The Scottish Parliament: An Historical Introduction

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Parliament's role in medieval government

The history of European parliaments is often thought to begin with the *cortes* of Castile-Leon in 1188, that being arguably the first recorded instance of an assembly that fits the commonly held definition of what constitutes a parliament. Of course, long before that date, assemblies of some sort or another met to give counsel to rulers, to debate political issues, to conduct diplomacy, to plan military campaigns and to offer judgement in matters of justice. The exact point at which these early assemblies were transformed into parliaments remains debatable, and the difference between an early parliament and the earlier royal assemblies will often have been slight. By the mid-thirteenth century, however, parliamentary institutions were beginning to develop in many European kingdoms. In the later sixteenth century the constitutional lawyer, Sir Thomas Craig of Riccarton, speculated that Scotland's parliamentary development was relatively late compared to other countries, and that 'we did not follow the example of more powerful states'.[1] In fact, parliament in Scotland developed broadly at the same time and it followed much the same pattern, combining existing Scottish legal and procedural traditions with the imitation of other kingdoms, above all England, but probably also France.

The sources for parliament's early history are not good, many records probably being an unfortunate casualty of Edward I's attempted conquest. For this reason reconstructing how and when Scotland's parliament came into being will probably remain a matter of debate. It is known that the word *colloquium*, which in England appears to be synonymous

1 T. Craig, *Jus Feudale* (London, 1934), trans. J.A. Clyde, i, pp. 88-90.

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with the word 'parliament' in Henry III's reign, was used occasionally in Scottish government documents from 1235. Yet almost nothing can be discerned about these assemblies, especially about what differentiated them from earlier meetings.[2] Between 1235 and 1286, therefore, parliament exists for historians in a kind of limbo – we can see that the term is used (in the early *colloquium* form), but can tell almost nothing about what was meant by that term. What set the early *colloquia* apart from previous assemblies of the king and his subjects has been lost, although there could have been a clear distinction, and the primary purpose of those early assemblies is unknown – whether they were political, judicial or legislative. There are no criteria that can be used for parliament's emergence other than the moment that contemporary Scots began to refer to their assemblies in official sources by either the word *parliamentum* or *colloquium*. The debate about the earliest known Scottish parliament, therefore, becomes very simple – it was the Kirkliston *colloquium* held in 1235. Whether this was the first assembly to be referred to as such, or whether it differed in any significant way from the royal councils and assemblies that had occurred before will almost certainly never be known.[3]

Perhaps the most common explanation of parliamentary evolution in medieval kingdoms is that they developed from the king's great council as the realm's leading nobles acquired a self-conscious realisation of their ability to influence and to audit rulers. These new assemblies often acquired a judicial function and the ability to agree legislation, giving expression to the view that laws could not be made without the consent of subjects. They also became politically prominent because of clashes between the king and his subjects over the issue of taxation, often required for war. This is a pattern that

2 The word *colloquium* is used in official documents in 1235, 1248, 1256, 1258, 1264, 1265 and 1285. A.A.M. Duncan, 'The early parliaments of Scotland', *SHR*, xiv (1966), p. 36 and *n.*; A.A.B. McQueen, 'The origins and development of the Scottish parliament, 1249-1329', (unpublished Ph.D. thesis, University of St Andrews), pp. 18-19; *RPS*, 1235/1 to 1293/8/2.

3 *RPS*, 1235/1-1290/3/1; Duncan, 'Early parliaments', pp. 36-8; McQueen, 'Scottish parliament', pp. 5-7; A.A.M. Duncan, *Scotland. The Making of the Kingdom* (Edinburgh, 1975), pp. 571-2, p. 610; M. Brown, *The Wars of Scotland* (Edinburgh, 2004), p. 33.

suggests clear parallels to the historian of Scotland's parliament, and while the records are too poor to make any confident judgement about the primary role of parliament before the death of Alexander III in 1286, the community or estates did exercise a strong influence over taxation and legislation at an early date. However, notions of collective authority were not explicitly set out until the parliamentary oaths of 1445.[4]

While our knowledge of assemblies and parliaments in the twelfth and thirteenth centuries is scarce, it is possible to make some observations. For one thing, the Scots produced their own body of laws that is likely to have been arrived at by kings together with their councils and the judicial administration, in other words bodies sharing many of the functions seen in later periods as characteristic of parliaments. It is also worth remembering that parliament was not the only form of representative assembly, for example the provincial council of the Scottish church fulfilled such a function.[5] It is likely that the opportunity provided by an assembly of powerful men for such purposes might have enabled discussion upon a broader range of issues than the king intended.

