THE GENESIS OF PROFESSIONAL ORGANIZATION IN SCOTLAND: 
A CONTEXTUAL ANALYSIS*

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Abstract

The early organization of accountants in Scotland has been explained as a consequence of the separate Scottish legal system, the rise of industrial society and as an attempt to achieve social closure and collective mobility. This paper reports on an historical investigation conducted within a critical conflict paradigm which examined occupational organization in its contemporary socioeconomic and political contexts. It is shown that professional formation in Edinburgh and Glasgow in 1853 was an organizational response to the activities of a powerful group of London merchants whose demands for law reform were founded on the dominant economic philosophy of mid-Victorian Britain and whose proposals threatened the interests of accountants in Scotland. Further, a linkage between the dynamics of professional organization in Scotland and subsequent developments in England is provided.

The causes of the formation of the first modern organizations of professional accountants which took place in Scotland in 1853 are the focus of the present analysis. It is contended that the existing explanations offered for the emergence of the Society of Accountants in Edinburgh (SAE) and the Institute of Accountants and Actuaries in Glasgow (IAAG) 17 years before the first organization of accountants in England, are either misdirected, speculative or generalized.

In part, such deficiencies derive from the insular, teleological and evolutionary approaches of traditional accounting history recently questioned by Miller & Napier (1993). As an alternative, Miller & Napier advocate a genealogical approach to historical investigation which identifies the interplay of the "multiple and dispersed surfaces of emergence" of accounting phenomena (p. 633), assumes permeable disciplinary frontiers and examines "the outcomes of the past, rather than a quest for the origins of the present" (p. 631). Such a modus operandi has a potentially revelational impact on current understandings of the emergence of the accountancy profession (Loft, 1986) and the structure of accounting practice (Walker, 1993).

The conventional explanations for professional formation in Scotland suffer from such a decontextualized approach to the processes and motivations underlying professionalization. In particular, the nature of the contemporary social structure and political discourse have not featured significantly in the literature. Yet, as Willmott has rightly stated, "the organization of the profession cannot be adequately understood independently of an appreciation of the political, economic and legal circumstances..."

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that have supported and constrained its development" (1986, p. 556).

It has been shown recently that the success of the post-formation closure practices adopted by the Scottish chartered societies during the nineteenth century can be understood only in the context of the underlying socioeconomic and political factors which sustained professional monopoly. In particular, it depended on the articulation of self-interested objectives through the medium of prevailing ideologies in support of occupational claims (Walker, 1991, pp. 276-279). The tendency to adopt a piecemeal approach to the historical investigation of the institutionalization of the accountancy profession in Scotland has resulted in the neglect of vital source material and a consequent inability to provide compelling explanations of why accountants north of the border organized earlier than their English counterparts.

The significance of professionalization in Scotland

The predecessor organizations of The Institute of Chartered Accountants of Scotland have attracted disproportionate attention in the professionalization literature (see Lee, 1991). Interest was engendered initially by the reputation of the Edinburgh and Glasgow societies as the first organizations of professional accountants. However, the nature of professional organization in Scotland is of a much broader import which transcends its antiquarian novelty. It is contestable that, in the following ways, events in 1853 had a formative impact on the organization of the accountancy profession outside Scotland as the successful professionalization project of accountants north of the border was emulated elsewhere.

The locally structured societies of Edinburgh and Glasgow were to be mirrored in the predecessor organizations of the ICAEW (in Liverpool and London (1870), Manchester (1871) and Sheffield (1877)). The exclusion from the Scottish societies of those not engaged in public practice and the equating of public practice with professional accountancy was imported by the associations later formed in England (Howitt, 1966, pp. 18-25), and effectively created a pool of accountants with employee status who would later form separate competitive societies and thereby create the fragmented configuration of the British profession (Robson & Cooper, 1990, pp. 380-382; Edwards, 1989, p. 277). The acquisition of charters of incorporation and the invention in Scotland of the "chartered accountant" with the requisite status enhancing credentials of "CA" became the quest of the professional organizations which were established in England and Ireland during the 1870s and 1880s (Howitt, 1966, p. 5; Robinson, 1964) and became the cause of much internecine strife (Walker, 1991). Furthermore, as will be shown later, once the explanation for professional formation in Scotland is disclosed, new insights into organizational developments in England are revealed.

A CRITICAL-CONFLICT APPROACH TO THE STUDY OF PROFESSIONAL ORGANIZATION

The orthodox structural-functionalist framework for the analysis of professional organizations in which institutionalization was perceived as the first attribute in the acquisition of a catalogue of discriminating traits (Greenwood, 1957; Caplow, 1954; Wilensky, 1964) has been largely displaced. Recent commentators have recognized that explanations for professional formation founded on macro theories of group behaviour (Durkheim, 1957) or generalized abstractions based on the collective experience of professional groups (Carr-Saunders & Wilson, 1933; Millerson, 1964) fail to accommodate the multiplicity of professional experiences given the peculiar occupational, historical and spatial contexts in which organization took place (see Robson & Cooper, 1990, pp. 367-379). As Saks commented, the traditional taxonomic perspective "was obscuring the social and historical conditions under which occupational groups became professions — including the power
struggles involved in the process of professionalisation" (1983, p. 2).

The limitations of functionalist analysis encouraged the development of a critical-conflict oriented approach to the study of professional behaviour and organization founded particularly on Weiberian concepts of social closure (see, for example, Parkin, 1979; Murphy, 1988). Critical research indicates that professional formation is a sociopolitical process which may be motivated by the desire for economic rewards and occupational ascendency. Foremost among the revisionist writers of the 1970s was Larson (1977) who considered that professional organization comprised an integral part of attempts by an occupation to define and control the market for services and to achieve the collective social mobility of practitioners (pp. 66-78): "the professional project is an organizational project: it organizes the production of producers and the transaction of services for a market; it tends to privilege organizational units in the system of stratification; it works through, and culminates in, distinctive organizations — the professional school and the professional association" (p. 74).

Critical writers have increasingly recognized that professionalism is most usefully investigated at the level of particular occupations (Freidson, 1983; Parry & Parry, 1977). Collins has asserted that one reason why the sociology of professions is currently being revitalized is the emphasis on "historical variation" (1990a, p. 14) and that the investigation of the emergence of specific occupational groups offers the prospect of the development of broad multi-dimensional theories of professions which are grounded in historical comparisons: "all professions do not go through the same pathways, nor do they arrive at the same outcomes. We have instead a kind of family resemblance among different professions and current work is concerned with charting those multiple paths" (p. 15). The emphasis on historical comparisons necessarily involves an examination of "external dynamics" (Robson & Cooper, 1990, p. 374) — locating professionalization in the context of contemporary socioeconomic and political developments and utilizing an array of pertinent primary and secondary sources (Davies, 1983, p. 182; Jarausch & Cocks, 1990, p. 4).

Some commentators have also recognized the potential offered by conflict theory as a paradigm for the analysis of the behaviour of professional organizations (Collins, 1975, pp. 340-346; 1990b). Though usually applied to the analysis of macro-collectivities such as social classes (as in the work of Marx, Weber and Dahrendorf, for example) and states (see Collins, 1975, pp. 56-61; Rex, 1981, pp. 75-101) conflict models of social interaction may also be utilized to examine meso-collectivities such as occupations and allied institutions.

Hostility between collectivities may be precipitated when established market or property relationships are challenged by a group seeking material advantage or when traditional authority structures are threatened (ibid., p. 27; Ncald, 1972, pp. 7-9). In conflictual encounters between collectivities the hostile groups engage in a process of political bargaining in an attempt to achieve desired outcomes. Ultimately, resolution may be achieved by violent means though the initial stages of conflict are usually characterized by discourse involving claims and counterclaims founded on pertinent legitimating ideologies (Rex, 1981, p. 14). Arguments are directed at internal constituents, opponents, potential supporters, opinion formers and actors within those institutions which may act as a forum for deliberation in the dispute.

Van Doorn asserted that "it is an accepted fact that conflict creates associations and increases the internal cohesion of social systems" (1966, p. 124). As applied to the story of professional formation contained in this paper, conflict theory provides a number of important insights. Conflictual models of stratification reveal that the outcome of encounters between collectivities is largely dependent on the ability of the combatants to mobilize their capabilities, marshall their resources and engage in concerted political action (Collins, 1975, pp. 60-61; Rex, 1981, pp. 90-92). A
number of imperatives may be noted. Formal organization is essential for effective mobilization, the encouragement of internal allegiances and for the development of group consciousness. A collectivity remains passive until it becomes organized; thereafter its energy potential is transformed from latent and static to active and kinetic (Etzioni, 1968, pp. 103-104). For the collectivity engaged in macroscopic political contest institutionalization provides a framework for the emergence of group cohesion and control.

