

George Monbiot Is an elite secret society undermining the impartiality of Scottish justice?

The Skye bridge club

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The toll turned out to be the highest per mile of road in the world. The private consortium invested just £500,000, from which it is due to reap some £88m from the people of Skye.

Many of the islanders refused to pay. They argued that the paperwork legalising the road tolls had never been published. Scotland's foremost legal expert, Professor Robert Black, described the government's demand that the tolls be paid as "fatally flawed".

The fatal flaw, however, did not stop the prosecution of 496 of the islanders. Some of them appealed, but their arguments were dismissed by Scotland's law lords. Many observers, including some very eminent lawyers, criticised the law lords' decisions. Some of the islanders began to question the impartiality of the courts.

Now, research by the tireless campaigner Robbie the Pict, published here for the first time, reveals that many of the key decision-makers, in and out of the courts, belong to a society which keeps its membership secret.

The Speculative Society, which is housed in the University of Edinburgh, appears to have arisen from a masonic guild in the 18th century. Three hundred years ago, the "operative" masons from the building trade began to admit "speculative" members, who were people of high standing from outside the trade.

The Edinburgh Speculative Society later split from the operative masons, to concentrate on cementing the bonds between powerful people. Unlike freemasons, the "knights" of the society, who are all male and all white, do not swear an oath of loyalty to each other.

Their meetings appear to concentrate on dining and debate. The group describes itself as a "sodality", or brotherhood, and its motto urges the "brethren... in unity to dwell". That is about the limit of what non-members can discover. Even the University of Edinburgh, whose principal is an honorary member, claims never to have heard of it.

But the secret membership lists obtained by the Pict show that many of the most powerful people in Scotland have received either "extraordinary privileges" or "honorary privileges" from the society. Among them are the Duke of Edinburgh (membership number 1662), Lord Mackay of Clashfern, the former British lord chancellor (no 1676), many of Scotland's leading company directors, several top surgeons, journalists and academics, plenty of sheriffs and QCs and at least 18 Scottish law lords.

The Pict alleges that the law lords' membership of the society throws the impartiality of many of the key Skye bridge cases into serious doubt. Over the past six years, Scottish law lords have presided over 14 hearings involving the bridge protesters. In every case they have ruled against the protesters and in favour of the crown and the toll collectors.

In 12 of these hearings, one or more of the law lords presiding over them and the government officials or company directors whose arguments they have assessed have, the secret lists reveal, been members of the Speculative Society. In *Anderson v Hingston* 1996, for example, Lords Morison and Weir, who are listed as enjoying the "extraordinary privileges" of the secret brotherhood, sat in judgment on a case concerning the legality of a decision made by the Minister of Transport, Lord James Douglas-Hamilton. Lord Douglas-Hamilton is also a member of the society (no 1772).

Appeals by the protesters concerning Lord Douglas-Hamilton's decisions were later examined by Lords Cowie, Coulsfield, Marnoch,

MacLean, Johnston, Drummond Young, Nimmo Smith, Cameron of Lochbroom and the lord justice-general Lord Cullen (no 1702), all of whom belong to the Speculative Society. In *Robbie the Pict v Miller Civil Engineering and the Secretary of State*, 1998, the government was represented by a QC called Duncan Menzies (now Lord Menzies), another knight of the Speculative Society. The case was heard by his fellow knights Lords Cameron and Johnston.

In January this year, Lord Drummond Young prevented an appeal brought by Robbie the Pict against a judgment of Lord Johnston's. In May, Lord MacLean helped to judge Robbie the Pict's petition against a decision made by Lord Cullen. All four law lords are members of the brotherhood. The 496 Skye defendants were all refused legal aid. There may have been good grounds for refusal, but if so these were not explained. Standing counsel to the legal aid board from 1991-98 was Colin McEachran QC, also a member of the society.

The body with overall responsibility for making the Skye bridge project happen was the Scottish Office's development department. One of its senior officials was Niall Campbell, another knight of the society. He went on to run the Scottish Office's justice department. The tolls on the bridge are collected by the Skye Bridge Company. Its chairman was Sir Iain Noble. He too belongs to the society.