Analysis of the few early parliamentary records demonstrates that the definitive phase in the parliament becoming prominent – or at least the word 'parliament' being used with any regularity – was not associated with justice, or the presentation of grievances against the king, or taxation, but with the unique circumstances arising after the death of Alexander III in 1286. In the absence of an adult monarch, and with the lack of any clear succession following the death of the Maid of Norway in 1290, the Scots were forced to innovate. This they did by the mechanism of guardianship and by adopting large assemblies, or parliaments, to perform an advisory and overseeing role, associating these

4 Duncan, 'Early parliaments', pp. 36-7; R. Tanner, *The Late Medieval Scottish Parliament. Politics and the Three Estates, 1424-1488* (East Linton, 2001), pp. 112-13.

5 W.D.H. Sellar, 'The common law of Scotland and the common law of England', in R.R. Davies (ed.), *The British Isles, 1100-1500: Comparisons, Contrasts and Connections* (Edinburgh, 1988), pp. 82-99; H.L. MacQueen, 'Scots law under Alexander III', in N.H. Reid (ed.), *Scotland in the Reign of Alexander III, 1249-1286* (Edinburgh, 1990), pp. 74-102; G.W.S. Barrow, 'The Scottish justiciar in the twelfth and thirteenth centuries', *Juridical Review*, xvi (1971), pp. 97-148; D.E.R. Watt, 'The provincial council of the Scottish church 1215-1472', in A. Grant and K.J. Stringer (eds), *Medieval Scotland. Crown, Lordship and Community* (Edinburgh, 1993), pp. 140-55.

bodies with the idea of the authority vested in the 'community of the realm'. The word *parliamentum* replaced *colloquium* after 1290 as the term to refer to certain assemblies of significance, but intriguingly was not employed with any regularity among Scots. Instead it seems to have been adopted out of necessity when negotiating with England over the future status of Scotland. This arose both when discussing the union of the Scottish and English crowns anticipated by the treaty of Birgham in 1290 at which time the Scots argued for the continued existence of an independent Scottish 'parliament' before an institution with that name was firmly established.[6] The momentum to involve parliament in government was maintained after John Balliol was chosen as king in 1292. The new king tried to use parliament to establish his authority over the kingdom, while parliament also played a role in seeking to reunite the divided community and in counteracting Edward I's increasingly encroaching demands. The repeated crises after the death of Alexander III and the unique circumstances of John Balliol's reign forced the innovation that brought the term 'parliament' into common usage, made the institution prominent, and created a situation where the powers implied by terms such as 'parliament' and 'community of the realm' reflected, at least partially, a genuine role for collective authority in the government of the kingdom.[7]

From its origins, parliament had a well established judicial role as a final court of appeal and complaint, it began to invite town representatives in the late thirteenth or early fourteenth centuries primarily for reasons of taxation, and it continued to see a relaxed distinction between parliament and other great assemblies termed variously full councils,

6 *RPS*, 1290/3/1 to 1293/2/1; Duncan, 'Early parliaments', p. 38; McQueen, 'Scottish parliament', pp. 74-6; Brown, *Wars of Scotland*, p. 170.

7 A.A.B. McQueen, 'Parliament, the guardians and John Balliol, 1284-1296', in K.M. Brown and R.J. Tanner (eds), *The History of the Scottish Parliament Volume 1. Parliament and Politics in Scotland, 1235-1560* (Edinburgh, 2004), pp. 123-44; McQueen, 'Scottish parliament', pp. 65-80.

general councils and great councils.[8] Furthermore, the political role of parliament was substantial, having 'fundamental' powers over taxation, legislation or in its role as a court of appeal and complaint (on occasion against the monarch and his officials). Parliament, therefore, represented a challenge to kings, and unsurprisingly the political role of the community of the realm was curbed temporarily by Robert I in the early fourteenth century. Only his death in 1329 without an adult heir denied the crown the opportunity to build on this success. In addition, the renewal of war against Edward III, David II's minority and later imprisonment in England, the extinction of the Bruce dynasty and its succession by two weak Stewart kings all ensured that parliament retained a powerful voice throughout the remainder of the fourteenth century.[9] However, parallel institutions – 'full councils' and 'general councils' – continued to be held and occasionally occupied a more prominent role than parliaments, especially during the reigns of Robert II and Robert III.[10]