The degree of motivation towards participation in conflict and the development of group consciousness is also enhanced by the existence of articulate spokespersons, leadership, normative bonds between group members and the identification of a common opponent. Organized collectivities also augment their resources in conflict situations by mobilizing the support of other groups outside their formal memberships. Appeals to unifying and prevailing ideologies encourage internal cohesion and consciousness and also reveal the dispute as being more than privatized (Neale, 1972, pp. 9-10).

Studying professions as organized collectivities with the capacity to engage in conflict also suggests the redundancy of the attribute-trait approach with its narrow, insular focus and excessive emphasis on certain rigidly defined perceptions of professionalism. Turner and Hodge, for example, advocated the development of a broader analytical framework in which occupations rather than professions alone could be compared and contended that "in setting out to examine the crystallization and operation of occupational organization . . . it is necessary to consider the form of organization, the ideologies advanced, and the activities carried out, and to attempt to relate these to the wider social structure" (Turner & Hodge, 1970, pp. 35-36).

A conflict-centred approach to the study of occupational groups was advanced by Krause (1971) whose analysis combined elements of Weber-derived pluralism and Marxian concepts of class consciousness. Societies are characterized by the struggle between different interest groups for power and rewards. The effective advancement or protection of collective interests in the political arena is dependent on a developed occupational consciousness — "a code word for the degree to which an occupational group is fighting as a group in its own interest" (p. 88). Occupational consciousness is strengthened by organization (as a profession or trades union, for example) and adherence to unifying, articulated ideologies. Ideologies which comprise "texts, theories, doctrines, phrases, or concepts which are proposed by an interest group (proponent) with a target group in mind" (p. 89). Group ideologies are changed to accommodate new objectives or to react to competitive ideologies and may be developed in order to encourage "cross-occupational complexes" or alliances with other groups in order to assist the achievement of a mutual interest (pp. 88-93).

The approach taken in this paper is to investigate the formation of occupational organizations within a critical-conflict based analytical framework. The emphasis placed by critical writers on the extent to which professions seek market control and are engaged in the pursuit of their economic self-interest explains why Scottish accountants were motivated to organize in 1853. Conflict theory as applied to collectivities provides insights into the circumstances which compelled institutionalization; how the resources and strategies employed by a threatened occupational group were utilized; and, how the organizations of accountants which were formed in Scotland in 1853 to defend job monopolies were moulded by encounters with hostile outsiders. Further, the paper seeks to accommodate the demands of the "post-revisionist" sociologists of the professions for historical investigations of a rigorous, contextual character. The latter is largely absent from prevailing analyses of the emergence of organizations of accountants in Scotland.
EXPLANATIONS FOR PROFESSIONAL ORGANIZATION IN SCOTLAND

Existing explanations for the formation of the institutes of accountants in Edinburgh and Glasgow in 1853 are founded on one or more of three primary phenomena. Firstly, early professionalization in Scotland is perceived as a symptom of the differences between the English and Scottish systems of jurisprudence and legal institutions, particularly in respect of the law of bankruptcy. Secondly, organization was grounded in the development and maturation of an urban-industrial society and the increased demand for accounting labour which was engendered by the expansion of capitalist enterprise. Thirdly, professional formation in Scotland was induced by the need for accountancy practitioners to achieve social closure and collective social mobility.

Brown's (1905) account of the formation of the SAE and IAAG falls into the first of the aforementioned categories. Brown contended that the background to the organization of the profession in Scotland was the difference between Scottish and English law which encouraged the early recognition of accountancy as a separate occupation north of the border (p. 232). Although the specific causes of professional organization were not addressed directly, Brown's detailed (though insular) description of events includes a recognition that, in Glasgow at least, proposed changes to the Scots law of bankruptcy was one reason for societal formation in that city in 1853 (pp. 203–211).

Brown's account of professional organization in Scotland substantially coloured subsequent analyses such as those of: Littleton (1933, p. 286) who provided a more detailed narrative of the importance of the Scottish bankruptcy statutes in creating work for accountants; Carr-Saunders & Wilson (1933, pp. 209–210); ICAS (1954, pp. 20–24); Jones (1981, pp. 79–83) and Parker (1986, pp. 14–20).

Stacey (1954) also recognized the potential significance of bankruptcy law as a causal factor in the development of the profession of accountancy in Scotland and, like Brown, noted that changes in the law in 1853 were heavily discussed by the newly formed societies in Edinburgh and Glasgow (p. 22). However, Stacey also drew attention to the economic circumstances in which the organization of the profession in Britain took place. The vast expansion of trade, transportation, manufacturing and financial institutions during the first half of the nineteenth century increased the demand for the services of accountants as bankruptcy practitioners, auditors and as financial and cost accountants: “no wonder that some three associations were formed in Scotland, quickly in succession at the commencement of the second half of the nineteenth century” (p. 20).

Stewart's (1975, 1977) explanations for the early professionalization of accountants in Scotland also integrated the economic determinist and differential legal system approaches. The vast expansion of industrial and financial activity required the services of skilled accountants by the mid-nineteenth century. The new industrial capitalism produced economic failures as well as successes and in Scotland bankruptcies were administered primarily by accountants, unlike the situation in England. Stewart's commentary draws attention to the need to consider the long-term economic and legal background to professional organization (1975, p. 113). However, like Stacey, he failed to identify any specific developments in the contemporary context which induced institutionalization in 1853 and concluded that “the movement was entirely spontaneous. There

1 The difficulties inherent in identifying a nebulous causal link between industrialization and the emergence of specific qualifying associations was recognized by Millerson (1964) who contended that “To expound reasons for formation in terms of broad general factors is too approximate. It is as unrealistic as any attempt to suggest that the discovery of the wheel 'caused' the invention of the steam locomotive” (p. 51).
was no legislative pressure nor even any official encouragement" (1977, p. 8).

An alternative analysis of professional formation in Scotland was offered by Macdonald in 1984. Macdonald applied the concepts of collective social mobility and social closure to Stewart's collective biography of Scottish CAs to 1879 in order to explain the circumstances which induced their organization. Macdonald hypothesized that the process of professionalization differed in Edinburgh and Glasgow. In Edinburgh, the respectable social origins of accountants and their close proximity to the landed proprietor-lawyer nexus in local society conferred a high occupational status on a large proportion of accountancy practitioners. This, and the contents of the Edinburgh Institute's charter application of 1854 suggest that "an important impetus came from the need to establish both equality with and distinctiveness from the legal profession" (Macdonald, 1984, p. 185) by the institution of a separate professional organization of accountants.

In Glasgow, the fact that younger practitioners took the initiative to form an association reveals that "somewhat different forces were at work" (ibid.). The lower respectability of younger Glaswegian accountants and the recent organization of professional competitors in Edinburgh probably induced "this competent but less well endowed generation" (ibid., p. 186) to lobby the senior accountants of Glasgow to form an association so that the juniors might "acquire some of the ascribed and inherited characteristics of their seniors. By this means they could achieve a 'closure' and create a distinction between themselves and those of even lower attainment and background" (ibid).

It will be shown later that Macdonald's deductions concerning professional formation in Glasgow have some credibility but that his observations for the Edinburgh case are more questionable. The fact that the professional status of Edinburgh accountants largely derived from their association with the lawyers is likely to have constituted a disposition averse to organizational and occupational differentiation lest the status ascribed by association with the legal fraternity be fractured. Further, contemporary evidence suggests that Edinburgh accountants did not require organization in order to achieve "equality" of status with the lawyers. During the mid-nineteenth century the legal profession comprised a gradation of occupational and social statuses ranging from the advocate to the writer. Accountants were regarded as equal in status to qualified solicitors (who were located in the middle ranges of the stratification of lawyers) well before 1853 (see Walker, 1988, p. 15).

Edinburgh accountants did not require organization in order to achieve collective professional status as that also had been acquired previously without the need for institutionalization. Evidence of the early professional standing of accountants is provided by the eminent Scots commercial lawyer Bell who attested in 1826 that "in this country we have a set of professional accountants, possessing a degree of intelligence, and a respectability of character, scarcely equalled in any unincorporated body of professional men" (p. 491). Similarly, in 1834, the Society of Writers to the Signet referred to Edinburgh accountants as "a most respectable body of professional gentlemen" (see Walker, 1988, pp. 14-15). The "first stirrings of professionalism" (Bryer, 1993, pp. 671-672) did not, therefore, commence with the institution of professional organizations during the 1850s. Finally, as with the technological determinists, Macdonald's hypotheses cannot explain why the need for collective action arose specifically in 1853 and his conclusions are inevitably speculative given their reliance on secondary sources.

Macdonald's inferences were disputed by Briston & Kedslie (1986). On the basis of an examination of the minute books of the SAE and IAAG, Briston and Kedslie contended that the catalyst for the formation of both the Edinburgh and Glasgow societies in 1853 was impending alterations to the Scots law of bankruptcy which posed a threat to the principal source of income of accountants (p. 125) —
"it was a purely economic stimulus which had nothing to do with respectability or collective social mobility" (p. 128). This thesis, which advanced the differential legal infrastructure explanation for early professionalization in Scotland, was expanded upon by Kedslie (1990a,b). To date Kedslie's work comprises the most convincing account of professional organization in Scotland and has been recognized by other writers (Lee, 1991, p. 197; Napier and Noke, 1992, p. 35).

