A Brief History of an Ancient Institution: The Scottish Parliament

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I

Parliaments Old and New

When in July 1999 the British and world media gathered in Edinburgh to witness the state opening of the new Scottish parliament, the head of the newly devolved government, the late Donald Dewar, book-ended his speech in the chamber with two emotional and pointed references. He stated at the beginning 'there shall be a Scottish parliament' and concluded that the opening ceremony had its 'roots in a great tradition'. As Scotland's 'first', First Minister, Dewar was the man of the moment. His lifelong ambition for Scottish devolution was fulfilled and as a scholar-politician he was imbued with an acute sense of the past. His opening phrase refers to the first line of the Westminster Scotland Act (1998) that established the parliament. It is strikingly simple but 'there shall be a Scottish parliament *again*', would have been more accurate and more in tune with Dewar's own historicism, something his contemporaries, both political friend and foe, came to admire.[1] But how significant are the links between the old and new parliaments? Is Scotland's medieval and early modern parliamentary tradition in any way 'great'?

For many the key event with which to judge the value of the Scottish parliament was the Anglo-Scottish parliamentary Union of 1707. Who could applaud an assembly that voted for its own extinction or allowed national affairs to reach such a perilous state that union was the only solution? To take a negative view it is not necessary to be a 'Scoto-phob' like Hugh Trevor Roper (admittedly in his case apologetically so), who appeared to spend a lifetime exploding the 'myths', as he saw it, of Scottish history. Thus in the late 1970s P.W.J Riley, an English-born political historian of Scotland, declared the parliament 'no more than an instrument of magnate rivalry and the kingdom was well rid of it'. This bleak and cynical assessment arises from Riley's close study of Scottish political culture from the Revolution of 1689 (when the Catholic James VII and II was removed) to the Union itself, and the dismissive tone expresses a common enough perception by commentators of various political hues, and many without Riley's credentials as a Scottish expert.[2] Since 1707 in fact Whig, Tory and Jacobite historians have developed their own critiques. Scottish 'Jacobites' such as John Cockburn, writing soon after the Union, or John Lingard in the 1850s, argued that the parliament was essentially the king's feudal court, and was duty-bound to defer to the royal will, but also in 1689 its parliamentarians had rebelled against 'rightful' monarchy, and then defied the popular will in 1707.[3] Tory interpretations also link 1689 with 1707. The Revolution and Union were 'necessities', though in themselves limited dynastic and

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[1] Scotland Act 1998 (1998, c.46); BBC (Scotland) live broadcast of the ceremony, 1 July, 1999
[2] H. Trevor-Roper, *The Invention of Scotland* (Yale, 2008); P.W.J. Riley, *King William and the Scottish Politicians* (Edinburgh, 1979) 162; P.W.J. Riley, *The Union of Scotland and England* (Manchester, 1978)
[3] J. Cockburn, *A Short History of the Revolution in Scotland* (London, 1712), 4-6; J. Lingard, *History of England* (London, 1855), *passim*. For a summary of historiographical interpretation see K. M. Brown and A. J. Mann (eds.), *Parliament and Politics in Scotland, 1567-1707*, (Edinburgh, 2005), 5-10 and 184-5

constitutional changes. They were part of the evolutionary development of constitutional monarchy and, above all, confirmed the central significance of 'right kingship' and crown authority. Yet the history of the Scottish parliament has impressed Whigs even less. In the eighteenth century David Hume (1711-76), William Robertson (1721-93) and Sir John Dalrymple (1726-1810) affirmed that after 1707 the English parliamentary system had saved the political liberties of Scotland. Scottish Whig constitutional history, from then to Robert Rait in the twentieth century, inspired in part by a victorious presbyterian historiographical tradition, lauded presbyterian resistance to royal absolutism, signalling the example of a mature English parliament in contrast to an institutionally under-developed Scottish assembly, with weak procedures, little power and a factious membership.[4] Such negativity in the twentieth and twenty-first centuries has produced a strange convergence of views where unionists, including Trevor Roper himself, conclude the parliament was not worth saving, while nationalists condemn it as having failed the nation. Stranger still are the Whig and nationalist 'bedfellows' who celebrate the parliament as a representative institution but only since the Revolution of 1689. Thus, with no union, the beginning of a reformed phase is suggested and that if projected into the eighteenth century could have produced an assembly of 'adequate' institutional sophistication.[5] It is the history of what might have been.

If we are fair, however, there is plenty of contemporary opinion to sustain the whiggish interpretation, whether deployed in the eighteenth century or in the present day, through the likes of Steve Pincus, one of the newer breed of 'neo-Whigs'. After all it was James VI and I (1566-1625) who to the English parliament boasted in 1604 that its Scottish equivalent was a co-operative and complaint body, subject to his pen and merely the 'head court of the king and his vassals'. In the Restoration period John Maitland, duke of Lauderdale (1616-82), Charles II's secretary and parliamentary royal commissioner, declared in 1674 that parliament was 'useless at best'.[6] However, these views come from elite politicians looking to create an impression of control and unchallenged authority. The reality was that James, Lauderdale and many other political managers faced significant challenges from their parliament. There are many early political writers from Scotland, such as John Mair (1467-1550), George Buchanan (1506-82), Sir George Mackenzie of Rosehaugh (1636-91), Sir Andrew Fletcher of Saltoun (1653-1716) and George Ridpath (d.1726) who can attest to a vibrant political culture with the Scottish parliament at its hub. The fact that a Scottish Tory like Mackenzie and a Whig like Ridpath could agree on this, when in other respects they were philosophical opposites, adds further corroboration. The myth of Scotland's 'failed'

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[4] J. Dalrymple, *An Essay Towards a General History of Feudal Property* (London, 1757), 330-1 and also his *Memoirs of Great Britain and Ireland* (3 vols, Edinburgh and London, 1771-88), i, part 2, 78; D. Hume, *A History of England from the Invasion of Julius Caesar to the Revolution of 1688* (1763; 6 vols, Indianapolis, 1983), vi, 466; W. Robertson, *The History of Scotland, during the Reigns of Queen Mary and James VI till his Accession to the Crown of England* (2 vols, London, 1759), i, 71 and R.S. Rait, *The Parliament of Scotland* (Glasgow, 1924), *passim*. For a summary see C. Kidd, *Subverting Scotland's Past. Scottish Whig Historians and the Creation of an Anglo-British Identity, 1689-c. 1830* (Cambridge, 1993), 130-44.

[5] K. Webb, *The Growth of Nationalism in Scotland* (Harmondsworth, 1978); C. Harvie, *Scotland and Nationalism: Scottish Society and Politics, 1707 to the Present* (Abingdon, 2004) and P. H. Scott, *The Union of 1707: why and how* (Edinburgh, 2006)

[6] S. Pincus, *1688: The First Modern Revolution* (Yale, 2009). For James VI's views see his speech to the English parliament in 1607, J.P. Somerville (ed.), *King James VI and I. Political Writings* (Cambridge, 1994), 173; O. Airy (ed.), *The Lauderdale Papers* (3 vols, London, 1884-5), iii, 36

parliament has, therefore, a long pedigree, little changed until recent decades. Nevertheless, the whiggish emphasis on success and failure, the victory or defeat of royal autocracy, is not even closely the full story of what parliaments are about. The effective representation of society, as understood in the medieval and early modern world, the promotion of the economic and social welfare of the people, and the unifying of the kingdom and nation in the face of external and internal threats, were of equal significance to contemporaries and should be so to historiography. The modern electorate is, after all, more concerned with taxes and public services than with which party is in power.

The historiography dealing with the old Scottish parliament has, however, grown in maturity in recent years as source-based studies have overcome the prejudiced accounts of three centuries - modern politicians have played their part. This 'revisionist' phase has been based on foundations laid by A.A.M. Duncan, Maurice Lee, P.W.J Riley and David Stevenson from the 1950s to 1970s, which pointed to future research.[7] Building on this, from the 1980s to today, medievalists such as Roland Tanner and Michael Penman, and early modernists such as Julian Goodare, John Young, Alan MacDonald, Keith Brown, Gillian MacIntosh and this author, have provided a 'new' history of the Scottish parliament, exploring the diversity of the institution throughout its near 500 year history.[8] Many of these historians have been editors or research associates of the Scottish Parliament Project at St Andrews University (1997-2008) which produced in 2008 the online resource *The Records of the Parliaments of Scotland to 1707*, a digital record of the surviving legislation and minutes of the parliament, and a vital source for students and researchers. This was at the end of a ten year project which began when Michael Forsyth, Conservative Secretary of State for Scotland (chief minister in the British cabinet with responsibility for Scottish affairs), agreed to fund the research following a tentative approach made by the project director, Professor Keith Brown, in June 1996. Only four weeks later John Major, then Prime Minster, announced in the House of Commons that the project would be funded. The context was that the Labour opposition, under Tony Blair's leadership, was committed to establish a devolved parliament in Edinburgh if they won the election the following year, and Conservative ministers, opposed to devolution, were keener to support Scottish cultural initiatives. Indeed, the announcement

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[7] See for example A. A. M. Duncan, 'The early parliaments of Scotland', *Scottish Historical Review*, [hereafter *SHR*], xlv (1966), 35-57; M. Lee, *John Maitland of Thirlestane and the Foundation of the Stewart Despotism in Scotland* (Princeton, 1959), 120-54; P.W.J. Riley, *The Union of Scotland and England* (Manchester, 1978) and his *King William and the Scottish Politicians*; and D. Stevenson's, *The Scottish Revolution 1637-4: The Triumph of the Covenanters* (London, 1973) and *The Revolution and Counter Revolution in Scotland 1644-1651* (London, 1977).