Scotland's unicameral (single chamber) assembly was dominated by the nobility, especially as there was no significant distinction between the titled peerage and the lesser nobility, or barons, even after the development of the parliamentary peerage in the mid-fifteenth century. Yet the absence of an independent lower house, and the fact that the lesser nobility identified more strongly with the great magnates than with the relatively unimportant burgesses, had no effect on parliament's power to influence royal policy. The history of parliament in the fourteenth and fifteenth centuries confirms the view that there was no need for a prominent 'commons' element for a medieval parliament to be able to exert influence in political affairs. The Scottish parliament, therefore, resembled

8 R.J. Tanner, 'Cowing the community? Coercion and falsification in Robert Bruce's parliaments, 1309-1318', in Brown and Tanner (eds), *Parliament and Politics in Scotland, 1235-1560*, pp. 50-73; M. 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, 1235-1560*, pp. 74-101; Tanner, *Parliament*, pp. 30-1.

9 Tanner, 'Cowing the community?'; Penman, 'Parliament lost – parliament regained?'; S. Boardman, 'Coronations, kings and guardians: politics, parliaments and general councils, 1371-1406', in Brown and Tanner (eds), *Parliament and Politics in Scotland, 1235-1560*, pp. 102-22.

10 M.D. Young (ed.), *The Parliaments of Scotland: Burgh and Shire Commissioners* (Edinburgh, 1993), ii, app. 1, pp. 748-9; Tanner, *Parliament*, pp. 30-1.

the English house of lords with a largely silent and semi-developed 'commons' element tacked on.[11]

The 1445 oaths, by which the young James II swore not to 'eike nor mynisshe' the statutes of the realm and 'nathing to wyrke na use tuoching the comon profitt of the realme bot [without] consent of the three estaitts', were made at a comparatively late point in parliament's history. Nevertheless, parliament acquired a realisation of its political and constitutional importance (at least in maintaining Scotland's legal and political independence) as early as the treaty of Birgham in 1290. Scotland's parliament was already more constitutionally advanced than many European assemblies, and it played a prominent and 'quasi-executive' role in the government of the kingdom under the guardians, and continued to do so after 1292 because of John Balliol's reliance on it as a means of reforming the kingdom, pressurising potentially troublesome subjects such as the Bruces, and holding off the encroachments of Edward I.[12]

War with England and the Bruce Dynasty, 1306-1371

By 1306, when Robert I seized the throne, there might have been some expectation that the prominent role for the community of the realm in the government of the kingdom that had arisen since 1286 would continue. Yet no king voluntarily accepts limits upon his powers, and Robert I restored royal authority, removing the ability of the community to play a significant role in the formulation of parliamentary acts. The king used the rhetoric of community and parliamentary authority that had evolved since 1286 to give his actions a façade of broad support that they often did not have. Parliament became a tool for creating documents designed to validate and augment the king's authority by the public

11 A. Grant, *Independence and Nationhood. Scotland 1306-1469* (London 1984), pp. 166-70; Tanner, *Parliament*, pp. 30-7, 267-9; J. Goodare, 'The estates in the Scottish Parliament, 1286-1707', in C. Jones (ed.) *The Scots and Parliament* (Edinburgh, 1996), pp. 11-32.

12 Tanner, *Parliament*, p. 113; McQueen, 'Parliament, the guardians and John Balliol, 1284-1296', pp. 29-49; *RPS*, 1293/1-1294/2/1.

display of support for his kingship – most famously in the Declaration of Arbroath (1320). A meeting of parliament, therefore, was a useful means of engineering declarations of support for the king, or of manipulating collective decision-making, but, as was clearly demonstrated in the meeting at Ayr in 1315, any large assembly of prominent lords was equally useful. More crucially for the history of parliament, while Robert I was willing to adopt the language of collective authority, there is little evidence of that authority in action during his reign. Instead, there is substantial evidence to suggest he was ruthless in appending indications of community support to documents that were created firmly under the oversight of his chancery. Particularly in the use of the names and seals of the Scottish bishops on key documents, Robert I hijacked the language of collective power for use on documents that were not created in the presence, or with the knowledge of, substantial numbers of the sealers. While the reign of Robert I certainly saw dissatisfaction and opposition manifest itself even among people nominally at the king's peace – most famously in the Soules conspiracy of 1320 which aimed at removing Robert I – this was not something that evidence suggests was voiced in parliament. As was the case in most of Europe, parliament once again belonged to the king, not the community.[13]

However, the actions of Robert I were unable to erase the memories of what parliament had done in the 1290s. Robert I demonstrated something of how a strong king might treat parliament, and later medieval kings like James I and James IV in their own different ways also exercised royal power over the estates. But the discontinuity of personally exercised royal authority that arose after 1286 was to be a prominent feature of the next two hundred and fifty years, ensuring that parliament never suffered from prolonged periods of royal overbearance. The importance of meetings of the

[13] Tanner, 'Cowing the community?'; Brown, *Wars of Scotland*, pp. 225-6.