Kedslie showed that those accountants who were instrumental in forming the SAE and IAAG in 1853 had a substantial pecuniary interest in bankruptcy work (1990a, pp. 39-48; 1990b, pp. 6-7). Hence, when it was proposed in the Bankruptcy (Scotland) Bill, 1853 (the Lord Advocate's Bill), that the office of Interim Factor (the official appointed to preserve the bankrupt's estate until a trustee was elected by the creditors) be abolished and the duties transferred to local sheriff clerks, accountants were induced to constitute societies to protect this source of income. Professional organization commenced in Edinburgh on 17 January 1853 "between the introduction of the Bill to Amend the Laws relating to Bankruptcy in Scotland and the subsequent Act which came into force on 4 August 1853" (1990a, p. 53). It was also contended that the new Bankruptcy Act was the principal motivation behind professional organization in Glasgow in September 1853 (1990a, p. 66). Kedslie concluded that "without any doubt, the catalyst for the formation of these two societies was the proposed changes in Scottish bankruptcy legislation" (1990a, p. 77).

Although Kedslie's recognition of the importance of bankruptcy legislation is correct, the emphasis on the Bankruptcy (Scotland) Bill, 1853, is misplaced. There are a number of difficulties with the thesis that the Bankruptcy (Scotland) Bill induced the organization of Scottish accountants. The first problem concerns the office of Interim Factor which was to be abolished by the Bill. Although their appointment as Interim Factors was important to Scottish accountants because it often resulted in their election to lucrative trusteeship (Bell, 1826, p. 332), it was not in itself an important source of remuneration. Interim factorships were so insignificant that one group of Scottish accountants concluded in 1853 that: "we cannot, after the most patient and searching consideration, see any particular use or advantage of an Interim Factor, or any reason why the office should not be altogether abolished" (A Scotch Accountant, p. 12). In 1856 the Bankruptcy (Scotland) Act, which had been devised following consultations with representatives of the SAE and IAAG (Brown, 1905, p. 213), eradicated the office of Interim Factor.

Secondly, the Bankruptcy (Scotland) Bill, 1853, was an unlikely instigator of professional organization. Brown described the Bill as of "a limited and tentative nature" (ibid.). The sponsor of the Bill, the Lord Advocate, considered it "not of any great extent" and comprised an attempt to smooth some of the rough edges in bankruptcy administration (The Law Magazine, 1853, pp. 331-332). Thirdly, the chronology of the Bill's progress is inconsistent with the timing of the formation of the SAE. The Edinburgh society was constituted in January 1853 yet the Bankruptcy (Scotland) Bill was not ordered until April and received its First Reading in May (Alphabetical List of Public Bills, 1852-3, p. 2). The Institute of Accountants and Actuaries in Glasgow was instituted in September 1853 — after the Bankruptcy (Scotland) Act had entered the Statute Book.

Fourthly, Kedslie's thesis is founded primarily on quantitative evidence that discloses the substantial pecuniary interest of Scottish accountants in bankruptcy which was threatened by the Bankruptcy (Scotland) Bill, 1853. Investigation of the work mix of contemporary accountancy practices suggests that sequestration was an important but not always the most significant source of fee income (Walker, 1993, pp. 134-135). The winding-up of insolvent estates under voluntary trusts (as opposed to judicial bankruptcy) was also a lucrative area of work for accountants in Scotland during the nineteenth century (ibid., pp. 135-138). As early as the 1820s it was suggested that
creditors should choose a professional accountant as a trustee under a voluntary trust because "the regularity of conduct, the clearness of accounts, the perfect system of administration, according to which these gentlemen manage their trusts, afford an admirable instrument in the arrangement of insolvent estates" (Bell, 1826, p. 491).

Another important branch of the Scottish accountant's practice was judicial factory work (Walker, 1993, pp. 138-140). That significance was never more apparent than in 1834 when one of the previously unidentified antecedent organizations of Edinburgh accountants was founded to lobby Parliament concerning an Accountant-General Bill. The Bill threatened to place the audit of judicial factories — a practice which accountants had "been exclusively accustomed under the employment of the Court, to discharge" (Report by the Committee named at a Meeting of Accountants, p. 4) — in the hands of an Accountant-General. An ad hoc 10-man Committee of Accountants Practising Before the Court of Session (chaired by James Brown, the first president of the SAE), successfully fought against the offending legislation.

It will be shown in this paper that occupational organization in Edinburgh and Glasgow in 1853 was induced primarily by proposals which would have posed a massive, rather than a marginal threat to the whole insolvency practice of Scottish accountants. The nature of the threat required that accountants strengthen their competitive position in the political arena by instituting protective organizations and by devising a compelling counter-ideology to that propounded by their opponents. Such imperatives acted not only to enhance the occupational consciousness of accountants in Edinburgh and Glasgow but also assisted in the establishment of cross-sectional alliances capable of repelling the demands of a powerful antagonistic interest group. The source of the antagonism was The London Committee of Merchants — an organization whose ideological discourse was founded on the ascendent economic philosophy of mid-Victorian Britain: free trade, and the related concept of the assimilation of commercial laws. The product of The London Committee's labours and the menace to Scottish accountants was the Bankruptcy and Insolvency (Scotland) Bill, 1853 — legislation which has been overlooked by previous writers as a cause of the formation of the SAE and IAAG.

In order to comprehend the intimidatory nature of the Bankruptcy and Insolvency (Scotland) Bill, 1853, to Scottish accountants, it is necessary to understand the power and motives of its devisors and sponsors and the political context in which the Bill emerged.

THE EMERGENCE OF A THREAT TO THE INTERESTS OF SCOTTISH ACCOUNTANTS: THE LONDON COMMITTEE OF MERCHANTS, 1851-1852

The defects in the system of administering insolvent estates in Scotland were discussed frequently during the early 1850s. In April 1851, for example, a group of wholesale merchants and traders in Edinburgh, alarmed by an increase in fraudulent and reckless trading which tarnished the reputation of the whole commercial community, formed a Mercantile Protection Association (later the Edinburgh and Leith Trade Protection Association and the Scottish Trade Protection Society) to investigate and prosecute offenders (The Edinburgh Courant, 3 April 1851, p. 2; also 15 May 1851, p. 3). By February 1853 the Association boasted 253 members.

During the autumn of 1851, a more vociferous and powerful interest group was formed. Following their sustaining of what were perceived as heavy losses as creditors of a bankrupt in Glasgow, a group of (mainly cloth) warehousemen trading with Scotland located in the City and Cheapside districts of London formed the London Committee of Merchants and Others Associated for the Improvement of the Commercial and Bankruptcy Laws of
Scotland, and the Assimilation of Those Laws in England and Scotland.²

By September 1852 the London Committee comprised 22 merchants, 4 Liberal MPs, 6 lawyers and was chaired by Robert Slater of the largest mercantile house in Britain (Hansard, 1856, Vol. 140, p. 1395). Having suffered as creditors of a Scottish bankrupt the members of the London Committee attempted to identify the reasons for their meagre dividends. They were astonished to discover that 5% of the bankrupt's estate was paid in commission to the trustee — a percentage which was deemed "enormous and out of all proportion to the amount of service rendered for it" (Trade Protection Circular, January 1853, p. 201).

During the first year of its existence the London Committee undertook extensive inquiries into the state of the bankruptcy law of Scotland. A series of "Queries" on the subject was circulated to a wide audience of businessmen and lawyers and articles on the defects of the Scottish system of insolvency administration were printed in the Committee's mouthpiece — The Mercantile Test.

The fruits of the London Committee's labours were produced in a Report and Suggestions Addressed to the Mercantile Community of the United Kingdom in October 1852 which listed a miscellany of evils under the current Scottish law of insolvency. Delays in the appointment of Interim Factors and in the realization and distribution of the bankrupt's estate were highlighted. The principal grievance, however, concerned the Scottish system of vesting the management of the bankrupt's estate in the hands of a trustee. The judicial powers of the trustee were considered as excessive, the system of election by the creditors encouraged litigious and time-consuming competitions for trusteeships and the payment of "exorbitant" levels of commission disadvantaged creditors. Although it was conceded that "there are many professional trustees who are excellent men of business" (Report, 1852, p. 19), "many hundreds of trustees in sequestrations are mere tradesmen and mechanics, who have no knowledge whatever either of commercial jurisprudence, or the rules of evidence, or even of the most simple branches of judicial procedure" (ibid).

The reforms suggested by the London Committee to remedy the evils of the Scottish system of insolvency administration were sweeping. It was proposed to impose the English process of bankruptcy on Scotland. So far as the accountants of Edinburgh and Glasgow were concerned — remunerative sequestration trusteeships (see Kedslie, 1990a, pp. 39-49) would be supplanted by the administration of bankrupt estates by a small number of judicial officers and the hitherto unregulated and lucrative system of voluntary trusteeships would be placed under the supervision and scrutiny of the courts.