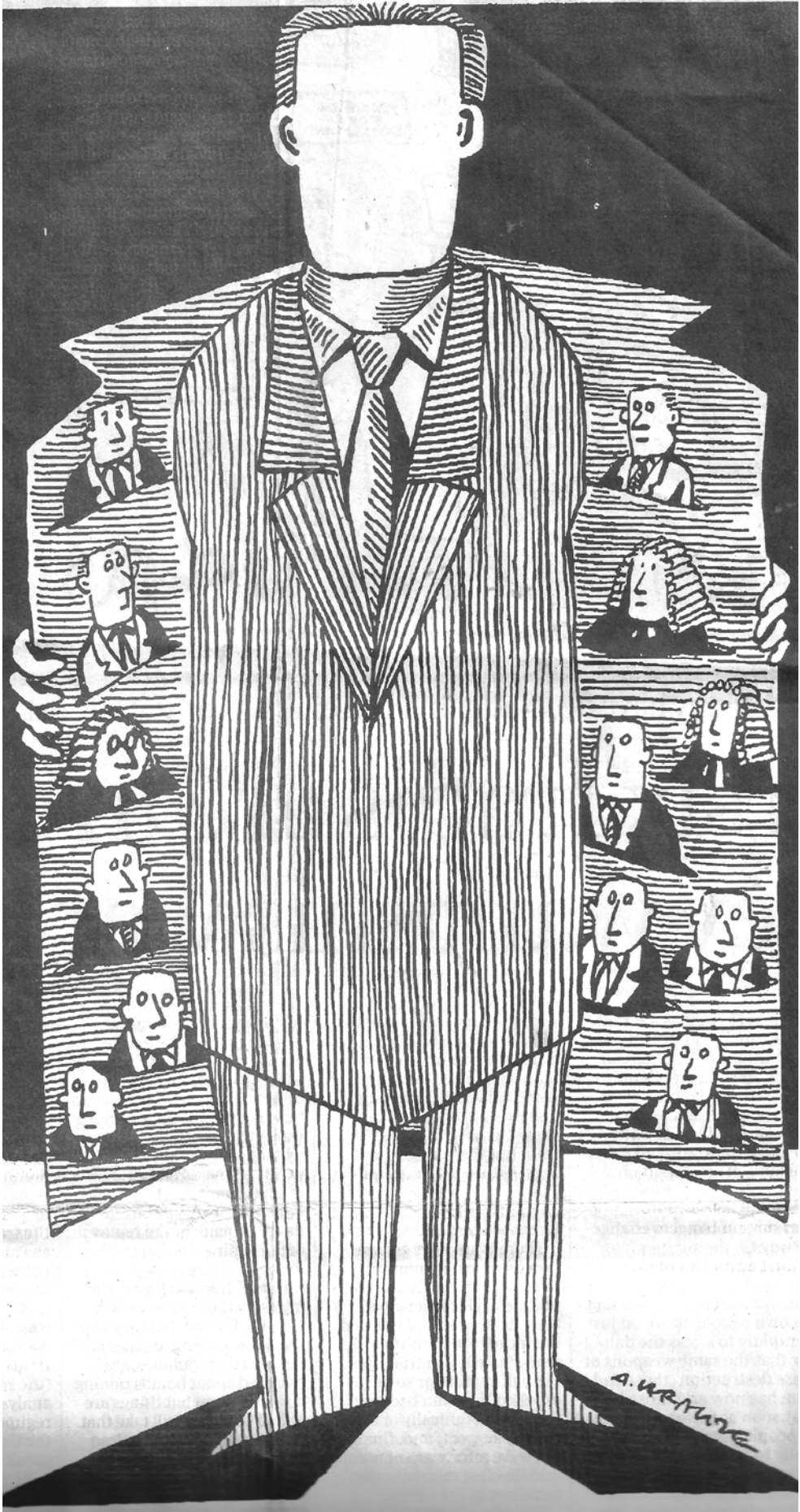
Since July 1999, Scottish law has been, in principle, legally compliant with the European convention on human rights. Article six of the convention determines that "everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal". "Independent and impartial" means, in this case, above any reasonable public suspicion of influence or special interest. Robbie the Pict suggests that the law lords' adjudication of cases involving other members of the Speculative Society appears to offend both the letter and the spirit of the law. Interestingly, an essay published in 1968 in the official history of the Speculative Society by Sir Derrick Dunlop (a former president of the society) observes that "we all know... that the judicature is icy in its impartiality, which is one of the chief glories of this country, but perhaps this impartiality would be strained to breaking point where the Speculative is concerned".