'community', 'three communities' or 'three estates',[14] as events when the crown could find itself prevented from pursuing its policies evolved especially during lengthy royal absences, minorities and government by lieutenant. In any period, such circumstances brought parliamentary bodies to prominence as fora where genuine settlements were hammered out between factions that lacked overriding authority. Throughout the late medieval period no royal minority, or a lieutenancy, concluded without a parliament or general council proving a thorn in the side of a faction at least nominally in control of the government.

However, while David II's reign does show substantial evidence of the ability of parliament to exert its will over the king when the need arose – most clearly over the policy of an English succession favoured by David II after 1346 – this should not be confused with parliament acquiring formally recognised powers to act as a check on the crown. During the king's prolonged absences, parliaments, or more often '*plena consilia*' (a phrase whose meaning is hard to establish with confidence, but that implies 'full councils' with at least a quasi-parliamentary authority and attendance), were fora for conflict and 'wrangling' between rival parties, particularly between the favoured councillors of the king and Robert the Steward (the future Robert II) and his allies. The 'crown' side was by no means guaranteed to emerge the victor. As a result, during the first period of direct governance by David II (1341-46), the king did not find it easy to pursue his policy of exerting his authority over the well-established interests of men such as the Steward. Instead, these men were still able to use a council for their own purposes at Aberdeen in 1342, overturning a policy of 'divide and rule' pursued by the king.[15] Their ability to

[14] '*Tres communitates*' is first used in 1357, and is frequent thereafter (*RPS*, 1357/11/1). The singular '*communitas*' continues to be used alongside it (*ibid.*, 1357/11/9) through the remainder of David II's reign. 'Three estates' is first used in 1373, in a phrase which indicates that 'estates' and 'communities' are synonymous: '*de tribus statibus sive communitatibus totius regni*' ('concerning the three estates or communities of the whole kingdom', *ibid.*, 1373/3), and gradually becomes the norm thereafter.

[15] Penman, 'Parliament lost – parliament regained?'.

oppose royal policy, however, probably says as much about the confidence and abilities of a young and inexperienced king as it does about the development of parliament.

Following the king's capture by the English at the battle of Neville's Cross in 1346, the Steward showed far more ability to use council as a means of implementing his policies, even pursuing policies that only put off the day when David II would return to Scotland. Yet the king at least seems to have recognised the *de facto* powers of the estates, agreeing concessions to the clergy and the burgesses, and making promises about the powers of parliament, in an attempt to win his subjects over to his plans. Ironically, in opposing David's plans, the Steward and the estates turned to the rhetoric used in Robert I's reign of threatening to select another king if he went against their wishes. But even the Steward had to bow to apparent changes in opinion; when he agreed to opening negotiations with England in 1357 he gave ample recognition of the authority of the community. Subsequent to his release in 1357, relations between David II and parliament evolved in response to the difficult problem of paying a large ransom after a period of the king's absence. Moreover, the language of parliament had made a leap forward since the reign of Robert I, with collective decision-making implied in much of the legislation, in contrast to Robert I's legislation of 1318 that was clearly an expression of royal policy.[16]

However, there was a turning point in 1364. After this date a more experienced David II mastered the trick of political management necessary to secure obedient assemblies, controlling the attendance by adopting the '*licencia recedendi*' (permission to withdraw), and apparently excluding the troublesome and powerful magnates – the Steward, Douglas and March – who had stood in the way of his policies hitherto. As with the Bruce tailzies of 1315 and 1318, those who attended were encouraged to swear oaths, on this occasion to uphold decisions favouring a military alliance with Edward III. The

[16] Brown, *Wars of Scotland*, pp. 325-6; Penman, Parliament lost – parliament regained?'; M. Penman, *David II 1329-71* (Edinburgh, 2004), *passim*. 'Legislation' is here used to denote the business that in an English legal sense would be called 'acts of parliament' (only statutes that establish or alter the law). A Scottish 'act' of parliament denotes not just statute law, but any proceeding of parliament, however unimportant.