The unorganized accountants of Scotland had every reason to fear the realization of the London Committee's proposals. The fact of their emanation from significant merchants located in the nation's business capital was threat enough.³ In addition, the London Committee had zealously set about developing cross-occupational alliances by mobilizing the support of mercantile, manufacturing and legal groups. The Edinburgh based Trade Protection Circular warned that the London Committee

² The Scots law of bankruptcy had long been a concern of merchants in London who traded with Scotland. In 1813, for example, a committee had been formed to prevent the passing of a Bankrupt (Scotland) Bill and to complain of the level of commission paid to trustees in sequestrations (see Report of the London Committee on the Scotch Bankrupt Bill, 1814). It is possible that the London Committee of Merchants was related to The Committee of Merchants and Traders of the City of London which reported in 1851 that it had "for some time past endeavoured, with varying success, to improve the Laws relating to Bankruptcy and Insolvency" (p. 3).

³ For the significance of London and its "commercial based" elite in British economy and society see Rubinstein (1986, p. 34; 1993, pp. 25-32, 157-160; also Briggs, 1968, pp. 311-360).
"have an object to carry, and that for the carrying of that object their chief dependence is on the parliamentary power possessed by the commercial interests of England" (8 January 1853, p. 210). The London Committee's Report was distributed to the chambers of commerce, merchant companies, town councils and law societies of all the major towns and cities in Britain (Report, 1852, pp. 5-6). Public meetings, lecture tours and personal lobbying of organized commercial interests were planned to highlight the national importance of the issue. The London Committee's Report concluded that: "it appears almost impossible to over estimate the importance of this movement to the commercial interests of this great empire . . . The movement is national, and should be nationally supported: the London Committee, connected as they are with the greatest commercial city in the world, have, they hope, not improperly ventured to lead it" (ibid., p. 40). More importantly, the London Committee commissioned its Secretary to draft an insolvency bill for Scotland in the expectation that its proposals would become enshrined in the Statute Book.

THE EMERGENCE OF A GROUP IDEOLOGY ANTAGONISTIC TO SCOTTISH ACCOUNTANTS: FREE TRADE AND ASSIMILATION

In order to excite contemporary opinion and cultivate cross-sectional alliances, the London Committee's reforms were advanced on the basis of an ideological discourse constructed around the ascendent philosophies of free trade and the assimilation of commercial law. In order to comprehend the threat to Scottish accountants posed by this strategy, it is necessary to show how the allied concepts of free trade and assimilation had come to dominate economic thought and the attention of law reformers by the early 1850s.

Free trade

The idea of maximizing national wealth through the removal of obstacles to trade and the creation of the most favourable conditions for the free play of market forces is rooted in the classical economics of Adam Smith and Ricardo. The extent to which free trade became the prevailing economic doctrine in Britain during the mid-nineteenth century has been well documented (see Mathias, 1969, pp. 293-303; Grampp, 1987, pp. 107-112). According to Neale "if there was any axiom of political economy entering the psyche of Victorian men and women it was this: free trade — Cobden and Bright were the culture heroes of mid-nineteenth-century England not Marx" (1972, p. 130). The evidence for the conversion of policy makers from protectionism to free trade is usually presented as a series of landmarks from Huskisson's tariff reforms of the 1820s, to the repeal of the Corn Laws in 1846 and the Navigation Acts in 1849 and culminating in Cobden's Commercial Treaty with France in 1860. Grampp has identified the decision by Parliament to adopt Free Trade in 1820, following a petition from an earlier Committee of London Merchants, as the climactic in the re-orientation of British commercial policy (1987, pp. 86-106).

Richard Cobden and other adherents to the Manchester School philosophy considered that free trade comprised more than a crusade for the removal of restraints on the exchange of goods. Free trade would also bind nations, reduce international discord and secure universal peace (Edsall, 1986, p. 228). One impediment to these ambitious ideals was the disparate and often conflicting nature of the mercantile laws within which free international trading was to be conducted. The solution to the lack of consistency in the commercial laws of nations was considered to be their assimilation.

The assimilation of commercial laws

Demands for the assimilation, or homogenization of the mercantile laws of individual states during the late 1840s and early 1850s had their intellectual foundations in the work of Jeremy Bentham. Bentham recognized the incoherent and inconsistent nature of English
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statute and common law and in its place prescribed a more comprehensible “Pannomion”, or, a unified set of constitutional, civil and penal legal codes (Dinwiddy, 1989, pp. 54-65). Although some customization would be required to take account of the peculiar circumstances of individual nations, universal legal codes were considered by Bentham to be an attainable objective because human nature and needs were largely congruous across territories (ibid., pp. 70-71). Britain’s domination of world trade, improved communications and the increasing internationalization of business by the mid-nineteenth century engendered renewed interest in the development of national and international codes of commerce. The most notable manifestation of the mood was the work of an associate of Cobden, Leone Levi (1821-1888) (Dictionary of National Biography, XI, 1917, pp. 1035-1037).

The publication of Levi’s four volume treatise Commercial Law: its Principles and Administration (1850-2) has been described as “an international event” and its author was “showered” with gold medals and prizes (Palgrave, 1986, Vol. 2, p. 598). Levi compiled a synopsis of the merits and conflicts of the mercantile laws of 59 nations in an attempt to identify universal principles upon which a general conformity of commercial jurisprudence might be based (Levi, 1850-2, Vol. 1, pp. vii-ix). In a Cobden-like vein, Levi envisaged that the development of an international code on subjects such as the laws of contract, bills of exchange and bankruptcy would improve the circulation of capital and encourage the development of international business. The results would “cement peace between all countries, extend commerce and promote morals and justice” (Levi, 1851, p. iii).

Levi’s treatise and a supporting series of lectures in 1851 resulted in the formation of committees in London, Birmingham, Edinburgh and Glasgow (consisting primarily of merchants) to consider the best means of carrying out his proposals. Levi’s mission also excited considerable interest because of the concordance of his objectives with those of the Great Exhibition of May-October 1851. The Exhibition was “calculated to promote and increase the free interchange of raw materials and manufactured commodities between all the nations of the earth” (Babbage, 1851, p. 42) — it was a celebration of “peace and international understanding through Free Trade” (Fay, 1951, p. 9). The effects of the Great Exhibition were envisaged as being an expansion of trade and the liberalization of commercial transactions (The Illustrated London News, October 1851, p. 458). Levi’s proposal that a conference of commercial men from around the world should meet during the Exhibition to discuss “one Universal Code of Laws, regulating commercial transactions under whatever clime or position” (1851, p. 19) received some support from Prince Albert and other influential personages (Levi, 1850-2, Vol. 1, p. ix).

Although the unification of the mercantile laws of all nations was considered to be an unrealistic objective made in the excitement of the Great Exhibition (The Law Magazine, Vol. XIV, 1851, pp. 60-61), the potential advantages of at least assimilating the separate mercantile laws of England, Scotland and Ireland in order to extend commercial relations within the Kingdom was recognized to be an attainable objective (Trade Protection Circular, September 1852, p. 118). One area of difference in the commercial laws of England and Scotland which was singled out for close scrutiny by assimilationists was the law of bankruptcy.

The London Committee embraced free trade and assimilation as the ideological justification for its proposals for reform. The bankruptcy law of Scotland was considered to be an impurity in commercial relations (Report,
1852, p. 40) and an impediment to the internal trade of Britain because the commercial community in England could not rely on Scottish legislation which was perceived to render credit insecure. The Committee considered that:

at this momentous era, when the established principles of free trade, and the recent discoveries of gold, hold out the prospect of a grander development of British commerce than it has yet attained, every impediment, from whatever quarter proceeding which may tend to hinder its progress should be removed out of the way. Such on the most mature consideration, they are constrained to regard the present bankruptcy laws of Scotland (Second Address, 1853, p. 16).

A great effort was required from the mercantile interest “to free the internal commerce of this country from a most unquestionable evil” (ibid., p. 30) and replace existing Scottish bankruptcy law with a unified law having “one weight and one measure throughout the United Kingdom” (ibid., p. 17).

THE NATIONAL POLITICAL ARENA, NOVEMBER 1852—JANUARY 1853

The pressure on Scottish accountants to protect their interest in insolvency work became more urgent during the late autumn of 1852 owing to a confluence of developments which enhanced the position of the London Committee on the wider political scene.

Firstly, the public profile of assimilation was raised. On 16–17 November the Law Amendment Society successfully organized Levi’s major conference of “deputations from the principal trading and commercial towns in the United Kingdom, as well as several law societies” (The Scotsman, 20 November 1852, p. 4) to consider the propriety of assimilating the mercantile laws of England, Scotland and Ireland. The attenders drew particular attention to the often antagonistic nature of English and Scottish commercial law which tended “greatly to restrict and embarrass commerce, by producing uncertainty, perplexity and delay” (ibid). The conference determined that progress on assimilation would best be served by a Royal Commission on the subject and it was resolved to despatch a deputation immediately to represent its collective views to the Prime Minister. The Earl of Derby concurred that the issue was of great importance and saw no objection to the institution of a commission5 on assimilation (Hansard, 7 March 1853, p. 2034).