Whether this demonstrates partiality or not is impossible to say. Not every judge in the Skye bridge cases is a member of the society. There is no evidence that anyone has exploited his links with other members of the society. But when Lord Hoffman's membership of Amnesty International was revealed, soon after he and his fellow law lords decided that General Augusto Pinochet should be extradited to Spain, the original judgment had to be scrapped and a retrial ordered. Amnesty International had no direct connection with the prosecution. In this case there is a direct connection between the law lords and the people whose decisions they were assessing. Their undeclared membership of the society surely necessitates a retrial of all the cases involving Skye bridge.

But that is not the end of the matter. These law lords have, between them, presided over thousands of other hearings. The Pict's findings raise questions about the entire system of Scottish law, and should also cause those of us living south of the border to take a closer look at our own system. Public confidence in the law requires that the judiciary be above suspicion. This story suggests that we cannot be assured that this is so.

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Transcript taken from The Guardian Friday August 16, 2002



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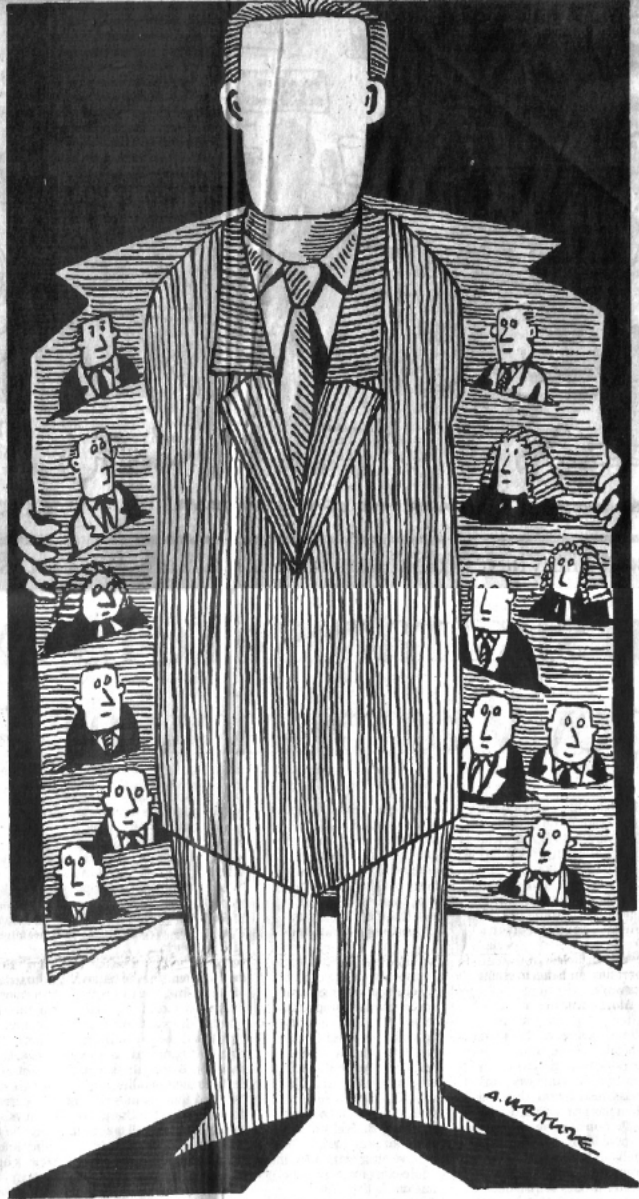
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