swearing of oaths to the king often implies that loyalty is in doubt, rather than the unanimity that the oaths would like to purport. As in 1315 and 1318, the 1365 oaths probably also indicate the determination of the crown to get its way regardless of objections, and a process of recording the coerced public acquiescence to controversial policies by potential enemies. The repeated grants of taxation during the latter stages of David II's reign, therefore, suggest that the king ended his reign with almost as much control over parliament as his father had exerted, although the king's dependence on parliament to provide that taxation should not be under-estimated. While this position of royal strength was largely atypical in the period after 1329, it suggests that parliamentary authority remained reliant on royal weakness, rather than any widely accepted *de jure* recognition of its position.[17]

The Late Medieval Stewart Monarchy, 1371-1496

The prominent role of assemblies of estates in removing both Robert II and Robert III from an active role in government, and then regulating the office of the guardian, might suggest a leap towards some form of limited 'constitutional' monarchy, but there is no evidence of an ideological conflict between the crown and estates. The guardianships of Robert II's and Robert III's reigns were justified as measures to restore the acceptable level of royal power and military leadership, not to limit that power on behalf of the estates. The on-going military threat presented by England since 1296 meant that forceful political and military leadership was the ideal craved by late fourteenth-century Scots. It is ironic, therefore, that in seeking to provide that strong executive authority in the form of

[17] Penman, 'Parliament lost – parliament regained?'; M. Penman, *David II 1329-71* (Edinburgh, 2004), *passim*.

guardians appointed by general councils, the political community was edging towards a more conciliar view of sovereign power.[18]

What is less clear is how representational the late fourteenth-century parliaments and general councils had become. Parliaments decreased in number, but general councils, which had the same membership and almost identical powers, continued to be held frequently. The available sources decrease dramatically, probably because of the accident of survival, and this should not be confused with evidence for a decline in the ability of the three estates to influence the monarchy or its governors.[19] It is certainly the case that, due to the absence of elected shire commissioners, who were created in 1587, late medieval Scotland did not experience any form of electoral politics, and it might be argued that the involvement of local communities in parliamentary business was minimal. Likewise, the tiny amount of surviving evidence suggests that elected burgh commissioners to parliament were generally chosen by the restricted elite found on the burgh council, while 'popular' election of the council itself was outlawed in 1469.[20] Yet the lack of shire commissioners brought its own benefits in terms of the independence of the estates. Theoretically any tenant-in-chief was permitted to attend, providing the potential for a far wider and less crown-controlled attendance than a system of shire representatives. Lesser barons were released from undergoing an 'election' likely to be dominated by the local magnate, although it has been argued that James I's abortive attempt to introduce shire commissioners in 1428 amounted to an attempt to introduce a

18 S. Boardman, *The Early Stewart Kings. Robert II and Robert III 1371-1406* (East Linton, 1996); Boardman, 'Coronations, kings and guardians'.

19 The relatively good records for David II's parliaments are heavily reliant on the survival of *Liber Niger* (NAS, PA5/4). If this single volume had not survived historians might now argue for parliamentary decline after 1329. Despite poor record survival, Robert II, III and the Albany Stewarts held at least 40 parliaments, 'full councils' and general councils in the fifty-three years between 1371 and 1424 (*RPS*, 1371/1-1423/8/1).

20 A.R. MacDonald, 'The burghs and parliament, *c.*1300-1707', in K.M. Brown and A.R. MacDonald (eds) *The History of the Scottish Parliament III: A Thematic History* (Edinburgh, forthcoming). The 1469 act outlawing council elections nevertheless suggests that hitherto local council elections had been overly boisterous, *RPS*, 1469/19.

mechanism for crown control, not locality involvement.[21] Nevertheless, while the records of who attended parliament are fragmentary before 1467, much can still be teased out about the relationships between centre and locality, about the breadth of counsel parliament represented, and the inter-connected webs of patronage that provided parliament with its political dynamics.

Between 1424 and 1496 parliament played a much more prominent role in political affairs, exerting sustained and substantial influence over the Stewart monarchs. This power was based on the reduced military threat from England and the decentralised nature of the Scottish kingdom. No king could force his subjects to pay a tax, or enforce a law, or go to war, without the genuine consent of a cross-section of society (and especially the leading lay and ecclesiastical magnates). Yet ironically it was the increasing demands of the crown after 1424 that enabled this more intensive parliamentary role to arise. James I's vigorous style of kingship demanded frequent parliaments, particularly when seeking taxation, which in turn allowed the estates to modify these policies, or on occasion to block them entirely. In this context it is right to be cautious about an overly constitutional perception of parliament's place in political life. Of course, James I also summoned parliaments and issued statutes as a means to reinforce his power and status, and parliament was a key royal tool in the elimination of the Albany Stewarts (the family that held the regency during James I's imprisonment in England), as it was in the destruction of the Black Douglases under James II. That James I and James II were sometimes obstructed in the implementation of other policies should not obscure the value of parliament to a succession of kings seeking to remove individual noble threats to their authority. Fifteenth-century parliaments were intimately bound up with attempts to increase 'public authority' at the expense of the private power of families such as the

21 *RRS*, v, no. 563; *RPS*, 1426/3/11; Tanner, *Parliament*, pp. 30-4; A.A.M. Duncan, *James I, King of Scots, 1424-1437*, 2nd edition (Glasgow, 1984), pp. 12-13.