Secondly, free trade was confirmed as the guiding principle of British commercial policy. On 26 November, following the “great free trade debate”, the House of Commons voted for the maintenance and extension of financial and administrative reforms based on free trade (Connacher, 1972, pp. 151–159). The Edinburgh Courant reported that the cause of protectionism was lost — free trade is now “accepted without further protest: it is safe; it is triumphant” (18 November 1852, p. 2).

Thirdly, the causes of free trade and law reform were further advanced by the fall of Derby’s Conservative administration on 16 December and its replacement by the Aberdeen Coalition (see Stewart, 1971, pp. 206–215). In late December the new Peelite Prime Minister stated that the mission of his Government would be the preservation and advancement of free trade policies (Connacher, 1968, p. 33) and his ministerial team emphasized the “necessity of vigorous measures of Law Reform” (The Edinburgh Courant, 6 January 1853, p. 2).

Given the increasingly liberal and reformist

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5 A Royal Commission on the assimilation of the mercantile laws of the U.K. was later established in June 1853 by the Aberdeen Government (Robert Slater of the London Committee of Merchants was a commissioner). The recommendations of the Assimilation Commission (1854, 1854–55) resulted in legislation (Mercantile Law Amendment Act, 1856, and the Mercantile Law (Scotland) Amendment Act, 1856) which removed the most obvious discrepancies between English and Scottish commercial law. Bankruptcy was excluded from the work of the Commission (see Hansard, 26 February 1856, pp. 1393–1401).
political environment of November 1852-January 1853 the London Committee's threatened bill to overhaul the Scottish system of insolvency administration, which posed a substantial threat to the interests of Scottish accountants, had a chance of success. The accountants of the principal cities of Scotland were bound to respond. They did so by establishing protective occupational organizations and by devising a potent counter-ideology to free trade and assimilation.

THE EMERGENCE OF COUNTER ORGANIZATIONS: SCOTTISH ACCOUNTANTS, JANUARY-OCTOBER 1853

Conflict theorists reveal that collectivities such as occupational groups who are engaged in conflict situations require organization, articulation and leadership for the effective engagement of their opponents. The initial response of Scottish accountants to the agitation for bankruptcy law reform which had emanated from London took the form of the publication of a series of pamphlets by a number of leading practitioners who were to form the SAE. The first and most influential of these was Reform of the Bankruptcy Law of Scotland by Samuel Raleigh which appeared at the end of 1852.

Raleigh considered that in the current climate of reform the bankruptcy law of Scotland was likely to be the subject of legislation in the Parliamentary Session of 1852-53. Although he provided a convincing rebuttal of the London Committee's allegations, Raleigh did recognize that the London Committee's concerns about the qualifications of trustees had some validity. Although he showed that 75% of bankrupt estates in Scotland were managed by "professional trustees" (of whom the majority were accountants), there was a need to secure "the exclusion of all unqualified and incompetent parties" (1852, p. 25). This might be achieved by the compilation of public certified lists of suitably qualified individuals eligible for selection as trustees. These trustees might become organized "as a separate professional body" (ibid., p. 26). The determination of the membership of such an institution was to be subject to discussion but Raleigh had no doubts that an organization could be formed (ibid., Appendix).

Raleigh's ideas were supported by a group of Edinburgh accountants who, in their Remarks on The Revision of the Bankruptcy Laws of Scotland, also rejected the London Committee's proposals (1853). It was considered that Raleigh's suggestion "that a qualified body of Trustees should be organized, and a certified list of such drawn out, thereby constituting them as a separate professional body, and excluding incompetent and interested parties from the charge of bankrupt estates, would, we think, be found highly beneficial" (ibid., p. 18). Further, it was argued that "the active part of the movement should no longer be left entirely in the hands of our thorough and energetic London reformers" (ibid., p. 20).

The Institute of Accountants in Edinburgh

It was in the context of the imminent threat to their bankruptcy and insolvency practice and demands for the organization of qualified trustees that the first move was made on 17 January 1853 for "uniting the professional Accountants in Edinburgh" (Society of Accountants in Edinburgh, Sederunt Book, p. 1). Whereas other individuals acting as sequestration trustees, such as lawyers, bankers and merchants, had established institutions to defend their interests, the occupational group which occupied most trusteeships — accountants — were unorganized.

The Minute Books of the Institute of Accountants reveal that organization was an urgent political expedient. By 22 January 1853 a draft constitution was discussed and attempts were made to enrol suitable members "with as little delay as possible" (ibid., p. 4). Such exigency was necessitated by the fact that the London Committee's promised Bill to overhaul the Scottish system of bankruptcy administration was now drafted — on the same day as the
Institute of Accountants discussed its draft constitution, the London Committee's Chairman was explaining the merits of the Bill to the Edinburgh Chamber of Commerce (Alexander, 1853, p. 21).

**The progress of the Bankruptcy and Insolvency (Scotland) Bill**

The offending Bill (House of Lords, _Sessional Papers_, 1852-3, Vol. 3, 100) consisted of 266 clauses and was designed to consolidate the insolvency law of Scotland, improve the collection and division of sequestrated estates, prevent delays in the winding-up of bankruptcies and place all insolvency proceedings under judicial control (ibid., 100a, _Paper of Observations_, p. 1). The guiding principles of the Bill were to assimilate and codify the law of bankruptcy, protect creditors and produce "the soundest and truest Economy" in insolvency administration (ibid., pp. 32-33). These objectives were to be achieved by removing the exclusive power of the Court of Session in Edinburgh to award sequestrations and by reposing administrative power in new local Courts of Bankruptcy and Insolvency throughout Scotland. The management of bankrupt estates would be vested in five Official Assignees for Scotland rather than in the 862 trusteeships currently filled by accountants (60%), lawyers (10%), bankers (4%), merchants and others (26%) and which cost creditors a total of £90,702 in trustees' commission (Report by the Sub-Committee of the Edinburgh General Committee on Bankruptcy-Law Reform, 1853, p. 2). Voluntary trusts for behoof of creditors—a highly lucrative source of income for accountants and lawyers which were currently outwith the public gaze and judicial control—were to be supervised by the new Courts of Bankruptcy and Insolvency to which trustees were to be made accountable for their actions.

The parliamentary progress of the Bankruptcy and Insolvency (Scotland) Bill was unpredictable in a legislature of shifting allegiances and comparatively weak party discipline (Beales, 1967; Woodward, 1962, pp. 160-166). However, the London Committee claimed that the Bill was received by the Government "in a friendly manner" (_Second Address_, 1853, p. 21). The Bill's chances of success were further advanced when its parliamentary sponsor was revealed as Henry, Lord Brougham (1778-1868) (_Dictionary of National Biography_, Vol. II, pp. 1356-1366). Although he had only once held a major office of state (as Lord Chancellor 1830-34), Brougham remained a powerful political figure in the mid-1850s. As an acquaintance and sympathizer of Bentham (Stewart, 1985, p. 234), Brougham was a noted instigator of law reforms. He had been instrumental in formulating the English Bankruptcy Laws of 1831 and 1849 and in 1844 had founded the Law Amendment Society and chaired its conference on the assimilation of mercantile laws in November 1852 (Hawes, 1957, p. 201). As an advocate of reform and free trade (Aspinall, 1939, p. 250), Brougham was a champion of middle-class causes in a legislature dominated by aristocratic representatives (Perkin, 1969, p. 316; Rubinstein, 1993, pp. 145-148). Hence, when the Bankruptcy and Insolvency (Scotland) Bill received its First Reading in the House of Lords on 15 March 1853, Brougham stressed that the "great mercantile body" in Britain felt "deeply anxious" on the need for reform on this subject (_Hansard_, 1853, Vol. 125, p. 196).

The appearance of Lord Brougham's Bill galvanized a cross-occupational alliance of accountants, lawyers and merchants in Edinburgh into vigorous lobbying of the principal Government representative in Scotland—the Lord Advocate (see Report by the Sub-Committee of The Edinburgh General Committee on Bankruptcy-Law Reform, 1853). The result was the framing and introduction into the House of Commons of the Bankruptcy (Scotland) Bill on 4 May 1853. The Lord Advocate's Bill contained a mere 18 clauses designed to remedy the most obvious defects of Scottish bankruptcy administration and thereby negate the necessity for the radical reforms proposed in Brougham's Bill.

