sparrow has identified that successful regulatory bodies across the world have moved towards "problem-solving regulation" techniques where the agencies adopt a range of strategies including:

(i)   Identifying key repeating problem areas in their overall workload and identifying new mechanisms for handling them as a group.
(ii) Seeking to "get upstream" of the problem. That is, to anticipate problems and resolve them before they occur rather than respond to them after they occur.
(iii) To work on a multi-agency basis to tackle key problem areas.
(iv) To seek to redefine their regulatory activities in a way that allows them to create a clear and understandable media and political positioning.

Historic Scotland's Inspectorate adopted this problem-solving approach in a number of key areas of its regulatory work including that of castle restoration/re-use (Cooper 2010, 2011). Rather than waiting for applications to arrive it set up the

Scottish Castles Initiative which allowed it to use it expertise to support and guide applicants to the acceptable sites for restoration and to adopt the right techniques and levels of expertise in bringing forward a project. The initiative included:

- The compilation of the Castles Conservation Register which identifies castle sites where restoration/reuse would be acceptable in principle
- The production of a good-practice guide for castle restoration including a range of case studies and contacts
- The production of a historic of castle restoration monograph with a focus on the role of the state in such projects
- The identification of an exemplary restoration/re-use project
- In selecting exemplar sites for the *Castles Conservation Register*, Historic Scotland identified a series of criteria it applied in determining which sites might be open to restoration/reuse in principle. The main consideration is the impact of any proposals on the cultural significance of the site and within this the considerations are:

  - Is the cultural significance of the castle/tower so important that anything beyond works to preserve it in its current condition should be regarded as unacceptable?
  - Can it be restored in a way that would preserve the important values of the castle/tower for future generations?
  - Can it be restored without detracting from what is important about the castle/tower?
  - If the changes could detract from the cultural significance of the castle or tower, would the public benefits of such changes be outweighed by increased access or understanding, or of wider economic benefits?
  - Is the castle/tower complete enough, or sufficiently well documented, for it to be restored without speculation about its original form?
  - Can the castle/tower be restored without major alterations or additions that would affect its character?
  - Is the castle/tower currently without a function such as a public amenity or a visitor attraction?
  - What are the current and foreseeable risks to the condition of castle/tower, and what is the possibility of alternative approaches—ones that would result in less change to the castle/tower—emerging within the foreseeable future?

Within this initiative such cases were coordinated across the area-based advice teams and a range of training ensured a consistent approach is adopted in all cases. The initiative was taken forward under the guidance of a reference group made up of castle-owners, architects and other stakeholders to ensure that the project is carefully targeted, helpful and understood more widely in Scotland.

There is no doubt that this project, and a number of other "upstream" projects, have improved the relationship between Historic Scotland and its key regulatory customers and stakeholders, despite the issues surrounding the two high profile cases referred to above.

Conclusions

What can we learn from these two cases and how are we best to understand why they have become such *cause-célèbres*? While I am certain that opinions will differ, there are a number of points that seem to me to be relevant:

(i) It seems a realistic and defensible position that not all structural monuments should be restored/re-used particularly where such proposals would significantly reduce its cultural significance.

(ii) However, there will be very real difficulties faced by regulatory bodies where international charters, and domestic legislation and policy clearly identify one desired outcome but public pressure is mobilised to seek a different outcome. However, this alone does not seem sufficient to explain the situation relating to castle restoration/re-use in Scotland.

(iii) There seems little doubt that an important factor for many in assessing the cultural significance of castle and tower houses in Scotland relates to the Scottish clans (Coventry 2008), to particular events in Scottish history, and in particular the very significant events surrounding the Jacobite risings, seeking to reclaim the Scottish throne. This factor leads to the likelihood of a far higher level of interest and passionate debate than is exhibited in England for example and this seems to have been exacerbated both by devolution and by the ongoing debate on full Scottish independence both of which have brought issues of national identity to the fore. Here we enter the broader philosophical debates relating to heritage, identity and nationalism which might be expected to become highly visible and more charged as issues of independence and national autonomy become increasingly high-profile in Scotland (Ashworth et al. 2007; McCrone 1998). The vote on full Scottish independence is due to take place in 1914 and it is perhaps no co-incidence that this year sees the 700th anniversary of Bannockburn.

(iv) The close identification of particular sites with particular families or clans leads to an increasingly strong desire for these families to determine their future. In this context though, the current legislative and policy frameworks are not well placed to respond to the desire for restoration/re-use where strongly differing views are held.

(v) The Scottish diaspora and the renewed interest in Scotland as a "homeland" has the potential to raise significantly the international interest in such cases and the symbolic cultural importance of individual sites with perceived historical family connections.

(vi) While it is clear that there are people both across Scotland and locally who may be uncomfortable with restoration/re-use of such sites, and would prefer to see them conserved as found, there is a tendency for these voices to be less evident in such a charged context.

(vii) We may also be seeing differences in philosophy between those cultural resource managers trained as historic building professionals and those trained as archaeologists—the latter being more likely to support preservation as found and the former seeing adaptive reuse as a more acceptable approach.

The case of castle restoration in Scotland also provides an interesting backcloth for the study of both the development of an AHD and the complex set of issues relating to its subsequent maintenance, modification and ultimately its replacement. These issues relate to how such discourses develop, how they come under pressure both from within and without the governmental organisations responsible for them, what mechanisms might be used to challenge, undermine and replace existing AHDs (Cooper 2008), and for what purposes and ends such processes might be used. At the time of writing, the authorised heritage discourse relating to the restoration/reuse of structural scheduled monuments in Scotland is under severe pressure.

Looking at this more broadly, we can see that the application of legislation and policy in cultural resource management exists and is operated in a highly dynamic context. Specific cases, broader political and social currents, and changes in philosophy within the profession itself mean that consistency of approach is hard to achieve at certain time and a migration of approach can be seen. This leads eventually to more substantive changes in the legislation and policy itself as it becomes increasingly out-of-step with society's broader wishes.

There is also a strong suggestion that we are seeing strong competition for supremacy between competing authorised heritage discourses within Historic Scotland, between Historic Scotland and other heritage bodies, and between Historic Scotland and wider Government. In the context of the political philosophy of localism currently being espoused by both the United Kingdom and Scottish governments, and the strong desire to reduce regulation and encourage economic growth we may well see significant changes in the regulatory framework (Cooper 2010). As we saw in the 1912 Select Committee discussions, a *cause célèbres* has often been a key factor in the strengthening of heritage legislation. It seems to me that the opposite may well also be true—that *cause célèbres* can also lead to changes which weaken the protective framework.

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