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### Corroboration and the Carloway Report – the evil of the medieval?

**Citation for published version:**

Cairns, JW, Corroboration and the Carloway Report – the evil of the medieval?, 2012, Web publication/site, Edinburgh Legal History Blog. <<http://www.elhblog.law.ed.ac.uk/2012/10/22/corroboration-and-the-carloway-report-the-evil-of-the-medieval/>>

**Link:**

[Link to publication record in Edinburgh Research Explorer](#)

**Document Version:**

Publisher's PDF, also known as Version of record

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## Corroboration and the Carloway Report – the evil of the medieval?

Posted on 22/10/2012 by John Cairns

That something is new is no reason to reject it; that something is old is no reason to reject it.

But your blogger has always been interested in the use of the language of history to condemn institutions. Most recently there has been interesting language about the Scottish rule on corroboration in criminal law. This rule in Scots law derives ultimately from the Codex Justinianus and was received along with much Romano-canonical procedure. The recent Carloway Report has recommended its abolition; your blogger has no axe to grind about this, but it is interesting to note that the Senators of the College of Justice and the Scottish Police Federation have opposed its abolition. It will be interesting to see what the Scottish government does in the face of this opposition.

What is interesting is that the rule is condemned as "archaic" and "medieval" (Carloway Report, pp. 282, 284) and it is claimed that its preservation would ensure that "Scots criminal law remains deeply steeped in what is essentially late medieval jurisprudence" (ibid., p. 256). Now if it does not function well in the modern world and the law can be improved that is one thing; but the use of medieval and archaic in this way is telling about modern attitudes to the past. After all, the Scots rule that agreement is all that is necessary to form a contract derives from Roman law as influenced by canon law: do we condemn it as archaic and medieval? If not, why not? Should we not abolish this archaic and medieval rule? These are not neutral adjectives.

"Medieval", like "feudal" is generally used as an adjective implying disapproval – that which they qualify is always something to be disapproved of. Oddly enough, "classical" is generally an adjective which implies approval. Is corroboration a classical rule of Scots law! Surely it is. It is interesting how the Renaissance and Enlightenment's language of attack remains current.

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