The appearance of the Lord Advocate's Bill resulted in an intensification of effort by the
London Committee. A series of petitions in favour of its Bankruptcy and Insolvency (Scotland) Bill were raised including one from over 200 merchants in London whose trade with Scotland amounted to £5m (Hansard, 19 July 1853, p. 433). The assault on bankruptcy administration in Scotland, and particularly the system of trusteeship, became more venomous. In July 1853 Brougham stated that for trustees: "no qualification was required. He ought to be both an accountant and a judge. Instead of this, however, he was required to possess no learning whatever — no qualification of any sort" (Hansard, 4 July 1853, p. 1145). Brougham's Bill passed its Second Reading in the House of Lords on 22 July 1853. The Government measure — the Bankruptcy (Scotland) Bill — was passed in August with little parliamentary discussion. The new Act failed to quell the agitation of the London Committee.

Within one week of the Second Reading of its Bankruptcy and Insolvency (Scotland) Bill the London Committee reassembled at the Guildhall Coffee House. It was resolved that the Lord Advocate's Bill was "utterly inadequate" (Second Address, 1853, p. 20) and "in no way alters the state of the question" (ibid., p. 21). The campaign was to be escalated in order to further interest the mercantile community "in a matter of such vast importance to the welfare of our internal commerce" (ibid., p. v). A Second Address to the Mercantile Community of the United Kingdom was prepared and widely circulated during the summer of 1853 in order to encourage petitioning of Parliament against the system of insolvent administration in Scotland. The Secretary of the London Committee — John Gilmour — was remitted to lobby the mercantile and law organizations located in all the major commercial and manufacturing centres of Britain (ibid., p. vi). The "second city of the Empire" was singled out for particular attention.

The Institute of Accountants and Actuaries in Glasgow

If the London Committee's message was to find a sympathetic ear in Scotland it was likely to find it in Glasgow. Many Glaswegian merchants and industrialists were persuaded by assimilationist measures intended to enhance trade with England and support could be found among Glasgow lawyers for measures which would reduce the hegemonic position of Edinburgh in the Scottish legal system (Hutchinson, 1986, pp. 93-95). The London Committee's proposals to unify the law of bankruptcy and increase local judicial control over the administration of bankrupt estates together with ancillary measures relating to small debt procedures, were looked upon favourably by the Glasgow Law Amendment Society and the Glasgow and West of Scotland Society for the Protection of Trade which had petitioned in favour of Lord Brougham's Bill (Second Address, 1853, pp. 18-19).

Until the autumn of 1853 the agitation against Brougham's Bill was Edinburgh-centred. The reactionary Bankruptcy (Scotland) Act, 1853 had reflected the interests of Edinburgh accountants, lawyers and merchants. That Act failed to dampen the enthusiasm of the London Committee which promised the pursuit of its objectives with renewed vigour. In late September 1853 further parliamentary debate on the bankruptcy laws of Scotland seemed inevitable. John Gilmour had organized a public meeting in Glasgow for October to discuss Brougham's Bill. The younger accountants of Glasgow needed to organize to protect their pecuniary interests particularly as they practised in a city where many of their fellow citizens were in favour of law reform and assimilation.

Hence, 27 accountants who commenced practice after 1841 requisitioned their more senior colleagues to meet to consider the formation of an organization of professional practitioners in Glasgow. The requisition stated that organization was necessary now because of "the late changes and contemplated alterations in the Bankrupt Law of Scotland", and "in order that the practical experience of those parties who have hitherto been entrusted with the management of Bankrupt Estates in the West of Scotland may be properly represented, and have due weight in determining what changes require to
be made upon the existing Bankrupt Law” (Institute of Accountants and Actuaries in Glasgow, Minute Book, 1853, p. 1).

Two to three hundred attended the “great” public meeting in Glasgow to discuss Brougham’s Bill in late October (Hansard, 15 May 1854, p. 299). Among the speakers was David McCubbin, one of the requisitionists of the new Institute of Accountants. McCubbin made a vigorous defence of the prevailing system of bankruptcy administration in Scotland but like Raleigh had done a year previously, conceded that it “is an evil in our current system, and a great one too, that any man, whatever may be his abilities or qualifications, may be elected trustee” (Trade Protection Circular, October 1853, p. 25). McCubbin’s solution was to compose a certified list of experienced trustees eligible for election (presumably the members of the Glasgow Institute) and those with lesser experience might enter the list following examination and by finding security for their intromissions as evidence of respectability.

THE EMERGENCE OF A COUNTER IDEOLOGY: SCOTTISH NATIONALISM

The organization of accountants in Edinburgh and Glasgow was insufficient by itself to challenge the likely re-introduction of Lord Brougham’s Bill in the parliamentary session of 1853–54. Conflict models reveal the importance of developing group ideologies in order to enhance collective consciousness and to elicit the support of other interests. Hence, the occupational groups with a vested interest in the maintenance of the existing system of Scottish insolvency administration had to present a convincing case against the proposals which had emanated from the London Committee of Merchants. A rhetorical discourse founded on self interest — the deleterious pecuniary consequences of Brougham’s Bill for insolvency trustees — was incapable of penetrating the utilitarian banners of free trade and assimilation. Rather, the accountants reverted to what has been described as “the most successful political ideology in human history” (Birch, 1989, p. 3); the antithesis of the harmonization of international law and the removal of institutional hindrances to cross-border trade: nationalism. In order to comprehend the seductive value of appeals to patriotic sympathies during the 1850s, the relevant political context must be sketched.

Scottish nationalism in the 1850s

The period from 1850 to 1855 witnessed “one of the first flickers of modern Scottish nationalism” (Hutchinson, 1986, p. 91). According to Hanham, the mid-century national movement, which persisted until attention was deflected to the Crimean War, was both romantic and radical. The patriotic upsurge was inaugurated in 1849 by the neglect of Scottish measures in the English-dominated legislature (Hanham, 1969, pp. 151–153). From 1850 to 1852 agitation against English hegemony in the machinery of government and the provincialization of Scotland were compounded by complaints against the irregular use of Scottish heraldic symbols. In May 1853 a National Association for the Vindication of Scottish Rights was formed and by November of the same year claimed 6000 members. In its first Address to the People of Scotland, the Association resolved that the national laws and institutions of Scotland should be preserved and that attempts “to subvert or place those institutions under English control, and under the pretence of a centralizing economy to deprive her of the benefit of local action” (1853, p. 33), should be strenuously resisted.

The centralization of governmental functions in London and the attempts to assimilate the laws of Scotland with those of England were deeply held grievances particularly in Edinburgh. One member of the National Association for the Vindication of Scottish Rights stated at its first public meeting that “Our manners and our customs may assimilate, but our laws and our religion are essentially different, and our own” (Justice to Scotland, 1853, p. 32). Hanham has concluded that “the main function of the national movement was to
remind the nation that Scotland was a cultural and political entity, and to fight against the more blatant forms of assimilation with England" (1967, p. 177).

The leaders of the mid-century Scottish nationalist movement were primarily Tory protectionists who were marginalized by the confirmation of free trade and reformist policies in 1852-53 (Hutchinson, 1986, pp. 91-92). Among the supporters of the National Association for the Vindication of Scottish Rights were those directly threatened by assimilationist pressures: accountants. One of the principal agitators, John Grant, was allegedly an accountant (Hanham, 1967, p. 159). The membership lists of the General Committee of the National Association include the names of five members of the SAE and IAAG (see Address to the People of Scotland, 1853, 1st and 2nd editions).

The secretaries of the Edinburgh and Glasgow branches of the National Association — Frederick H. Carter, CA, and George Wink, CA — were “leading spirits” of the movement (Hanham, 1967, p. 170). Robert Christie, senior, who mysteriously resigned as a member of the Institute of Accountants in Edinburgh shortly after its formation, wrote a scathing pamphlet on the inequitable distribution of government expenditure between England and Scotland (Christie, 1854).

The nationalist retort to assimilation

In the increasingly patriotic atmosphere of the early 1850s, Scottish accountants and their allies who were confronted by assimilationist measures in insolvency law, embraced the nationalist pennant. In addition to highlighting the specific technical defects of the London Committee’s proposals, the accountant pamphleteers of 1852-53 expressed considerable resentment at the attempted imposition of the English system of bankruptcy administration on Scotland.

Samuel Raleigh argued that the assimilation of the bankruptcy laws ignored the peculiarities of the Scottish character and the indigenous legal system which would not readily accommodate “imported methods and foreign systems of procedure” (1852, p. 5). The “violent and wholesale substitution” (1854, p. 18) of the Scottish system of bankruptcy by the English and the consequent introduction of alien legal institutions with no tradition in Scotland would disrupt the whole judicial process north of the border. Further, it was argued that such contentions were not motivated by a selfish desire to protect the income of trustees: “the question is not whether professional interest shall give way to public good, but whether what has grown up among us — what adapts itself in many ways to our means and existing institutions, — instead of being improved and perfected, should be at once abolished, and a system demonstrably worse put in its stead” (1854, pp. 22-23). Raleigh was offended that demands for the overhaul of the Scots bankruptcy laws had emanated from London and not from those north of the Tweed who had an intimate and practical knowledge of their own national laws and institutions (1852, p. 30).