[8] For example see Goodare, 'The Scottish Parliament of 1621' in *The Historical Journal*, 38, 1 (1995), 29-51and 'The Estates in the Scottish Parliament, 1286-1707' in C. Jones (ed.) *The Scots and Parliament: Parliamentary History*, (Edinburgh, 1996) 11-32; J.R.Young, *The Scottish Parliament 1639-1661: a political and constitutional analysis*, (Edinburgh, 1996); R.J. Tanner, *The Late Medieval Scottish Parliament*, (East Linton, 2001); A. R. MacDonald, 'Deliberative processes in the Scottish Parliament before 1639: multi-cameralism and the Lords of the Articles', *SHR*, 81 (2002), 23-51 and *The Burghs and Parliament in Scotland, c.1550-1651* (Aldershot, 2007) and A.J. Mann, 'Inglorious revolution: administrative muddle and constitutional change in the Scottish Parliament of William and Mary' in *parliamentary History,* 22, part 2 (2003), 121-44. Out of the Scottish Parliament Project at St Andrews University see, K.M. Brown and R.J. Tanner (eds.), *Parliament and Politics in Scotland, 1286-1567*, (Edinburgh, 2004); Brown and Mann (eds.), *Parliament and Politics in Scotland, 1567-1707*, and K.M. Brown and A.R. MacDonald (eds.), *Parliament in Context: 1235-1707* (Edinburgh, 2010).

to support the project was made on 4 July 1996, the day after it was also announced that the ancient Stone of Scone, the inauguration stone of the kings of Scots, would be returned to Scotland from its then resting place in London's Westminster Abbey. Subsequently, MSPs from all political parties, and presiding officers David Steel (Liberal Democrat), George Reid (Scottish National Party) and Alex Fergusson (Conservative), offered support, and additional funding was forthcoming through three first ministers (all Labour) and the then Scottish Executive.[9] Finally with the 300th anniversary of parliamentary Union in 2007, the publication of seminal studies on the union added to the mix, especially those by Chris Whatley and Allan MacInnes.[10] These two express divergent views on voting behaviour, preconditions and the inevitability of the Union. Most controversially, Macinnes concludes that Scotland's economic woes have been exaggerated and that it was well-placed to recover on its own, and contemporaries who argued poverty had a vested interest in doing so. The colonial trade was going well, in spite of its technical illegality, and Holland might have been an alterative partner to England had the union talks stalled. Whatley meanwhile, an 'economic causes' commentator, who has studied in detail the dreadful circumstances of the famines of the 1690s amongst other economic woes, has now re-focused attention on a clear patriotic pro-union vote from Presbyterians. These 'patriots' were anxious to preserve the Revolution of 1689 and to avoid a slip back to the world of James VII, which might ensue without the security that Union would provide. This harks back to the religious continuities of the Reformation and the Covenanters. The historiography is much more diverse than this brief summary, but with these works awareness of the old parliament has been taken to higher levels than ever before.

Deepening interest in the old institution, beyond a few hard-core academics, depended initially on the fate of the new assembly– it took a long time to come into being. Indeed, the campaign for a new parliament had continued for over a century. The movement for Home Rule, the devolving of some Scottish decision making from the UK parliament in London to a Scottish parliament in Edinburgh, arose in the 1880s and coincided with parallel and more dramatic moves in Ireland, as well as a rise in popular nationalism in Scotland. Liberal prime ministers, from William Gladstone in the 1880s to Herbert Asquith, in the years leading up to the First World War, supported the idea of Scottish Home Rule and much of the Labour Party, particularly Scottish MPs, were sympathetic in the inter-war years. Between 1906 and 1939 no less than fifteen Home Rule bills and motions were presented in the Westminster parliament, although all were thrown out or set aside. The pro-devolutionists split into two camps: the old federalists, mainly Liberals and Labour with a few Conservatives, on the one side, and the separatists on the other. The hardening of nationalism was underlined in 1934

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[9] K.M. Brown et al (eds.), *The Records of the Parliaments of Scotland to 1707* [*RPS*] (St Andrews 2007-13), available online at http://www.rps.ac.uk . For a fuller description of the history of the Parliament Project see K.M. Brown, 'The Records of the Parliaments of Scotland' in *History Scotland* : special issue: 'The Scottish Parliaments 1235-1707', vol. 8, no. 3 May/June 2008, 15-19

[10] C.A. Whatley, *The Scots and the Union* (Edinburgh, 2006); A.I. Macinnes, *Union and Empire; The Making of the United Kingdom in 1707* (Cambridge, 2007)

when the Scottish Home Rule Association transformed itself into the Scottish National Party. The case for devolution floundered in a sea of division.[11]

During and after the Second World War the Scottish Secretary of State, and the Scottish Office he presided over, developed enhanced responsibilities over economic and social affairs, although there was still no direct accountability to the Scottish electorate. A 'democratic deficit' remained. However, when both the Labour and Conservative governments ran into difficulties in the 1970s, the SNP gained in support. Following the SNP's electoral successes in the two general elections of 1974, the Labour government was forced to bring forward a devolution bill which passed in 1978, but would only become law subject to a referendum in which 40% of the entire electorate voted 'yes'. The referendum held the following year showed only 33% in favour, and therefore the devolution plans collapsed, as did the Labour government and SNP support in Scotland. The nationalists took much of the blame for the debacle with their more 'extreme' demands for full independence, and lost all but two of their seats at the subsequent election in 1979.

Nevertheless, the 1980s and 1990s saw a revival of interest in devolution and to some extent in the fortunes of the SNP. The Scottish electorate and public were reacting to the Conservative government of Margaret Thatcher which was seen as too right wing for Scottish collectivist traditions, too authoritarian and apparently too English. That the 1997 General Election saw not a single Conservative MP elected in Scotland was the culmination of this perception. Also, the use of Scotland as a test laboratory for the unpopular poll tax in 1989 merely confirmed suspicions that the UK parliament failed to adequately represent the Scottish electorate and its views. Momentum was created by the all party (minus the Conservatives and SNP) and interest group represented (including the churches) Constitutional Convention formed in 1988. This produced a statement of intent, *A Claim of Right for Scotland*, which demanded devolution. Thus when Tony Blair won his landslide victory in 1997 it was with the promise to hold referendums for a Scottish parliament and Welsh assembly, theorising at the time that devolution would be the weapon to defeat nationalism. In the Scottish referendum that followed in September that year, 75% of those who voted approved of the creation of the new parliament, and while this was still only 46% of the entire electorate, it was seen as overwhelming support and a sign that a political watershed had been reached.[12] Once the Scotland Act was passed, the first elections to a 129 member, single-chamber parliament took place in May 1999. So, to invert what the last Chancellor of Scotland, James Ogilvy, earl of Seafield, said when he adjourned the old parliament in March 1707 - it was the beginning of a new, not 'the end of an auld song'.[13]

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[11] T.M. Devine, *The Scottish Nation, 1700-2000* (London, 1999), 273-327; I.G.C. Hutchison, *Scottish Politics in the Twentieth Century* (Bassingstoke,2001) *passim*.

[12] C. Harvie, 'Scotland after 1978: from Referendum to Millenium' in R. A. Houston and W.W.J. Knox (eds.) *The New Penguin History of Scotland*, (London, 2001), 494-529.

[13] For Seafield's comment see *'Scotland's Ruine': Lockhart of Carnwath's Memoirs of the Union*, (ed.) Daniel Szechi (Aberdeen, 1995), 204

II

The nature of the pre-1707 parliament

Figure 1.The Parliament House, Edinburgh, c.1646, engraved after a drawing by James Gordon of Rothiemay, in a view now lost to us. To the right (North East corner, near St Giles) is the doorway with above it the statues of 'Mercy' (right) holding a crown wreathed with laurel leaves, and 'Justice' (left) with a balance in one hand and palm in the other. Underneath was the Latin motto: *stant his felicia regna*, kingdoms stand happy by these virtues. The statues by Alexander Mylne (1637) are now found inside. Parliament Hall is the oldest surviving purpose-built parliament in Europe. The new mace, used since 1999, has cut into it the words 'Wisdom, Justice, Compassion and Integrity'.

The pre-1707 Scottish parliament was also a single chamber or unicameral affair, unlike Westminster with its two houses, but like the medieval parliament of the Kingdom of Naples or the states general of France before 1560. The Scottish parliament gathered as a meeting of estates, originally three, reflecting the medieval orders of society – those who prayed (the clergy), those who fought (the nobility) and those who toiled in commerce (the burgesses and merchants of burghs). It was summoned by the crown to meet on forty days notice.[14] The earliest known surviving example of an individual summons is a royal letter to a sheriff in 1293 summoning him to a 'colloquium' in Stirling. An alternative gathering of estates, with less judicial and legislative power, was the Convention of Estates, which could be summoned on shorter notice, for emergencies or for the sake of convenience. The Polish parliamentary diet, or *sejm*, also had ordinary and extra-ordinary sessions which roughly equate to Scottish parliaments and conventions.[15]

Whether 'less an institution than an irregular and short-lived event (at least before 1689)', or a 'meeting place where the matrix of governmental authority was configured', the Scottish

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[14] For the most comprehensive descriptions of how parliament operated see Brown and Mann (eds.), *Parliament and Politics in Scotland, 1567-1707,* 11-56 (with some historical narrative); A.J. Mann, 'House Rules; Parliamentary Procedure' in Brown and MacDonald (eds.), *Parliament in Context: 1235-1707,* 122-56 (a procedural summary), and the still magnificent, in spite of dated interpretation, Rait, *Parliaments of Scotland*, *passim*

[15] Brown and Mann (eds.), *Parliament and Politics in Scotland, 1567-1707,* 11-12; Duncan, 'Early parliaments of Scotland', 43-53; *RPS*, 1293/8/1 (all subsequent references accessed 15 February, 2013). For European comparisons see Brown and Mann (eds.), *Parliament and Politics in Scotland, 1567-1707*, 1-5 and J.R. Young, 'The Scottish Parliament in the Seventeenth Century: European Perspectives' in A.I. Macinnes, T. Riis and F.G. Pederson (eds), *Ships, Guns and Bibles in the North Sea and the Baltic States, c.1350-c.1700* (East Linton, 2000), 139-72

parliament operated with evolving procedures aimed at carrying business through to completion. Parliaments are, after all, mechanisms to establish agreement and the widest possible consensus.[16] However, a council of advisors might easily carry out these functions. Wider medieval councils, 'general councils' or 'conventions', have been regarded as 'proto-parliaments' as these were gatherings of the estates. In the official Scottish record the first mention of the actual word 'parliament' or 'parliamentum' is not until 1290, but at least from 1235 the term 'colloquium' is used for a great council, and the historiographical consensus is that these were, in effect, parliaments where the political community gathered to make decisions. Therefore, while the period from c.1230 to c.1290 represents 'a kind of limbo' or uncertainty in the history of the Scottish parliament, the sources being few and far between, we can be confident with the succession crisis following the death of Alexander III (1241-86) that the use of the word 'parliament' demonstrates that the estates of Scotland were indeed meeting. Equally however, as parliamentary meetings were found necessary throughout medieval Europe to balance the needs of the crown with the policy objectives of the political community, it is not difficult to imagine 'proto-parliaments' convening in Scotland some time before 1235, and as early as the reign of David I (c.1084-1153, r.1145-53). If the Scottish parliament is defined as a meeting of the estates, then when groups of the same cast met in an assembly of different casts we have the quality of a parliament. The first known meeting of estates was in Spain in 1188, under King Ferdinand II of León and Galicia, and England's first equivalent is assumed to have met in the 1250s in the reign of Henry III (1207-72), yet meetings of a parliament of English nobles occurred in the 1230s and the forced agreement by King John (1167-1216) to *Magna Carta* in 1215 was a similar gathering, and they no doubt met before. It seems reasonable to assume, therefore, that the advent of the parliament of Scotland, though not the first, was contemporary or close to being contemporary with that of England and was an early manifestation. The mother of parliaments had a cousin of similar vintage.