Black Douglases. The parliament of 1455 appeared to mark a victory for the crown that, in theory, left assemblies of the three estates as the only remaining legitimate means by which communal political action against the government could be expressed. James I and James II, therefore, had demonstrated that parliament could be used as a tool to enhance monarchical authority, but at the price of increasing intervention by the estates in royal affairs.[22]

For much of the fifteenth century, parliament was a double-edged sword for crown and estates alike, while dynastic crises and royal minorities continued to enhance parliamentary authority, benefiting the nobility especially. During the minority of James II (1437-49) and the minority of James III (1460-9) parliaments and general councils could be the tool of whichever faction currently claimed to be the government. Equally importantly, however, parliament was effective in curbing the excesses of governors, lieutenants and monarchs who either demanded too much from their subjects (as with James I's taxation schemes), or who lacked the good sense to realise their plans were unrealistic (as with James III's continental plans to assert his claims to Brittany). It offered a means of extracting concessions from the monarch aimed at the common interests of king and estates alike, such as the 1455 Act of Annexation. The 1445 oaths reflected the perception among many members of the three estates of the *de jure* authority over the crown that was invested in them when assembled in parliament, and a more pragmatic wish to avoid the repeated clashes between the king and estates that characterised James I's reign. The very extent of parliamentary influence over the crown envisaged by these oaths might have been responsible for provoking a royal reaction in a rival theory of an

[22] Tanner, *Parliament*, *passim*, summarised pp. 264-78; M. Brown, 'Public authority and factional conflict: crown, parliament and polity, 1424-1455', in Brown and Tanner (eds), *Parliament and Politics in Scotland, 1235-1560*, pp. 123-44; M. Brown, *James I* (East Linton, 1994), pp. 139-40; C. McGladdery, *James II* (Edinburgh, 1990), pp. 93-6.

overriding imperial authority adopted by James III and his successors, first expressed in a parliamentary setting in 1469.[23]

For most of the fifteenth century, however, the powers of the crown and the estates in parliament existed in a state of dynamic equilibrium, with the interests of each usually seen as mutually beneficial, but with a clear and recognised ability for both elements to influence the other. The overall effect, however, was that the practical ability of assemblies of the three estates to influence the crown was more intensively exercised in the fifteenth century than ever before, and that this *de facto* power was recognised by 1445 as a *de jure* right. The three estates also saw no contradiction in attempts to augment royal power taking place alongside declarations of a high degree of authority that they believed to be vested in parliament. This is best illustrated by the acts of the January 1450 parliament. The three estates both forfeited the Livingston family, thus increasing James II's power, and declared that rebellion against the king was only treasonable if done without the consent of the estates. During the reign of James III parliament met frequently, often in the context of bitter factional disputes and against a background of discontent with royal policies that led the estates to test the limits both of the king's power and parliament's right to restrain that power.[24] Scots wanted their kings to be strong, but also believed they had the right to act as a check on that authority, even to the extent of declaring rebellion to be lawful, and they stopped well short of providing the king with the frightening degree of coercive authority available to rulers elsewhere.

[23] Tanner, 'Outside the acts', pp. 69-70; R.A. Mason, *Kingship and the Commonweal: Political Thought in Renaissance and Reformation Scotland* (East Linton, 1998), pp. 104-38; R.A. Mason, 'This realm of Scotland is an empire? Imperial ideas and iconography in early Renaissance Scotland', in B.E. Crawford (ed.), *Church, Chronicle and Learning in Medieval and Early Renaissance Scotland* (Edinburgh, 1999), pp. 73-92.

[24] *RPS*, 1450-1/13 ; Tanner, *Parliament*, pp. 169-263; N.A.T. Macdougall, *James III. A Political Study* (Edinburgh, 1982).