Another original member of the SAE, Christopher Douglas, also prepared a pamphlet in 1853 which advocated a nationalistic defence of the Scots bankruptcy law. Douglas argued that although in many respects England and Scotland were a single country, on the law of bankruptcy “no two countries scarcely can bear less resemblance to each other” (p. 4). Despite the Union of 1707 the Scots had deep affection for their independent laws and were firmly resolved not to have unsuitable English jurisprudence thrust upon them (ibid.).

Cross-occupational alliances

The nationalist ideology became a rallying call to other collectivities such as merchants and lawyers who (as trustees) had a direct interest in the maintenance of the Scottish bankruptcy procedure. The result was the formation of a cross-sectional coalition of accountants and other organized occupational groups which succeeded in mobilizing public opinion north of the border against the London Committee’s proposals.

A patriotic ideology was advanced by the
mercantile community in Scotland. The Trade Protection Circular considered that the assimilation of commercial laws might prove advantageous but not when "always, and in every instance, made at the expense of Scottish interests" (13 November 1852, p. 163). The Circular protested that it "could not conceive a greater evil falling upon any nation than an attempt, rashly to overturn its fundamental laws, and the principles of its judicatories" and their replacement by "a blind and indiscriminate imitation or adoption of English principles or practices" (26 March 1853, p. 278). The mercantile interest was particularly aggrieved by the apparent intent to use Scots bankruptcy law as an early test of assimilation. The Edinburgh Chamber of Commerce objected that the London Committee was attempting to make Scotland "a sort of experimental garden of legislation for England, on a bill prepared by English parties" (Alexander, 1853, p. 21).

In order that the initiative for bankruptcy law reform should shift to Scotland and that any legislation would not simply reflect the interests of English merchants, Samuel Raleigh suggested in late 1852 that "the parties chiefly interested and best informed on our bankruptcy administration, should themselves take this subject into their own hands" (1852, p. 30) and devise their own proposals for reform. The result was The Edinburgh General Committee on Bankruptcy Law Reform which met on 18 February 1853. The General Committee comprised a forum for the cross-occupational alliance which fought the London Committee's proposals under the ideological banner of the protection of national interests. The General Committee immediately appointed a 34 man sub-committee (chaired by Raleigh) containing bankers, merchants, lawyers and four accountants (who were particularly active in the affairs of the early Edinburgh institute) to investigate the bankruptcy laws in Scotland, suggest "sound practical reform" and to watch any measures brought into Parliament on the subject (Report by the Sub-Committee, 1853, p. 1).

The resulting report, which made many suggestions later incorporated into the Bankruptcy (Scotland) Act, 1856, was agreed on 31 March 1853 and remitted to the Lord Advocate (ibid., p. 6).

The appeal to patriotism also enlisted the support of Scottish Members of Parliament and policy-makers, the most important of whom was the Lord Advocate, James Moncreiff. During the legislative progress of his Bankruptcy (Scotland) Bill, 1853, Moncreiff displayed an anti-Anglican streak which surprised contemporaries (The Law Magazine, August-November 1853, p. 328). He conceded that assimilation might prove advantageous but not if it meant merely imposing the laws of one country on another (ibid., p. 324). The Lord Advocate stressed the superiority of Scottish jurisprudence, chastised the amateurish nature of the proposals from the London Committee of Merchants and urged those "anxious to preserve the nationality of Scotland" to exert themselves in order to "prevent our legal system from being . . . altogether upset by crude and rash importations from the other side of the Tweed" (ibid., p. 327).

It is testimony to the extent to which Scottish opinion was mobilized on the issue that commentators in England were astonished by the public interest shown north of the border in the apparently mundane subject of assimilation (The Law Magazine, 1854, p. 119). Whereas mercantile law reform in England was the exclusive domain of lawyers, in Scotland, with its jealously guarded separate legal system, such issues "have a more general and stirring effect" and the lawyers "are not left alone, but the people individually, collectively, and under various forms of organization, offer their sentiments" (ibid.). Hence Brougham's insolvency Bill "is all but universally condemned" (ibid.) not only by groups with a direct professional interest in the subject but also by chambers of commerce, local authorities and at public meetings.

THE DEFEAT OF THE ASSIMILATION OF BANKRUPTCY LAW, 1854-56

Having received the support of the Lord Advocate and successfully enlisted a majority
of interested public opinion against the assimilation of bankruptcy law, the coalition of professional and commercial groups in Scotland were advantageously placed to confront the re-introduction of Lord Brougham’s Bill in the House of Lords on 10 March 1854.

Parliamentary debate on the Bill during the spring of 1854 centred on Brougham’s claim that “the Bill had the sanction of all classes both in England and Scotland, who were interested in the question” (Hansard, 10 March 1854, p. 588) and, in particular, that the Bill was universally supported by the mercantile interest. By 1854, however, the appeal of a nationalist-based ideology had ensured that the proponents of the Bill were almost exclusively from England. In 1853 six petitions in relation to Brougham’s Bill were presented to Parliament by organized interests in Scotland: three supported the measure and three were opposed to it. By contrast, in 1854, 16 petitions were presented from Scotland of which only one was in favour of the Bill.

Despite such evidence to the contrary, Brougham argued that there was wide support for his Bill among the commercial community in Scotland, that opposition was restricted to, and driven by, self-interested accountants and lawyers (Hansard, 15 May 1854, pp. 301-302) and that the lack of support from the Lord Advocate could be disregarded as an inevitable symptom of that official’s natural affinity with the Edinburgh-Parliament House view (ibid., 11 April 1854, p. 822).

Although Brougham’s Bill passed its Second Reading in the Lords in April 1854, the weight of Scottish opposition and the lukewarm response of the Government, ensured that it proceeded no further in 1854. The subsequent progress of the Bill was effectively scuppered by the Lord Advocate who, later in 1854, requested the Faculty of Advocates to prepare a report on the Scots bankruptcy laws. The resulting document, following extensive discussion with interested organizations in Scotland, engendered the Bankruptcy (Scotland) Act, 1856, which subsisted as the primary insolvency statute north of the border until 1913.

The Bankruptcy (Scotland) Act, 1856, does not mark the conclusion of the assimilation debate and its consequences for the organization of the accountancy profession in Britain. Paradoxically, the assimilation of bankruptcy law was to be achieved in 1870 not by the imposition of English laws on Scotland but by the adoption of Scottish insolvency practice in England via the Bankruptcy Act, 1869.

The English procedure of vesting bankrupt estates in the hands of official assignees under the aegis of courts of bankruptcy, which persisted after 1831, was criticized for its departure from the fundamental principle that the creditors should occupy the central role in the realization and distribution of the debtor’s estate (Littleton, 1933, pp. 278-280). The deficiency was remedied by the Bankruptcy Act, 1861, which placed administration in the hands of a “creditor assignee” elected by the creditors. In practice, the legislation of 1861 served only to increase the expense of bankruptcy administration as unpaid and inexperienced “creditor assignees” tended to delegate the management of insolvent estates to knowledgeable and remunerated solicitors.

In 1864 a House of Commons Select Committee conducted an extensive inquiry into the working of the Bankruptcy Act, 1861, and concluded that economy and efficiency in winding-up would be secured by the introduction into England and Wales of the Scottish system of paid, creditor-elected trustees which had been successfully defended by accountants and their allies in 1853-54. Several witnesses to the Select Committee attested that the administration of insolvent estates by competent trustees would be of considerable benefit to accountancy practitioners in England who at present assumed a comparatively limited role (compiling the debtor’s balance sheet) in the bankruptcy process compared with lawyers (Minutes of Evidence, pp. 171, 263, 308). The reforms suggested by the Select Committee were incorporated in the Bankruptcy Act,
1869. In introducing the Bankruptcy Bill to the House of Commons, the Attorney-General conceded that “the English system of bankruptcy had substantially failed” and “the Scotch system of bankruptcy had substantially succeeded. The conclusion naturally pointed to the adoption of the Scotch system” (Hansard, 5 April 1869, p. 780).

The Bankruptcy Act, 1869, made no provisions concerning the qualifications of trustees. As in Scotland the choice of trustee and his remuneration was to be a matter for the creditors. The extent to which this unregulated environment might attract canvassing and touting for trusteeship from a host of doubtful characters was considered less important than the potential advantages of competition for producing greater economy in bankruptcy administration.6 Further, the Select Committee of 1864 had recognized that the potential dangers of open trusteeships had been mitigated in Scotland by the appointment of respectable professional accountants to trusteeships. The Attorney-General expressed the hope that in England the effect of introducing the Scottish system would “be to create a similar profession, so that there would be no difficulty in the way of creditors in the choice of able and efficient trustees” (Hansard, 5 April 1869, p. 781).