The estates that attended the Scottish parliament did so according to status. The appointed clergy, the first estate, had an 'in-and-out' history, a faltering presence between the Scottish Reformation of 1560 and the formal reinstatement of bishops in 1606, and absent again from 1639 to 1660, before being finally removed in 1689; the nobility, the second estate, attended by hereditary right; the elected members of royal burghs, the third estate, who from the fourteenth century became regular attendees as pressure increased on the crown to raise revenue which required the consent of the merchant community, and lastly the elected shire members, who developed out of the lesser nobility (lairds) and who attended from the 1580s as a 'fourth' estate, somewhat like the cortes of Aragon which had separate representation for the higher nobility and *hidalgos* (gentry). Another grouping that attended were the seven or eight senior officers of state, such as the lord advocate, the crown law officer, or clerk register, the senior clerk of parliament, and their right to attend and vote *ex officio* (in addition to those officers who were peers or prelates) emerged from the fourteenth century. As these 'men of business' became more numerous, however, the estates became nervous about the number who could vote in committee, an attitude reflected in some general distrust

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[16] K.M. Brown, *Kingdom or Province? Scotland and the Regal Union 1603-1715* (Basingstoke, 1992), 13; J. Goodare, *The Government of Scotland, 1560-1625* (Oxford, 2004), 39.

of appointed bishops, who were also viewed as crown voting fodder. By the end of the seventeenth century these diverse members, appointed and elected, came together in a gathering of over 200 strong. The potential maximum numbers of the estates changed over the sixteenth and seventeenth centuries and as it did so greater electoral competition ensued. The hereditary peerage, the noble estate, expanded from 51 in the 1560s to 154 in 1707, though some did not always attend. The elected commissioners of the royal burghs had also grown in size from less than 50 before 1560 to 77 in 1700. As for shire commissioners, there was a maximum of 33 shires but as all were firstly allowed two representatives and some three or four in the 1690s, by 1693 the maximum shire representation stood at 92 commissioners.[17] To these we must add the last attendee, the king himself, who regularly participated in debates, especially the likes of James I (1394-1437) and James VI. Between the Union of the Crowns in 1603 and 1707 a reigning monarch attended on only five occasions (1617, 1633, 1641 and 1650-51), although James, duke of Albany represented Charles II in 1681 before himself becoming king. After 1603 a royal commissioner sat in the throne, as James did in 1681, and was tasked with the implementation of the royal agenda and empowered to give the royal accent in the traditional manner, not by signature but by touching the royal sceptre to the final draft of each act.

 'Commissioners', as elected members were known, were chosen by a small electorate, still small by 1707. This electorate consisted of the lesser landed, enabled as candidates or voters by an ancient property qualification, or later by an equivalent rental income, who elected shire commissioners, and individual town councils who selected one of their number to be their burgh commissioner. Indeed, the same small electoral franchise continued until the 1832 Reform Act once Scottish MPs were co-opted into the Westminster parliament after the Union of 1707. This made eighteenth century electoral management and related chicanery a much more scandalous business than it had ever been in Scotland before 1707. In spite of this limited franchise, by the late seventeenth century electioneering and party management had become a feature in a way mirroring the House of Commons in England. However, the unicameral nature of the Scottish parliament ensured it developed on different lines.

The Scottish assembly evolved out of the medieval king's court where justice was dispensed. In this respect the Scottish parliament was a court, like the Polish *sejm,* the *parlement* of Paris or the English House of Lords, in the Scottish case a court of first instance (in treason and forfeiture cases) or appeal (at the house's discretion, even after the Court of Session was created in the 1530s) in what was termed the 'falsing of dooms', that is appeals from lower courts. With this judicial and appellate quality many of the parliament's procedures reflected the convening of a court of justice. For example, the parliament was 'fenced' at the beginning of each session by a declaration to exclude the unauthorised and to warn of no interference in the business of the high court of parliament. When all entered parliament they sat in their estates and the role was called before parliament was 'fenced' by the two most important

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[17] Brown and Mann (eds.), *Parliament and Politics in Scotland, 1567-1707*, 49-51

ceremonial officials, the lord lyon king-of-arms, the heraldic authority for Scotland, and the clerk register.[18]

In two particular ways the new parliament resembles the old. As a unicameral parliament, like the old, the modern assembly relies heavily on the work of committees to scrutinise legislation drawn up by the executive. In addition, much importance is placed on petitions from the public and since 1999 a Public Petitions Committee has been established to provide a gateway to individuals and corporate organisations wishing to express priorities and opinion. The pre-1707 parliament operated with a number of committees. The history of such parliamentary commissions and committees goes back to the fourteenth century when, for example, a commission of 1367 was given parliamentary power to act for the whole estates, but also in 1370 a 'committee' of the house had to report on its decisions to a 'General Council'. Some commissions and committees were formed with special competencies. For example, in 1450 a committee looked into the codification of the law.[19] Some could deliberate with a parliamentary power between sessions, and were a feature of the post-1690 period. These included commissions for the visitation of schools and universities (1690-1702) and more significantly for Anglo-Scottish Union in 1702-3 and 1706. Between 1639 and 1651 the covenanters convened a more sophisticated series of committees to cope with the exigencies of warfare and revolution and these included both interval (between sessions) and session committees. For the session of 1644, for example, no less than eighteen session committees were created, five judicial, four financial, four executive, three diplomatic and two military. The return of the monarchy at the Restoration did not mean a complete end to these committees and from 1669 a parliamentary committee for controverted elections looked at election disputes. Such disputes became common in the shires, with franchise changes in 1661, 1681 and 1690 increased competitiveness, and in burghs from the mid-1670s when the privileges of royal burghs were eroded by concessions to baronial burghs (where the superior was a landed noble not the crown). This occurred simultaneously with efforts by Charles II (1630-85) and James VII (1633-1701) to control burgh elections, a policy which met with mixed success. Other standing committees common after 1660 included the key committees for trade and for security, while new smaller committees were established to agree the loyal address to the king and to revise the now regularly recorded minutes of parliament.[20]

Of all the committees of the Scottish parliament the one for which there is most historical controversy is the lords of the articles, the management committee that controlled the agenda and drafted legislation. The first recorded evidence of a committee of the articles dates from the reign of James I, indeed to 1424, yet the idea of a committee of the articles appears to have emerged out of the weakness of the crown in the reign of Robert II (1316-90) in the 1370s.[21] Initially the committee evolved to better control the behaviour of the crown not the

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[18] 'Fencing' was first recorded in 1475, though the court of parliament was 'affirmed' in 1431 and no doubt was asserted in similar fashion long before. *RPS*, 1431/1/1; 1475/1. Conventions, not being courts, were not fenced.
[19] Rait, *Parliaments of Scotland*, 351-4; *RPS*, 1450/1/21
[20] Mann, 'House Rules', 140-2
[21] For the most recent views on the lords of the articles see R.J. Tanner, 'The lords of the articles before 1540: a reassessment' *SHR*, lxxix (2000), 189-212; MacDonald, 'Deliberative processes in the Scottish Parliament before 1639' and Mann, 'Inglorious revolution: administrative muddle and constitutional change in the Scottish Parliament of William and Mary'. For summary Mann, 'House Rules', 137-8. *RPS*, 1424/1

reverse. It is nevertheless true that in the reign of James VI and Charles I (1600-49) attempts were made to control the membership of this committee and to use it to manage the business of the house, with a consequent sense of resentment from many ordinary members. In 1612 James reintroduced a sixteenth century procedure whereby the estates selected their committee representatives, but did so by means of making bishops chose from a list of nobles, and nobles from a list of crown-selected bishops, with these two groups coming together to select shire and burgh members. This procedure was objected to, especially by the nobility who protested in 1617, 1621 and 1633, and ensured that not every crown nominee made it onto the committee. This explains the suspension of the committee in the 1640s by the covenanters. Crown belief in the value of this management device is, however, seen in its revival in 1661, and the affirmation in 1663 of the 1612 method of selection. King William's vain efforts to engineer its survival at the Revolution of 1689 show divergent agendas of control and liberty, even though William had no desire to turn the clock back to 1633. As well as fluctuations in its perceived value the size of the committee also varied, with nine members (three of each estate) in 1467 and thirty-eight in 1535. After 1603 it became a large committee of forty representative members which debated and disputed before submitting measures to the full house, which in turn would not automatically accept draft legislation. The very size of the committee, a parliament within a parliament, made complete crown control almost impossible. In addition, the lords of the articles formed numerous sub-committees to give conscientious consideration to the increasingly varied parliamentary agenda –in 1681 it had no less than twelve.[22]

Petitioning parliament was common at least from the second half of the sixteenth century. By tradition subjects in Scotland had the right to an audience with the king and, that being impractical, to petition him and therefore also his parliament. Therefore, preparations for parliament included procedures to collate and select petitions, both private and corporate. The clerk register collated and vetted these before the session began and in turn passed them to the lords of the articles. A register was supposed to have been made in the 1590s but this has not survived. After the Restoration various committees considered petitions and supplications and at least from 1670 a sub-committee of the articles reviewed petitions, and it was made clear in 1681 that they were not to be submitted to the whole house without this vetting procedure. Following the Revolution of 1689 little changed and parliamentary committees took over from the articles, but from 1693, as part of a phase of procedural reform under the stewardship of James Johnston, secretary of state, petitions were considered by the whole house before being remitted to committee for closer examination, and then finally from 1703 petitions or draft acts were reviewed by the whole house, as they were from 1639 to 1651. The last decade of the parliament's life saw numerous printed petitions submitted for consideration. Some came in the form of 'articles' or draft acts or printed 'overtures', a term that ranged in meaning from a mere suggestion to an actual draft act. Whatever the system of administration, officers of state were clearly unsuccessful in limiting the volume of petitions

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[22] Tanner, 'Lords of the articles', 91-204, 208-11; *RPS*, 1535/2-3, 1476/10/5, 1535/3, A1567/12/43; Rait, *Parliaments of Scotland*, pp.385-392; C.S. Terry, *Scottish Parliament: Its Constitution and Procedure, 1603-1707*(Glasgow, 1905), 121-24; Brown and Mann (eds), *Parliament and Politics in Scotland, 1567-1707*, 51-3; Mann, 'House Rules', 136

before and during sessions. Indeed, they came under pressure to make more time available for private matters, after 1689 often in relation to the dire economic circumstances of individuals, burghs, trades and corporations.[23]