Decline and Revival, 1496-1560

In spite of the significant role parliament had established for itself over the course of the fifteenth century, 1496 marks a shift in parliamentary history after which it ceased to be called regularly until after the death of James IV. The latter achieved the trick of reducing parliamentary meetings from what had become almost an annual occurrence to a mere three between 1496 and his death in 1513 (in 1504, 1506 and 1509). After a minority that saw parliaments play a by now familiar role in the factional infighting precipitated by the absence of an adult king, James IV immediately turned to new methods of government that mitigated the need to call full parliaments. He did this by shifting parliamentary functions to other institutions: general councils and meetings of the lords of council whose attendance could equal or exceed the small parliamentary sederunts seen in the reign. These more quickly summoned and informal gatherings, perhaps without the presence of the third estate and more firmly under the control of the crown, performed most of the functions of full parliaments without risking the 'political morass' that could arise when all the magnates and prelates gathered at more formal meetings. By avoiding, as far as possible, turning to parliament with requests for taxation, the single issue which most often caused bitter disagreement in parliament before 1488, James IV made his wisest decision of all. Parliament abruptly ceased to be an important institution in the politics of the reign, but there is little evidence of complaint. By 1496 Scots must have craved stable and effective government more than anything else. They received it from James IV, and cared little for any constitutional principles that were impugned as a result.[25]

The adult reigns of James IV and James V show that successful monarchs could marginalise parliament and control the important committee of the lords of the articles

[25] Macdougall, 'The estates in eclipse?', in Brown and Tanner (eds), *Parliament and Politics in Scotland, 1235-1560*, pp. 145-59; N.A.T. Macdougall, *James IV* (Edinburgh, 1989), pp. 170-95.

which managed much of parliament's business; at no point were there repeats of the vocal and dangerous criticism seen before 1496. This was largely a function of the ability, wealth and popularity of these two kings rather than a reflection of a radical change in the way kings and subjects perceived parliament. However, this apparent decline in parliament's importance was always likely to be temporary in nature, dependent on the economy and the effectiveness of the king, not the emergence of a new more 'absolute' monarchy. After James V's death in 1542 royal government did not enjoy this luxury and faced a choice between poverty and awkward parliaments.[26]

Besides, even in the midst of the Stewart monarchy's high-point, the minority of James V (1513-28) demonstrated that there had been no wholesale diminution of the potential for parliament to play a key role in the great events of the day. Parliament still fulfilled a crucial function in acting as a point of contact for those men who collectively governed the kingdom, and thus the February 1525 parliament saw the government of Queen Margaret Tudor replaced by that of Archibald Douglas, sixth earl of Angus. The increasing amount of surviving source material available makes possible a detailed analysis of the personnel chosen as lords of the articles and of the disputes which arose over the selections, demonstrating that control of the parliament was finely balanced between the two factions, and was hinged on the wavering loyalty of just one or two men on the committee.[27] It appears that the demise of parliament seen in James IV's reign was dependent on the presence of a capable and adult king, and this was illustrated again in James V's reign. James V did not imitate James IV and abandon parliament, but the estates met less often than had been the norm before 1496. When parliament did meet, its sessions were invariably low in political controversy, while the crown was able, or was

[26] Macdougall, *James IV*, *passim*; J. Cameron, *James V* (East Linton, 1998), *passim*; R.J. Tanner, 'The lords of the articles before 1542: a reassessment', *SHR*, lxxix (2000), pp. 210-11.

[27] K. Emond, 'The parliament of 1525', in Brown and Tanner (eds), *Parliament and Politics in Scotland, 1235-1560*, pp. 160-78.

permitted, to place its key office holders and councillors on the committee of the articles.[28]

But with the death of James V in 1542 the usual parliamentary situation familiar from the previous two centuries resumed. There had been no wholesale decline in the importance of parliament in the first part of the sixteenth century, despite the ability of James IV and James V to marginalise the institution. The holding of five parliaments in four years by the regent, Mary of Guise, suggests a return to fifteenth-century practice. Indeed, the three estates were broadly supportive of the crown's policies in parliament, and it was not the implementation of new French policies that provoked resistance. Instead discontent was aroused by Guise's desire to reassert traditional Stewart policies familiar under every monarch since 1424, and to raise taxes for the justifiable purpose of the defence of the realm. While opposition manifested itself in the parliaments of 1555 and 1556 over the traditional subjects of justice and taxation, Guise enjoyed considerable support in 1557 over the potentially controversial subject of dynastic union with France by the marriage of Queen Mary to the dauphin of France. In spite of the apparent decline in parliamentary importance under James IV, and the ability of James V to control the lords of the articles, the relationship between the crown and parliament in 1558 was not dramatically different from the situation in 1366, 1431 or 1473. Issues of great importance needed the genuine consent of the estates, without it royal policies would fail.[29]

The Early Modern Parliament

In large part early modern Scotland was no different from any other European kingdom in the period in that assertive monarchies placed increasing demands on representative

[28] Cameron, *James V*, pp. 38-42, 213-14, 271-2; Tanner, 'Lords of the articles', pp. 210-11.