Demands for the institution of professional associations in England based on the Scottish model had also been made in The Times in 1867 and 1868 following public concern over the appointment of liquidators. Although 47% of liquidations under the Companies Act, 1862, were awarded to six eminent firms of public accountants (see Report of the Select Committee on the Limited Liability Acts, 1867, Minutes of Evidence, p. 59) a large number of the remainder were in the hands of men who had been attracted by the potential to make “very large fortunes” (ibid., p. 84) and comprised “a swarm of pettifoggers whose only qualification for the duties of accountants has been obtained by a series of personal experience of failure in every occupation they have tried” (The Times, 28 December 1867, p. 28). The remedy advocated by The Times to prevent the further encroachment into accountancy of the unqualified and financially immoral was the formation in London of a professional organization to emulate the successful professionalization project of the accountants of Edinburgh (ibid., 9 January 1868). The passing of the Bankruptcy Act, 1869, offered the prospect of a substantial expansion in the “herd of disreputable persons” (ibid.) offering their services as public accountants.

On 1 January 1870 the new Bankruptcy Act came into force and in the same month the first of the local English societies of accountants was formed in Liverpool. The extent to which accountants in England organized during the 1870s in order to protect their occupational status and gain socioeconomic advantage over the expected (and realized) influx of unqualified applicants for trusteeships following the introduction of the “Scotch system” of bankruptcy administration is deserving of further investigation and indicates the potential limitations of histories of the English profession which commence in 1870 and fail to take cognizance of earlier developments north of the border (Kirkham & Loft, 1993, p. 524).

Commentators in the late nineteenth century certainly considered that the 1869 Act was the principal inducement to the organization of accountants in the major commercial and industrial centres of England. In 1895 it was asserted that following the Bankruptcy Act,

6 Expectations of greater economy and efficiency in English insolvency administration following the implementation of the Bankruptcy Act, 1869, were soon disappointed. In 1877 the Comptroller in Bankruptcy was remitted to investigate the escalating expense of bankruptcy administration. The Comptroller reported a chaotic state of affairs in which costs had risen as bankruptcy had been placed “in the hands of some 20,000 scattered trustees” (Supplemental Report, p. 19). Canvassing was rife: “I believe that accountants, quite as frequently as solicitors, canvass on their own account, and that from the increased numbers of the lowest class of ‘touts’ there is an infinitely greater amount of ‘touting’ than under any former system” (ibid., p. 10). The Bankruptcy Act, 1883, re-introduced judicial control.
1869, established practitioners viewed with "alarm and disgust" the "great influx of men into the ranks of accountancy who had little or no capacity and fitness for the duties they assumed" (A Guide to the Accountancy Profession, p. 5). Respectable accountants were induced to combine in order to protect "the public and themselves from a recurrence of such evils" (ibid). Similarly, Dicksee (1897) claimed that the 1869 Act encouraged those devoid of morals and good conduct to enter the occupation to the detriment of reputable public accountants: "the presence of a black ship the midst of the body naturally resulted in the more respectable Accountants, forming various Associations for mutual protection, and for the purpose of affording to the public some sort of guarantee as to the standing of those whose services they employed" (p. 3).

If, as seems probable, the Bankruptcy Act, 1869, was instrumental in the formation of the first societies of accountants in England (and Boys has recently suggested as much (1994, p. 10)), then the successful preservation of the Scottish process of insolvency administration in 1853 assumes a more than parochial significance in the history of professionalization in Britain — it comprises a common theme which links professional formation in England and Wales with previous developments in Scotland.

CONCLUSIONS

It has been shown in this paper that a critical-conflict based analysis of occupational organization which examines institutional developments in their historical, socioeconomic and political contexts offers new insights into the motives for professional formation. The institution of the SAE and IAAG in 1853 constituted organizational responses to the activities of a London-based group whose proposals, if enacted, posed a substantial threat to the interests of accountants in Scotland. Further, the ideological justifications for the law reforms advocated by the opponents of Scottish accountants were founded on the dominant economic philosophy of mid-Victorian Britain (free trade) and required that the accountants devise an equally mesmeric counter-ideology (nationalism) as a basis for mobilizing cross-occupational support for the engagement of antagonistic interests in the political arena.

Scottish accountants were compelled to participate in a political conflict precipitated by a challenge to what was perceived as their occupational property. Their organization was not based on functionalist imperatives, it was necessary for the mobilization of an occupational collectivity and its potential allies for engagement in a clash of ideologies. The events which resulted in the formation of the first organizations of accountants in Scotland and later in England suggest that institutionalization was essentially motivated not to achieve collective social mobility or to promulgate job monopolies but to protect established economic and social statuses from assaults by exogenous parties such as the London Committee of Merchants (as in Scotland) or occupational usurpers (as in England).

The explanation for the organization of the SAE and IAAG related above does not, however, result in the total redundancy of the traditional explanations for professional formation in Scotland. Rather, the foregoing analysis provides a connecting threat which weaves together certain pertinent tenets of the conventional histories.

In so far that the essential backdrop to the assimilation movement was the maintenance of separate laws and institutions in Scotland

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7 The surviving minute books of the local societies of accountants which formed the ICAEW in 1880 state that organization was primarily induced for the protection and preservation of occupational status (Incorporated Society of Liverpool Accountants, 1870; Manchester Institute of Accountants, 1871; Sheffield Institute of Accountants, 1877; or for the elevation of occupational status (Institute of Accountants in London, 1870) (Habgood, 1994, pp. 201-205).
after the Act of Union, then the traditional explanation for the early professionalization of accountants in Scotland based on the different legal systems north and south of the border is relevant.

A connection between structural economic change and the organization of accountants in Scotland can also be found. Industrialization and commercial expansion ensured Britain's economic supremacy (Perkin, 1969, p. 408) and the existence of an increasingly numerous and wealthy middle class (Rubinstein, 1993, p. 147). During the early 1850s the energetic commercial, financial and manufacturing communities sought the affirmation and further extension of those Free Trade policies which had underpinned British economic hegemony. For a group of powerful London merchants aggrieved at losses suffered under the Scots law of bankruptcy, those laws were advocated as being part of "the huge, heterogeneous, inefficient, and expensive pile of institutions and institutional gaps which clogged the road of progress" (Hobsbawm, 1968, p. 228). In the intoxicating days of the Great Exhibition of 1851 one prescription for the further creation of the optimum conditions for the operation of international capitalism was the assimilation of commercial law. In attempting to defend their pecuniary interests by the maintenance of existing laws and institutions, Scottish accountants came into conflict with the prevailing spirit of liberalizing commercial relations and law reform.

The analysis of events which resulted in the formation of societies of accountants in Edinburgh and Glasgow in 1853 also partly concords with the contention that organization was induced by attempts by practitioners to achieve social closure. The central objection of the London Committee of Merchants was the expensive administration of sequestrated estates in Scotland by trustees. The London Committee argued that many trustees were educationally unfit for office and were of questionable social standing. Further, those practitioners who were reputable had no formal professional qualification to justify their election as trustees. The necessity of distinguishing the professional from the non-professional trustee was recognized by the opponents of the London Committee. The accountant pamphleteers of Edinburgh, the Edinburgh General Committee on Bankruptcy Law Reform and activist accountants in Glasgow, concurred that all unqualified and incompetent parties should be excluded from the office of trustee. The offensive by the London Committee against the competence of insolvency trustees was utilized by Scottish accountants as a justification for the imposition of closure practices. It was proposed that the creditors should choose their trustee from an approved list of qualified practitioners. One means of ensuring that the unorganized occupational group which filled most trusteeships — accountants in public practice — could claim evidence of professional respectability, fitness for office and appearance on a register, was membership of a qualifying association.

The evidence suggests, however, that initially, the formation of qualifying associations by accountants was a secondary objective. The accountants of Edinburgh had fleetingly organized in 1834 and, together with their professional brethren in Glasgow, associated on a more permanent basis in 1853 in order to form protective occupational groups geared for a political contest. As instituted in 1853, the Edinburgh and Glasgow organizations of accountants were agencies for the mobilization of participants engaged in a conflict to preserve collective socioeconomic interests. Hence, the first constitution of the Edinburgh Institute was chastised in legal circles for its absence of contemporary "professional" attributes. Provisions relating to education and qualification were omitted and the constitutional arrangements as a whole were considered to be "hastily and crudely concocted" (see Walker, 1988, p. 301). Once the challenge to their dominance in the market for the provision of insolvent services had been repelled, and on the acquisition of Royal Charters, the SAE and IAAG began to assume the persona of qualifying associations by the establishment...
of structures for the testing of professional knowledge in 1855 (Walker, 1988, pp. 312-317; Kedslie, 1990a, p. 200) and by operating other closure strategies based primarily on credentialism (Walker, 1991).

This paper has confirmed the heuristic value of examining professional formation and behaviour within critical-conflict models and the need to investigate the organizational development of occupations as opposed to the narrow profession-centred frame of reference which characterizes functionalist-based analysis. It has revealed the dynamic and political nature of the organizational objectives of the SAE and IAAG and confirms the fluid nature of professional ideologies. Moreover, the foregoing reiterates that "organizations are the outcome of struggles, reflect the social relations of wider society, and are thoroughly permeated by the inequalities and contradictions of that society" (Davies, 1983, p. 181).

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