The medieval Scottish parliament was peripatetic and gathered where the monarch resided. It met in burgh churches, including at Perth and at St Giles, Edinburgh, in tolbooths, the meeting place of the local burgh councils, and occasionally in royal palaces. There was, however, some anxiety to meet on neutral ground for fear of crown coercion. In 1578, when parliament was convened in Stirling Castle by James Douglas, Earl of Morton, regent to the twelve year old King James VI, some noble and burgh members protested and assembled instead at Stirling Tolbooth until such time as adequate assurances were given. The estates mostly met in Edinburgh from the 1460s and the reign of James III, but once the purpose built Parliament House was completed in 1639 a permanent home and location was established, interrupted only by occasional emergencies, such as when it convened in St Andrews in the winter of 1645-6 when Edinburgh was struck by the plague.[24]

When members assembled they took their seats in the chamber according to their estate, in a horse-shoe style facing the throne where sat the king or his 'viceroy' the royal commissioner. The layout of the house varied over the history of the parliament, dictated both by the number of estates present and the total attendance. While it is possible to be fairly certain of the arrangements from the 1580s we can be more confident of the Restoration period when noble and clerical members sat left and right and burgh and shire members faced the throne. In the middle, were three tables: at that furthest from the throne sat the judges of the Court of Session who, though unable to vote, provided legal advice, and in the middle table sat the clerks of parliament, headed by the clerk register. At the table nearest the throne were placed the honours of Scotland, the crown, sceptre and sword of state, the key symbols of royal power and the shared sovereignty of parliament and monarch. The honours were of course used in the coronation and so subject to competing claims for divine right monarchy or contractual kingship.[25] But sovereignty was a practical more than a theoretical question for the legislative process as ritual, symbol and procedure confirmed the passing of an act, the consent to it by representatives and a wide public acquiescence. The opening preamble used

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[23] *RPS*, 1594/4/39; 1600/11/6; 1661/1/53; c1670/7/10; A1681/7/5; 1690/4/37; 1693/4/83; 1695/5/39; 1696/9/26; 1703/5/55 and 1705/6/76; MacDonald, 'Uncovering the Legislative Process in the Parliament of James VI' in *Historical Research, 84* (2011), 601-17; Mann, 'House Rules', 128-9

[24] *A Diurnal of Remarkable Occurents that have passed within the Country of Scotland…till the year 1575*, ed. T. Thomson (Edinburgh, 1833), 13; David Calderwood, *A History of the Kirk of Scotland*, ed. T. Thomson (8 vols), (Edinburgh, 1842 (first published 1678)), iii, 413-14; David Moysie, *Memoirs of the Affairs of Scotland, 1577-1603*, ed. J. Dennistoun, (Edinburgh, 1830), 8-9. See Margaret Young (ed.), *The Parliaments of Scotland: burgh and shire commissioners*, (Edinburgh, 1993), ii, 745-56 for a convenient list of parliaments and locations and for an account of the building of the purpose built hall Aonghus MacKechnie 'The Crisis of Kingship: 1603-1707', in M. Glendinning (ed.) *The Architecture of Scottish Government: from kingship to parliamentary democracy* (Dundee, 2004), 82-134. See figure 1.

[25] Mann, 'House Rules', 133-4 and 151-6; Sir George Mackenzie of Rosehaugh, *Jus Regium, Or the Just and Solid Foundation of the Monarchy of Scotland*, (Edinburgh, 1684) 4, 8-9 and 41-2; Roger A. Mason, '*Rex Stoicus*: George Buchanan, James VI and the Scottish Polity' in Dwyer, Mason and Murdoch (eds.), *New Perspectives on the Politics and Culture of Early Modern Scotland*, (Edinburgh, 1982), 9-33 and Mason, *Kingship and Commonweal: Political Thought in Renaissance and Reformation Scotland*, (East Linton, 1998), 236-7

for laws passed, used so frequently as to seem almost devoid of significance, 'our sovereign lord, with advice and consent of the estates of parliament, statutes and enacts …' signified these interconnected sovereignties and legitimacies.

The hierarchical nature of the parliament was seen in the system of precedence. When members processed to the parliament, in the traditional opening ceremony, took their seats and finally voted, all did so according to precedence. As each estate voted in turn the senior clergyman, nobleman and burgh voted first, generally the archbishop of St Andrews, the duke of Hamilton (for most of the seventeenth century at any rate) and the burgh of Edinburgh. This was an inversion of the procedure in the House of Lords where the most senior voted last and suggests that in Scotland the example of senior parliamentarians was seen as instructive, even though William 3rd duke of Hamilton and his son led the parliamentary opposition from the 1670s to 1707. There is scant evidence for medieval voting but we know that individual members voted in 1430 and to amend legislation in 1504.[26] Notwithstanding the pre-1640 system where, as in 1633, on a single day a plenary session met to vote through the legislative programme, amendments were still made at the last minute. Voting was then by individual member not estate, although before 1621 and 1640 respectively combined votes were the norm for paired burgh and paired shire commissioners. When voting occurred it was oral, not by secret ballot or by lobby and, resembling the practice of the House of Lords, the roll was simply read in order of precedence and members voted 'aye' or 'no'.[27] The fact that few voting records survive, and none in the official record before 1701, has left some to doubt that voting was a meaningful activity. Yet strong opposition at key moments – such as in 1621 when the liturgy innovations of the Five Articles of Perth were voted against by about fifty members – confirms official record keeping does not reflect voting activity.[28] Equally, like many other assemblies then or since, not every matter required a division, while it was common in early modern record keeping, secular or spiritual, to record decisions not debates. The final stage in the process was public proclamation which took place immediately after the session ended or, in the case of forfeitures, at the end of the day's business. Decisions then had to be recorded: in parliamentary rolls, dating back to at least the 1290s; in manuscript copies made available to justices and sheriffs from 1318 in the reign of Robert the Bruce; in manuscript registers compiled from at least 1466, and volumes of printed acts, the earliest surviving being from the 1540s. In the sixteenth century the clerk register was given responsibility for proclaiming acts at market crosses, recording acts in registers, printed for the utility of courts, lawyers and the public and, for a fee, providing extracts for those who

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[26] Rait, *Parliaments of Scotland,* 406-7; Tanner, 'Lords of the Articles', 206-8; *RPS*, 1430/54; 1504/3/15-70 and A1504/3/101-46

[27] Enumerated voting began to be recorded in the House of Commons in the second quarter of the sixteenth century and a mid-century emphasis on recording is common to England and Scotland. For example, measures were agreed by majority voting at the Scottish session of 1546. *RPS*, 1546/7/60; M.A.R. Graves, *The Tudor Parliaments: Crown, Lords and Commons, 1485-1603* (London, 1985), 28-9; Mann, 'House Rules', 143-4. Note that the secret and politically controversial 'billeting' arrangements of 1662, designed by one noble faction in government to rid it of another, were unique and not repeated. MacIntosh, *The Scottish Parliament under Charles II*, 43-8.

[28] In the case of 1621 the main source is Calderwood, *History of the Kirk of Scotland,* vii, 499-510. See also Goodare, 'Scottish parliament of 1621', 29-51 and appendix 48-51.

desired them. For an 'unsophisticated institution' the Scottish parliament certainly evolved sophisticated procedures of communication.

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III

Politics and Parliament

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The political history of Scotland from the thirteenth to the early eighteenth century is punctuated by meetings of the Scottish estates. Personal kingship and crown prerogative powers ensured that some matters of immediate concern were handled without parliamentary agreement, but over the major policy decisions of diplomacy, finance, security and warfare parliamentarians wished to be consulted. Through legitimising actions and building consensus, kings and queens mostly saw the value in such a process. That did not mean that tensions were far from the surface. At the points of new regimes, revolutions, absentee monarchy and royal minorities parliament was especially important as a focus for decision-making. On the death of Alexander III in 1286 and the ensuing crisis of the succession, parliament gathered and elected six guardians to rule in the name of Margaret, Maid of Norway, his grand-daughter. The estates then agreed a marriage treaty in 1290 between the Maid and the son of Edward I (1239-1307) of England in which it was clearly stated that Scottish matters must always be concluded in the Scottish parliament. Unfortunately, the seven year old Maid died on her journey to Scotland. Subsequently, as the succession crisis intensified, with Edward eying up the prospect of being feudal superior of Scotland, King John (Balliol) (c.1250-1313) was chosen as rightful king through a legal and competitive process known as the Great Cause. Edward approved this arrangement as he saw John a mere puppet. Thereafter, as Anglo-Scots relations collapsed and warfare loomed, it was parliament that ratified the Franco-Scottish treaty of 1295 and began the Auld Alliance, an arrangement of mutual aid which generally benefitted France more than Scotland. It was at the estates meeting the following year to ratify the treaty where the French representatives insisted on the presence of merchants (the third estate) to help signal wide agreement.[29]

After Robert I (Bruce) (1274-1329) became king in 1306, notwithstanding a brief period of military defeat, exile and re-consolidation, he soon took an authoritarian view of parliament, controlling for example attendance at the St Andrews gathering in 1309. Declarations of support by the clergy and nobility agreed there were engineered propaganda statements containing forged seals. The famous Declaration of Arbroath of 1320, which affirmed the barons' determination to maintain Scots independence while supporting Bruce unless he yielded, came from the same 'press office'. And yet Bruce needed parliament, in particular to

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[29] A.A.B. McQueen, 'Parliament, the Guardians and John Balliol, 1284-1296' in Brown and Tanner (eds.), *Parliament and Politics in Scotland, 1286-1567,* 29-49; H.G. Richardson and S.O. Sales, 'The Scottish parliament of Edward I', *SHR, xxv (1928),* 300-17; Duncan, 'Early parliaments of Scotland', 36-58

confirm the succession in favour of his son, or in 1326 appealing for a pension when his financial resources were exhausted.[30]

If the monarchy was more dominant under Bruce it was less so under his son David II (1329-71). A minority of conflict ensued. David's long period of exile in France, where he was sent for his safety until 1341, and his capture on his return by the Edward III's forces at the Battle of Neville's Cross (1346), leading to over ten years of house arrest in England, saw a Scottish government of guardians rely heavily on parliament for support. In David's absence leadership passed to Robert the Steward, his older nephew, heir apparent and later Robert II. This particular Robert's own interests over the succession and the independent national view of the estates saw a total rejection of various plans by David to secure his release by promising the throne to the line of Edward III (1312-77). Notably this occurred in 1352, when David was allowed north to negotiate, and even in 1364 after his return to Scotland. The payment of the ransom for David's release, at last achieved in 1357, also involved parliament and yet more evidence of the third estate's participation when taxation was muted.[31] In the late 1350s, however, we see signs of monarch and estates coming to terms and cooperating, and it is in this period that we see parliamentary committees appearing on matters of security and legal disputes.

In spite of the impression we get of Robert II as self-seeking and being an effective manager of the estates in the 1350s, he and his son Robert III (c.1337-1406) came to the throne as old men who were never able to sustain control over a parliament that was now susceptible, as was the kingdom as a whole, to factional interests. Robert II, first of the great Stewart dynasty, sensibly side-stepped controversy and avoided the awkward question of taxation, managing to live off his lands and customs revenues. Parliament became involved, however, over the two major political coups of the period. In 1384 Robert's heir John, Earl of Carrick, (who later took the name 'Robert' as Robert III) persuaded parliament to back his appointing as lieutenant, in effect head of the administration, replacing his infirm and weak father, promising to end banditry and disorder in the North and West and to make preparations for war with England. Then in 1388, when Carrick himself became infirm after being kicked by a horse, his own brother Robert, earl of Fife made an identical move to wrestle control of the government. Importantly, these 'coups' were given legitimacy by the estates.[32] Fife, who became duke of Albany (a title from now on associated with the monarch's oldest brother), continued in his role as governor until Robert II died in 1406, and then deep into the minority of the next Stewart, James I.

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[30] R.J. Tanner, 'Cowing the Community? Coercion and Falsification in Robert Bruce's Parliament, 1309-1318' in Brown and Tanner (eds.), *Parliament and Politics in Scotland, 1286-1567,* 50-73; G.W.S. Barrow, *Robert Bruce and the Community of the Realm* (Edinburgh, 1988), *passim*; A.A.M. Duncan, *The Nation of the Scots and the Declaration of Arbroath* (London, 1970), *passim*, although there is an expanding historiography on the subject of the Declaration.

[31] M. A. Penman, 'Parliament Lost – Parliament Regained? The Three Estates in the Reign of David II, 1329-1371' in Brown and Tanner (eds.), *Parliament and Politics in Scotland, 1286-1567,* 74-101; and his *David II, 1329-71* (East Linton, 2004), *passim.* The civil war that took place at the start of David's reign saw John's son Edward bid for the throne against the Bruce administration.

[32] S. Boardman, 'Coronations, Kings and Guardians: Politics, Parliament and General Councils, 1371-1406' in Brown and Tanner (eds.), *Parliament and Politics in Scotland, 1286-1567,* 102-22 and his *The Early Stewart Kings: Robert II and Robert III, 1371-1406* (East Linton, 1996), *passim.*

In many respects the reign of James I had similarities to that of David II - what was different were their respective personalities. Following the defeat of the Scots by an English force at Homildoun Hill in 1402, Robert III became anxious over his remaining son and heir, given the perilous situation with regard to England and the machinations of his own brother. In 1406 James was intercepted when travelling by ship to seek sanctuary in France and, like David, then spent many years in house arrest, mainly in the Tower of London. Back in Scotland the parliament met rarely and James was not hurried back. Perhaps the nobility and others felt the strong government by Albany was preferable to their experience of royal weakness under Robert II and Robert III. However, after Albany's death his own son secured agreement by parliament to a treaty for James's return in 1424, and again a ransom had to be paid with taxation required. James on his return proved to be a great enthusiast for parliament, no doubt observing how matters were conducted in London. Revenge was uppermost in his mind as, with the support of the estates, he took it against the Albany Stewarts for being too slow to get him released from captivity. In addition, an effusion of legislation was passed reflecting the limited meetings of the parliament in the previous eighteen years; the delayed commencement of a new reign, and the controlling personality of James. A medieval 'nanny-state' was created where all manner of acts were passed limiting or controlling activities connected to sports, agriculture, social behaviour and much else. That did not mean that he always got his way in the chamber, however, as taxations were rejected or reduced, and even his whole style of government and coercion of local elites was criticised openly at the parliament of 1436, four months after which he was murdered by a small band of nobles. One of James's other errors was to propose a pro-English foreign policy in 1433, a move opposed by the Scottish estates, but this was not a mistake made by his son James II (1430-60). This James, like his own son James III (1452-88), also had a lengthy minority in which the estates gained more independence as court factions governed in the name of a boy. They also had great set-piece parliaments, something like 1424, which in 1450 and 1469 saw large meetings of the estates where the political elite paid court to a prince coming of age.[33] Nevertheless, recent research has shown that parliament reached something of a zenith in the reigns of James II and III. Paying court did not necessarily mean paying taxes, but what we do see is the increased regularity of parliaments.[34]

James II and III, like James I, found it necessary to use parliament to take revenge on the treasonous activities of those who ruled during their minorities and, in James II's case, those who murdered his father. However, on political questions the estates could be supportive over extraordinary examples of royal behaviour, such as James II's murder, by his own hand, of William Douglas, 8th earl of Douglas in 1452, a noble too wealthy, too grand and too independent for the king to stomach. After this in 1455 the estates approved the forfeiture of

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[33] M. Brown, 'Public Authority and Factional Conflict: Crown, Parliament and Polity, 1424-1455' in Brown and Tanner (eds.), *Parliament and Politics in Scotland, 1286-1567,*123-44; his *James I* (Edinburgh, 1994) , *passim*; C.A. McGladdery, *James II* (Edinburgh, 1990), *passim*; M. Brown, *The Black Douglases: War and Lordship in Late Medieval Scotland* (East Linton, 1998), *passim*; Brown, 'Scotland tamed? Kings and magnates in late medieval Scotland, *Innes Review* xlv (1994), 120-46. In 1431 the estates even insisted that funds raised for James I's judicial campaign in Lochaber were to be kept in a chest with four keys which were placed in the hands of individuals they nominated.

[34] Tanner, *Late Medieval Scottish Parliament*, *passim*

the earl's family, the Black Douglases, the greatest noble name in the Borders. But this is also the king who took the remarkable coronation oath of 1445, where in exchange for the loyalty of the estates he would be 'loyal and true to God, the church and the three estates'. This suggests an atmosphere of mutual cooperation and also that the estates exercised some control over the oath taking process – the precise wording of the oath was never used again.[35] Later the estates were also supportive of James II's diplomatic and foreign policy initiatives, favouring his marriage to Mary of Guelders in 1449, and his determination to rid Scotland of remaining English strongholds. Unfortunately, this policy and his enthusiasm for new cannon, saw him stand too closely to one which blew up and killed him at the successful siege of Roxburgh Castle in 1460. James III thereafter showed himself to have the scholarly interest of his grandfather but not the drive of his son, and when he toyed with a pro-English policy and various related marriage treaties the estates were unimpressed. Also when in 1472 James convened parliament to approve taxes to fund a (deluded) naval expedition to Brittany - in order to assert his territorial rights through his mother - it was flatly rejected. Moreover, the confidence parliament had in their king was shaken by other issues, such as his use of favourites in positions of power and his schemes to devalue the currency by mixing copper with silver. When matters culminated in a civil war between the king and his victorious fifteen year old son James, the future James IV (1473-1513), the estates were required to confirm the legitimacy of the new regime, which they promptly did. They exonerated the teenage king from any responsibility for the sudden and unexplained death of his father after the Battle of Sauchieburn in June 1488.[36]

In this period from 1424 to 1488 the Scottish parliament had changed. Ironically as strong kings sought to eliminate or humble regional magnates - such as the MacDonald, lords of the Isles, the Black Douglases and the Albany Stewarts – parliament was freed from the domineering influence of noble 'managers' and developed a more independent voice which was able to limit as well as lend support to crown initiatives. Other developments seemed aimed more at the future. Anxious to improve parliamentary attendance generally and especially to reap the taxation and political harvest from encouraging the lesser barons to the house, in 1428 James I sponsored a statute that gave small barons and freeholders the right to elect representatives or commissioners without attending personally. But while the main thrust of this act would not, as we have already seen, be embraced until the 1580s, in one respect the act declared an important addition to the parliamentary family – the introduction of 'lords of parliament' or hereditary parliamentary peers. Between this statute and the reigns of James II and III we see the gradual appearance of such peers who had a strong obligation

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[35] Lyall, 'The Medieval Scottish Coronation Service: some seventeenth-century evidence', *Innes Review*, 28 (1977), 9-10; *RPS*, 1641/8/4

[36] N. Macdougall, *James III* (Edinburgh, 2009), *passim*. The contemporary view of James III was not a positive one even though as part of the contract (approved by the estates) to marry Prince Margaret, daughter of Christian I of Denmark, the dowry included the passing into Scottish hands of Orkney and Shetland. Scotland was then at the full territorial extent we know today. When he was challenged by his assertive brother Alexander Stewart, duke of Albany (c.1454-85) between 1479 and 1483 the estates refused to forfeit the duke. His bother returned to France after a failed attempt to have himself crowned Alexander IV.

to attend. This represented an opportunity for the crown to extend political patronage and to increase the noble estate to their mutual benefit.[37]

James IV and James VI, perhaps Scotland's greatest kings, had completely different approaches to parliament. James VI took pleasure in summoning the estates and in participating in debate, while James IV, as we have seen, needed them at the start of his reign but rarely from 1496 to 1513. Nonetheless, agreeing taxation for judicial campaigns, in the Borders and the Highlands, required parliament's approval and so also the contradictory ratification of the Auld Alliance with France in 1492 and a marriage treaty (1502) with Henry VII of England for the hand of Margaret Tudor, which James took in 1503. James governed through his privy council and employed lords of council to carry out judicial functions. But in the end he made the same tactical error as his father and was also unable to solve the diplomatic conundrum that was England and France.[38]

After the catastrophic Battle of Flodden in 1513, when James lost his life at the head of a large army that attacked an English force in Northumbria, a period of minority arose when a one year old James V succeeded. Another faction-ridden minority began before the new regent John Stewart, duke of Albany (1481-1436), the heir apparent, arrived from France in 1515. Though speaking only French, he was efficient and popular and used parliament to maintain the rule of law before retiring to France in 1524 when the twelve year old James was invested as king. When James V finally took personal authority four years later, like his predecessors he worked through parliament to take revenge on those who kidnapped him and aggrandised themselves during his minority, in this case the other branch of the Douglases, the Red Douglases, headed by Archibald Douglas, 5th earl of Angus.[39] Thereafter, because of these experiences, the young king developed a distrust of his nobility, leading him to promote 'new' men. In spite of this during his reign parliament met almost yearly and with little contention. The creation of the college of justice, endowed in 1532 as lords of session, removed much of the judicial function, and even over taxation controversy subsided. With the Protestant Reformation taking hold in Europe and England, James was able to play on papal fears that Scotland would be next. Rome allowed James to improve his income by taxing the wealth of the church. In the end, however, James V failed to learn from his father, and his campaign against the English, culminated in his army's defeat at Solway Moss in November 1542, led to his depression and unexplained death only two weeks later.[40]

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[37] Ironically, the original right of all tenants and chief to attend was in due course forgotten and the reforms of fifteenth century were really to clear out the lesser lairds as much as to improve the conduits of patronage, and this is confirmed by efforts in 1458 and 1504 to restrict attendance to the more wealthy. *RPS*, 1428/3/3; 1458/3/22; A1504/3/123. Duncan, 'Early parliaments of Scotland', 54; Brown and Tanner, (eds.), *Parliament and Politics in Scotland, 1235 to 1560*, 25-6; J. Goodare, 'The admission of lairds to the Scottish Parliament' in *English Historical Review*, cxvi (2001), 1103-33.The precise means of the first creation of lords of parliament is obscure. See Rait, *Parliaments of Scotland*, 178-83

[38] N. Macdougall, 'The Estates in Eclipse? Politics and Parliament in the Reign of James IV' in Brown and Tanner (eds.), *Parliament and Politics in Scotland, 1286-1567,* 145-59 and his *James IV* (Edinburgh, 1997), *passim.*

[39] Angus also married James V's widowed mother Margret Tudor in 1514 but it quickly turned sour and lasted less than five years .They finally divorced in 1526 and she helped her son escape from Angus in 1528.

[40] K. Emond, 'The Parliament of 1525' in Brown and Tanner (eds.), *Parliament and Politics in Scotland, 1286-1567,* 160-78; J. Cameron (ed. N. Macdougall), *James V: the personal rule 1528-1542* (Edinburgh, 1998).

The reigns of James IV and V contrasted with those of James II and III and redressed the balance in favour of princes over parliament. Yet subsequently the Scottish parliament altered again in character. The hinge of this change is often seen as the Reformation parliament of 1560 at which the Protestant Reformation was established on a statute basis. However, the 1540s and 1550s - during which the child Mary, Queen of Scots was in 1548 sent into exile in France for her own safety, before marriage to the French dauphin in 1558 – saw a new sense of parliamentary assertiveness develop as the different factions jostled for control. The regency of James Hamilton, earl of Arran (initially pro-English), was followed by that of the queen dowager Mary of Guise (pro-French), and politics reflected these two parties more than ever before. In the end in 1544 two simultaneous parliaments were called– one to Edinburgh by Arran and one in Stirling by Mary of Guise – before Arran had to concede authority to the more numerous French faction.[41]

The Reformation parliament was in many respects a coup dressed up as a parliament. Catholics, the majority, stayed away, and the assembly was mobbed by over one hundred Protestant lairds, many of whom were not strictly entitled to vote. When a widowed Mary returned to Scotland in 1561 she gave no assent to the acts they passed which established Protestantism, yet nor did she use the estates to overturn them, and at her first parliament in 1563 (when she came of age) she even endowed the Protestant clergy. Four years later when Mary was removed from power and forced to abdicate, the Reformation was at last ratified by parliament as the regent for the child James VI, James Stewart, earl of Moray (1531-70), Mary's half-brother, took power. But after Mary escaped from her prison in Lochleven Castle, only to flee to England after her army was defeated by Moray, another institutional division took place like that of the 1540s. Over the next six years the Marian Civil War raged between the King's Men, mostly Protestant and headed by four successive regents, who fought for the baby James VI, and the Queen's Men, mostly Catholic, and who doggedly stood by their imprisoned Queen. Each side called parliaments, as in 1570 when simultaneously one was called at Leith for the King and another at Edinburgh for the Queen, or in 1571 where the former met in the Canongate, technically outside the burgh but within cannon shot of Edinburgh Castle (and for that reason known as the 'creeping parliament'), and the latter in the Edinburgh Tolbooth on the High Street. As the Queen's party possessed the Castle and so the honours of state, the King's men even had expensive replicas made so that their authority was legitimised – appearances were everything.[42]

The parliaments convened by James Douglas, 9th earl of Morton (c1516-81), regent from 1572 to 1580, attempted to reconcile the demands of episcopacy and presbytery. Since the early 1570s these emerged as opposing visions of Scottish Protestantism. The Reformation had not been as clean as John Knox and his fellow reformers had hoped. In fact Morton was one of the heroes of the Reformation, but slowly declined to an isolated political figure who

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[41] G. Donaldson, *James V-James VII* (Edinburgh, 1990), 70-1; 'Marie de Guise and the Three Estates, 1554-1558' in Brown and Tanner (eds.), *Parliament and Politics in Scotland, 1286-1567,* 179-202

[42] K.M. Brown, 'The Reformation Parliament' in Brown and Tanner (eds.), *Parliament and Politics in Scotland, 1286-1567,* 203-31; J. Goodare, 'The first parliament of Mary queen of Scots' *Sixteenth Century Journal*, xxxvi (2005); I.B. Cowan, 'The Marian Civil War 1567-1573', in N. MacDougall (ed.), *Scotland and War AD79-1918* (Edinburgh, 1991), 95-112; Donaldson, *James V-James VII*, 164-5

failed to curry favour with the young King James. That being the case, James was easily persuaded by his own favourites to use the estates to remove Morton from power and, for his involvement in the death of his father Lord Darnley, have him executed in 1581. The desires of the young king on religion then became evident, and in 1584 parliament passed the so-called 'Black Acts' reaffirming episcopal government of the church and asserting royal supremacy over all estates spiritual and temporal. When the following year, aged nineteen, James emerged from the last of the noble groups who ruled on his behalf, he sprung into action in the way of James I. He saw parliament, though, as an institution of value and an essential means of governing and broadening support, even though his personal authority could not be questioned. This was the type of subtle balancing act, between what was practical and what was theoretical, that his son Charles I was incapable of understanding. Nevertheless, during a politically weak moment in 1592 James felt it necessary to concede the 'Golden Acts', as Presbyterians call them, which confirmed Presbyterianism on a statue basis. Slowly, however, he consolidated his power and authority. In 1596 he took advantage of Presbyterian riots in Edinburgh, the result of an anti-Catholic panic, to cow the clergy and magistrates of the burgh into accepting royal authority for fear that he would move the capital from Edinburgh. This show of strength and more effective management of the estates, now meeting in regular conventions of estates, saw James work to persuade them to accept his policies, although conventions called to agree taxation had proved uncooperative in 1586 and on no less than five occasions in the years 1599 to 1600.[43] In spite of this James was an institutional innovator. In 1587 he had James I's plans for shire commissioners put into action and he spearheaded measures to promote rules for parliamentary dress and conduct. He also carried out a revolution in the peerage of Scotland through the erection of ecclesiastical properties into hereditary temporal lordships so increasing his power of patronage.[44] His desire to reinstate bishops into parliament was part of this plan to expand royal favour for political as well as religious purposes. Therefore, the king who travelled south in 1603 to become king of England did so with a Scottish parliament that met regularly but was mostly becalmed by the astute political management of James and his ministers. The exception was over finance, the Achilles-heel of the Stewarts (Stuarts) before and after 1603.[45]

James promised to return every three years yet only visited his homeland in 1617 where he attended parliament in Edinburgh. Extended absentee monarchy was visited on Scotland for the first time and this changed the dynamics of political life. After 1603 the opportunity for parliamentarians and factions to appeal over the head of government ministers to a monarchy in London allowed a sense of party to develop, but also intense rivalry between political heavyweights. Indeed, in the seventeenth century we enter a new phase of tension between crown and estates, much more problematic for both sides than anything experienced in the fifteenth century. While monarchy became more attracted to an absolutist agenda which

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[43] A.R. MacDonald, *The Jacobean Kirk, 1567-1625: Sovereignty, Polity and Liturgy* (Aldershot, 1998), 26-8; MacDonald, 'The Parliament of 1592: A Crisis Averted?' in Brown and Mann (eds.), *Parliament and Politics in Scotland, 1567-1707,* 57-81

[44] *RPS*, 1587/7/143

[45] The spelling 'Stuart' became the preferred royal spelling from the reign of Mary, Queen of Scots although in all official records, such as those of parliament, the more ancient 'Stewart' is employed.

underpinned prestige, secured finances for military adventures and built up the machinery of patronage, the Scots parliament grew more conscious of its own voice.

These tensions first surfaced not under Charles I, as is sometimes claimed, but under 'good king' James. For a brief period the movement of the court to London meant that crown revenue remaining in Scotland was sufficient for its needs. However, after a decade parliament was asked to agree increasingly regular taxations. This was emphasised when an unwilling and peace-loving king felt forced to raise funds and troops to support his son-in-law Frederick, Elector Palatine, whose regime as king of Bohemia collapsed so spectacularly at the start of the Thirty Years War (1618-48). While the war between Protestant and Catholic Europe was viewed as righteous by the majority of the Scottish political class, and many volunteered – over 30,000 alone in the Swedish army of King Gustavus Adolphus –the period intensified the convergence of political demands and crown financial objectives.[46] In fact Scotland did not suffer particularly excessive fiscal demands due to warfare during the thirty year period, given that continental princes and the Westminster parliament met much of the cost. Nevertheless, the period brought to Scotland the psychology of the fiscal-military state, where increased resources for military activity could be justified. Increasingly this required the approval of parliament, however.

The causes of the rebellion against Charles I in 1638 are various and disputed by historians and range from notions of the birth of a revolutionary ideological to simple crown incompetence.[47] Charles's coronation parliament in Edinburgh in 1633 was a grand affair but also a political disaster in the longer term where both his authoritarian attitude - writing down the names of members who voted against his measures - and his promotion in Scotland of English liturgical practices, increased a sense of alienation in the political classes. Matters had already been soured in Scotland during the reign of his father, where more frequent taxation and the close management of parliament left some of the nobility feeling their ancient privileges were eroded.[48] Therefore, when Charles prescribed a Prayer Book that was too Anglican in nature, a disastrous religious policy coalesced with a range of economic and political grievances to create the Covenanting revolution, and the mass signing of the National Covenant. After the military embarrassment of being defeated by the Scots in the two Bishops Wars (1639-40), Charles was forced to return to a parliament in Scotland in 1641 where a settlement creating a 'constitutional monarchy' was concluded. Powers were transferred to the estates. While it soon became clear that Charles had no intention of keeping to this arrangement, the Covenanting parliaments from 1641 to 1651 - in spite of two phases of covenanting royalism in 1647-9 and 1650-1 - took complete control of Scottish political,

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[46] V.T. Wells, 'Constitutional Conflict after the Union of Crowns: Contention and Continuity in the Parliament of 1612 and 1621' in Brown and Mann (eds.), *Parliament and Politics in Scotland, 1567-1707,* 82-100; J. Goodare, 'The Scottish Parliament of 1621' in *Historical Journal* xxxviii (1995), 29-51; A. Grosjean, 'Scotland: Sweden's Closest Ally?' in S. Murdoch (ed.), *Scotland and the Thirty Years' War, 1618-1648* (Leiden, 2001), 143-71

[47] M. Lee, *The Road to Revolution* (Urbana, 1985); A.I. Macinnes, *Charles I and the Making of the Covenanting Movement 1625-1641* (Edinburgh, 1991).

[48] J.R. Young, 'Charles I and the 1633 Parliament' in Brown and Mann (eds.), *Parliament and Politics in Scotland, 1567-1707,* 101-37. These were the same fears that made them reject, with the English parliament, James's ideas for Anglo-Scottish parliamentary union in the years 1604 to 1607.

military, diplomatic and economic affairs. Committee structures expanded in proportion to the managerial and financial complexities of fighting campaigns in England, Ireland and a civil war at home. Within the parliament the removal of clergy and setting aside of the lords of the articles were procedural manifestations of the greater authority of the estates.[49] As it was this authority came to nought. After English conquest in 1651 a Cromwellian Union arose which declared the parliament redundant and in 1654, 1656 and 1659 no more than twenty Scots representatives attended a union parliament in London.

When the Restoration occurred in 1660, after almost a decade of occupation by English forces, the objective of Charles II (1630-85) and his ministers was to turn the clock back to the constitutional position of 1633, and they were partially successful. Scotland was pleased to have its parliament back. Meanwhile, Charles's loathing of Presbyterians meant that as soon as practicable parliament passed acts to bring bishops back to their diocese and to seats in the chamber, and the Episcopalian structure, abandoned in 1638, was restored. Yet the subsequent persecution of covenanting and covenanters created unnecessary fiscal, military and law and order pressures for the next three decades. The estates were regularly asked to approve taxation to fight religious nonconformity and the conventicles (out-door field meetings) of those who refused to accept the restored structure. Most parliamentarians went along with this in a royalist reaction against the worst excesses of clerical extremism from the previous two decades. But the need to finance the second and third Anglo-Dutch Wars (1665-7 and 1672-4), the ailing economic circumstances which became more evident in the 1680s, where Scotland was disadvantaged by the protectionism (or mercantilism) of the English parliament, made the Scottish parliament wrestles. In particular, personalities came to the fore as Charles's chief minister Lauderdale became the greatest political manager of the period, but also someone who created too many enemies and too few friends. This encouraged an opposition party to express itself in parliament from the late 1660s onwards. After a decade the flush of Restoration optimism had subsided. In large part this provided the context for parliamentary attitudes after Charles II. Although the reign of his brother James VII was greeted with warm loyalty by the Scottish parliament – the members remembering his period in Scotland from 1679-82 during which with sensitivity he represented his brother at the 1681 session– his attempt in the 1686 session to get agreement for the toleration of Catholics in exchange for free trade with England was rejected. Regardless, James proceeded to grant toleration by royal proclamation not by act of parliament. Therefore, when the Revolution arrived in 1689 the convention of estates that gathered and which welcomed the

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[49] J.J. Scally, 'The Rise and Fall of the Covenant Parliaments, 1639-51' in Brown and Mann (eds.), *Parliament and Politics in Scotland, 1567-1707,* 138-62; J.R. Young, 'Scottish covenanting radicalism, the commission of the kirk and the establishment of the parliamentary regime of 1648-1649' in *The Records of the Scottish Church History Society*, 25 (1995), 342-75; Young, *The Scottish Parliament, 1639-1661: a political and constitutional analysis* (Edinburgh, 1996), *passim*; Young, 'The Scottish parliament and the covenanting revolution: the emergence of a Scottish commons', in J.R. Young (ed.), *Celtic Dimensions of the British Civil Wars* (Edinburgh, 1997), 164-81

arrival of William (1650-1702) and Mary (1662-94), was of a temper to express revolution in procedural terms. The lords of the articles were finally abolished, clergy were expelled and grievances were declared in the Claim of Right with the crown offered to William and Mary on a conditional basis.[50] In a sense 1641 had returned.

King William observed the same problems in managing the Edinburgh parliament that had afflicted his two predecessors, although he had trouble concentrating on English parliamentary business, let alone Scottish, preoccupied as he was with fighting Louis XIV. In fact William's ministers and the king himself proved a little accident-prone when it came to Scottish affairs. Once the threat of Jacobitism was neutralised in Scotland and Ireland, the crown obsession was with seeing the Highlands as a breeding ground for rebels. This produced the notorious massacre of Glencoe in 1692, which charged the atmosphere in parliament and led to an inquiry and the eventual dismissal of Sir John Dalrymple of Stair, secretary of state. This case of judicial murder, or 'murder under trust' - where clan MacIan of MacDonald had thirty-eight of its members dispatched by Campbell-led forces for being too slow to take an oath to the king - was such a scandal that it pushed William to concede the right of the Scottish estates to establish a great trading company, the Company of Scotland, its own version of the English East India Company. This directly led to the Darien Scheme of 1698-1700, a bold plan by the company, supported by the parliament, to set up a great trading colony at Panama. This was met by William's refusal of support, for political and diplomatic reasons as the territory was claimed by Spain, and opposition from the merchant interest at Westminster. Undaunted, the Scots financed the venture themselves and carried out two vain expeditions which virtually bankrupted the country.[51] In many respects this national disaster would deliver the Union of 1707. Before then the Edinburgh parliament rejected William's plans, taken on by his successor Queen Anne (1665-1714) in 1702-3, to negotiate Anglo-Scottish Union as neither side could agree over the fate of religion and Darien compensation. Indeed it was in 1703, after a fresh general election, that a minority administration came to power and was completely unable to carry forward the crown agenda. Since the late 1660s, a party of grievance, a Country Party, began to grow which, after flirting with cooperation with the English Whigs in the 1670s and 1680s, had by the 1690s emerged as clear parliamentary opposition to the Court Party, the government supporters. From 1703 a 'soft' Jacobite block was also added to the mix, not a party as much as another vehicle for expressing discontent, and it and the Country Party made life difficult for the crown. To gain taxation Anne was forced to give assent to legislation that declared the Scottish parliament's authority over the succession, on her death, and the right to declare war. As the Scottish estates asserted their independence, it became clear to Queen Anne, her ministers and to the majority of English MPs, that only union could deliver a solution to the economic and political tensions between England and Scotland. Westminster decided to focus Scottish

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[50] G.H. MacIntosh, 'Arise King John: Commissioner Lauderdale and the Parliament in the Restoration Era' in Brown and Mann (eds.), *Parliament and Politics in Scotland, 1567-1707,* 138-62;Brown and Mann (eds.), *Parliament and Politics in Scotland, 1567-1707,* 163-83; MacIntosh, *The Scottish Parliament under Charles II, 1660-1685* (Edinburgh, 2007), *passim*; A.J. Mann, "'James VII, King of the Articles': Political Management and Parliamentary Failure" in Brown and Mann (eds.), *Parliament and Politics in Scotland, 1567-1707,* 185-207
[51] D.J. Patrick, 'Unconventional Procedure: Scottish Electoral Politics after the Revolution' in Brown and Mann (eds.), *Parliament and Politics in Scotland, 1567-1707,* 208-44

minds by passing the Alien Act in 1705. This was an ultimatum – unless the Scottish parliament agreed to negotiate union, or accepted a Hanoverian succession to succeed the childless Queen Anne, then Scottish goods were to be banned from entering England and Scots treated as aliens in the southern kingdom. But yet another political grouping appeared in Scotland the year before, the new party, or 'Squadrone Volante' (flying squadron), named on account of their impermanent alliances with other groups. This small party, made up of disillusioned Country Party members and Darien investors, with their support for the Protestant succession and their desire for Darien compensation, helped tip the vote in favour of Union. But their existence made the parliamentary arithmetic problematic for hard-pressed crown managers and it is ironic that their votes delivered the required result in January 1707. Unsuprisngly, historians have recently picked over anew the circumstances of the union negotiations and that approval of the Edinburgh parliament to vote itself out of existence.[52] Whatever the covert and overt dealings, the compromises forced upon unwilling participants and the dire economic picture that faced a northern kingdom wishing also to secure Protestantism from international threat, those peers and commissioners who voted for or against did so in the context of a vibrant parliamentary culture that evolved from the clever managerialism of Robert the Bruce to the exasperated concessions of Queen Anne.

IV

People and Parliament

The old Scottish parliament was an event and the most significant institution of medieval and early modern Scotland. It brought together the representatives of the people through the estates representing their localities, shires, burghs, regional earldoms and landed estates. It was undemocratic and imperfect but it did represent. Yet how did the Scottish people relate to their parliament? The work of the pre-1707 parliament was a macrocosm of Scottish life and affairs. It exercised a judicial function with legislation to maintain law and order, though from the sixteenth century the Court of Session handled most of the civil business; it protected the church and promoted religious observance; it handled the thorny question of taxation, particularly after 1603, controlling economic policy, the coinage and foreign trade; it confirmed foreign policy, security and diplomacy, though after 1603 with less authority, and it secured private and corporate rights and privileges, often related to land and inherited wealth. Legislation is only part of the story – the involvement of other agencies, especially the Privy Council and civil and criminal courts, took law out to the people and thereafter enforcement was patchy and hard to assess. Nevertheless, the most significant means in which the estates engaged with the population was in social policy. Education at school and

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[52] K.M. Brown, 'Party Politics and Parliament: Scotland's Last Election and its Aftermath, 1702-3' in Brown and Mann (eds.), *Parliament and Politics in Scotland, 1567-1707,* 245-86; C.A. Whatley, *Bought and sold for English gold? : Explaining the Union of 1707* (East Linton, 2001); Whatley, *The Scots and the Union*, passim; Macinnes, *Union and Empire*, passim but especially 277-309 for the final voting.

university, morality private and public, policies for the poor and the idle, and legislation that protected minors, inherited wealth, rights of way and supporting town authorities, were all elements of a broad focus of parliamentary business, not about warfare or international affairs but the people. A chamber full of fathers, sons and husbands participated in social management in a way that reflected their fears and concerns; for example, that marriage law was robust enough to protect heritable property.[53]

The reign of Robert I delivered the first intensive effort at social engineering by parliament as estates and king came together to emphasise a cooperative national effort and the exclusion of those who were 'off message'. Oaths of loyalty and justice to rich and poor, as passed in 1318, speak to an idealised conflation of crown and nation. Thereafter, following a quiet legislative spell for the remainder of the fourteenth century, the explosive entry from English imprisonment by James I, the 'maker of law', is an obvious gear-change. However, although his parliaments sought to enact in fine detail on a wide range of judicial, economic and social matters – including (in theory) free legal counsel for the poor in 1425 - the agenda of moral discipline was promoted more rigorously by the parliaments of his son and grandson.[54] Therefore control of dress, of freedom of speech and the church's priority of discipline were emphasised. Under James IV and V welfare policies increased as measures for education and the care of the poor were enacted but in a context of further church discipline over the likes of Sabbath breaking, drunkenness, and, of course, the threat of heresy with the advent of Protestantism.

The Reformation did after 1560 produce new cooperation between church and state to enforce 'Godly discipline' and new levels of social control appeared. However, it was not immediate and not without foundation building. The first major effort to control public behaviour came under the regencies of James Hamilton, earl of Arran and Mary of Guise in the parliaments of 1551, 1552 and 1555. The influence of pre-Reformation church councils is also clear.[55] Censorship, divisive sumptuary laws on the quality of dress to worn by the different stations of society, price controls, the first gun laws, the care of minors, the examination of notaries and regulation of public holidays were just some of the controls that arrived in the 1550s. It was not merely the Scottish Reformation that brought change but a continent-wide reaction by Christendom, Catholic and Protestant, which saw governments adopt control measures with increased regularity. The sessions of 1563 not 1560, with measures on witchcraft, divorce and adultery, and 1567, where after Mary, Queen of Scots abdicated, fornication and incest were specifically targeted, show that the 'reformation' in

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[53] For a detailed overview see A.J. Mann, 'The Law of the Person: Parliament and Social Control' in Brown and MacDonald (eds.), *Parliament in Context: 1235-1707,* 186-215
[54] *RPS*, 1318/23; 1425/5/251; 1426/9; Nicholson, *Scotland: The Later Middle Ages* (Edinburgh, 1974), 310-12; Mann, 'Social Control', 187-211
[55] Mann, 'Social Control', 200, 205 and 211; T. Winning, 'Church Councils in Sixteenth-Century Scotland' in D. Microburst (ed.), *Essays on the Scottish Reformation* (Glasgow, 1962), 332-58; Ritchie, 'Marie de Guise and the Three Estates', 179-202

social policy was a longer process and also, more than the 1550s, much concerned with sexual offences.[56]

While the few meetings of the estates in the reign of Charles I were concerned with taxation, liturgy, warfare and property, the many meetings of the estates in the long reign of James VI and I showed a further intensity in social law where adultery, divorce, rape, correction houses for the poor, further complex sumptuary laws for dress, parental responsibility and drunkenness featured. Therefore, with the Covenanter regime we see not so much a huge increase in social legislation but a return to the authoritarian agenda of James VI. The long and regular sessions of the 1640s delivered a huge volume of law in all areas, including social policy. Acts relating to clandestine marriages, the education of noble sons and a new capital offence of blasphemy appeared as did particular concerns over drunkenness and fornication.[57] Nonetheless, legislation was seen as unnecessary in some areas covered by existing statute, such as over witchcraft and adultery.

Both the Restoration period and Revolution of 1689 represent legislative continuities with what came before. Yet the Restoration brought a cocktail of new moods, a cult of royalism, reflected in the celebration of the king's birthday, yet also new 'national' ideas of mercantilism where sumptuary laws were aimed more at the protection of home producers than mere social division. Social measures were often about continuity. The law of profanity introduced in 1672 brought together all the immoral vices and gathered up all statutes since 1560, while the 1701 act against profaneness still included the 1563 penalty of death for adultery. Indeed the Restoration did not generally produce a great softening in social policy as the 'extreme' regime of the Covenanters was thrown off – more it saw the management of existing laws and sanctions placed with the Privy Council and bishops rather than the presbyteries and committees of the Covenanters. Furthermore, the Revolution of 1689 did not bring overnight a society free of the 'fetters of bondage' itemised in the Claim of Right. A Scottish act of *habeas corpus* took a decade to appear, as it did in 1701, following on from the first such English statute in 1679. The 'Act for preventing wrongous imprisonments and against undue delayes in tryals', was there to prevent indiscriminate arrest without cause, to insist on written warrants, and the accused having a copy of the charges, and with the right to trial without undue delay.[58] Also, other important acts, such as trials in public and an education act pressing heritors (hereditary landowners) to raise funds for schools, took time to evolve. Thus it was that the improvement in the lives of medieval and early modern Scots also took time to evolve, but it is important to recognise that the estates, within the constraints of the social mores and hierarchical society in which they operated, felt some obligation to act, even though their measures were often merely permissive or delivered as context for other agencies to follow.

There were though other ways in which the parliament came to the people. The old Scottish parliament was characterised by ceremonial, procession and the symbolism of sovereignty,

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[56] *RPS*, A1563/6/1; A1563/6/10; 1567/12/24; 1567/12/97; M.F. Graham, *The Uses of Reform: 'Godly Discipline' and Popular Behaviour in Scotland and Beyond, 1560-1610* (Leiden, 2002), 46-7

[57] *RPS*, 1649/1/157; Mann, 'Social Control', 197-8

[58] *RPS*, 1700/10/240 and 1700/10/234 (both 1701), Mann, 'Social Control', 203

some within the chamber witnessed by the political elite, and significantly some outside in public view. The state opening ceremony, the 'riding of parliament' as it was called, occurred at the start and end of each parliament, and consisted of a largely equestrian procession which, when in Edinburgh, moved from the royal palace at Holyrood up the 'Royal Mile' to the parliamentary chamber. The opening of the 1703 session was the last occasion when this specifically Scottish ceremony was held and, unlike the English state opening of the period, each time all estates were involved. A key element in the ritual, linked to the royal dynasty and the monarch's coronation, were the honours of Scotland, and they took up the rear as the separate estates processed by horse and foot to Parliament House near St Giles. As they did so the people gathered to cheer and jeer and, just like in the state openings since 1999, troops or police held back the crowd. In 1999 the essence of the 'riding' of parliament lived on: in the procession from palace to parliament before the rituals in the chamber; the use of the honours of Scotland (the ancient crown only) and the relative informality of the relationship between chamber and monarch. Since 2004, when the parliament moved into its new home at Holyrood, the external spatial geography in which rituals can be played out has altered with the close proximity of palace and parliament.[59] Nevertheless, the denoting of parliamentary sovereignty is as essential in the twenty-first century as in 1703: as rendered before monarch, honours of state, elected representatives and the nation.
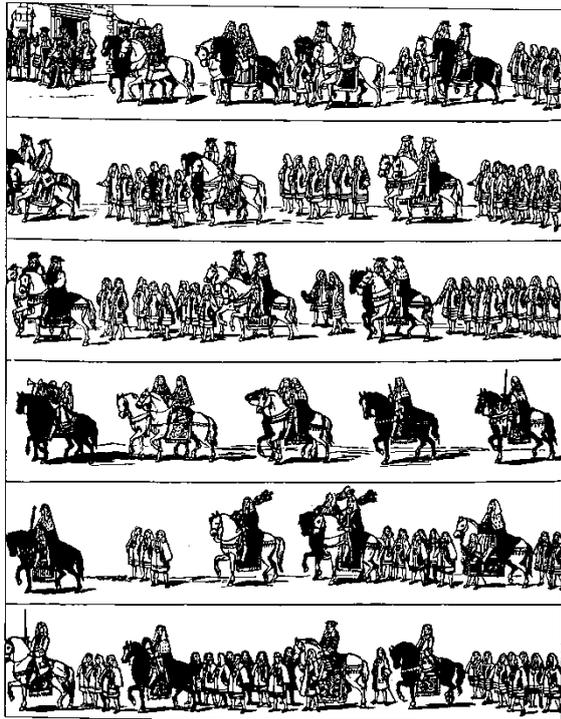

Figure 2: the 'riding of parliament'. A drawing, based on a painted series by Roderick Chalmers, herald painter of James VII, and now held by the National Library of Scotland, shows the 'riding' procession in the 1680s consisting of horsemen and retainers on foot. Having departed from Holyrood Palace and processing up the High Street the top shows them arriving at the 'Lady Steps', on the east side of St Giles Cathedral, before dismounting and walking to the chamber. [From James Grant, *Old and New Edinburgh: its history, its people and its places*, vol. 1, (Edinburgh, 1881), 61]

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[59] For discussion about the state opening for the old parliament and comparisons with the new see A.J. Mann, 'The Scottish Parliaments: the role of ritual and procession in the pre 1707 parliament and echoes in the new parliament of 1999' in *Rituals in Parliament: Political, Anthropological and Historical Perspectives on Europe and the United States* (Frankfurt, 2006), 135-58 and (updated to 2007) Mann, 'Continuity and change: the culture of ritual and procession in the parliaments of Scotland', in *Parliaments, Estates and Representation*, volume 29 (2009), 143-58. See figure 2.

V

Epilogue

There is a perception of Scotland the 'good European' in modern political commentary. In fact pre-1707 Scotland's position in relation to other countries was dictated by socio-economic considerations and not merely the obvious military, defensive and religious context. In the reign of James III the estates thought it especially important to protect the goods and persons of foreign merchants who, if ill-treated, would not trade with and bring much needed food supplies to Scotland. The sumptuary laws over consumption of food, such as those of 1552 and 1621, gave immunity to the entertainment of foreigners and an act of 1587 that sought to encourage Flemish weavers to settle in Scotland gave them immunities from taxation as an incentive to come and stay. Nevertheless, there was also a less tolerant side to legislation. In 1347, as negotiations were underway to establish a Staple Port at Middelburg, in Zeeland, the estates retaliated to news that Scottish merchants were being expelled from Flanders to issue orders for all the Flemings in Scotland to be arrested. In 1661 in the 'act for incourageing of shiping and navigation' is was declared that no alien could be employed as a factor overseas, and in the same session that a differential duty on tobacco would be charged depending on whether plantations were owned by Scots or foreigners.[60] These examples show that the Scottish parliament, just like England's, found itself defending economic interests and aimed at a close forensic control of social conduct and interaction. National consciousness is generally a mixture of pride and protectionism, and we have no reason to think that the legislature of pre-modern Scots was not reflecting the views of those it represented. It may be an aspiration of the Scottish people that in the twenty-first century the nation will indeed be a good European, and Scottish legislators will be judged accordingly. In this respect the old parliament, with its great tradition, is both a shining light and a salutary warning. Like all legislatures, in all political systems, it was imperfect but it counted.

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[60] *RPS*, 1478/6/83; A1482/3/8; 1482/12/84; A1552/2/22; 1621/6/37; 1587/7/142; 1621/6/14; 1661/1/339; 1681/7/36; 1347/2; 1661/1/341; 1661/1/144.