[29] P.E. Ritchie, 'Marie de Guise and the three estates, 1554-1558', in Brown and Tanner (eds), *Parliament and Politics in Scotland, 1235-1560*, pp. 179-202; P.E. Ritchie, *Mary of Guise in Scotland, 1548-1560: A Political Career* (East Linton, 2002), *passim*.

assemblies to fund the growing costs of war, expand patronage networks and underscore royal prestige and courtly life.[30] While the frequency of parliamentary meetings, or the length of sessions, is certainly not an indicator of an assembly's significance, that frequency does offer some insight into the relationship between crown and parliament during the early modern period. Between 1560 and 1603 there were twenty-two parliaments and about eighty conventions, of which perhaps half were of the estates and half of the nobility, some unfortunately with no surviving official records. In the period from 1603 to 1689 there were seventeen parliaments and about fifteen conventions of the estates.[31] These raw figures do not tell the whole story. Parliament did not sit at all in the years 1664, 1668, 1675-7, 1679-80 and 1687-8, but in the 1640s and again after 1689 parliament sat annually, Furthermore, the parliaments of the 1640s sat in longer sessions than any sixteenth-century parliament, while between 1660 and 1707 the estates met on average for forty days per year. In effect, the small, short and intermittent parliaments of the later sixteenth century, that depended on the king's will, were transformed into large, multi-layered and long-lasting assemblies much more conscious of their own authority.

An unusual feature of the meetings of the estates, especially in the sixteenth century, was the convention of estates that could be summoned by the king without the long period of forty days' notice required for a full parliament and usually only to agree taxations. However, these assemblies met less frequently in the early seventeenth century as they became more formal and largely addressed the issue of taxation. From 1643 conventions were called by general summons rather than selectively and so more closely resembled a full parliament in membership if not in the range of matters considered. However, although the restored monarchy did resort to the use of conventions on three

30 J.R. Young, 'The Scottish parliament in the seventeenth century: European perspectives', in A.I. Macinnes, T. Riis and G.G. Pederson (eds), *Ships, Guns and Bibles in the North Sea and the Baltic States c. 1350-c. 1700* (East Linton, 2000), pp. 139-72.

31 Precise figures are difficult especially in relation to conventions, see Young, *Commissioners*, ii, pp. 753-6; J. Goodare, 'The Scottish parliament and its early modern 'rivals', *Parliaments, Estates and Representation*, [*PER*] 24 (2004), pp. 147-72.

occasions, that in 1678 was the last to be held, the 1689 convention of the estates being unusual and quickly transformed into a parliament. The disappearance of these 'para-parliaments', where the very absence of a committee of the articles suggests they were generally more amenable to crown control, represented a recognition of parliament's pre-eminence in all matters relating to the estates, and in particular in the granting of taxation.

The estates continued to sit as a unicameral body and there is some debate over the effect this arrangement had on the capacity of parliaments to be representative and of the implications for the management of business. A unique feature of parliament was the committee of the lords of the articles through which proposed legislation was vetted and drafted. This committee was essential to ensuring crown control of parliamentary business, but more recent research suggests that it was at best an imperfect tool for the delivery of the court agenda.[32] The system of additional committees and parliamentary commissions in the pre-1639 parliaments was relatively simple, but between 1639 and 1651 the covenanters developed a much more sophisticated series of committees to cope with the huge demands placed upon parliament as it sought to govern the country in time of war. After the Restoration, parliamentary committees for controverted elections were regularly established from 1669, while conventions of the estates created committees for supply (taxation) that reported to the estates as a whole. Small parliamentary committees to consider such questions as ratifications, or processes against rebels were also a feature. Following the 1689 revolution, the disappearance of the lords of the articles was counterbalanced by the creation of important standing committees for trade, controverted elections and for the security of the kingdom, while new committees were established for agreeing the address to the king and to revise the minutes of parliament. However, after

[32] Tanner, 'Lords of the articles'; A.R. MacDonald, 'Deliberative processes in the Scottish parliament before 1639: multi-cameralism and the lords of the articles', *SHR*, lxxxi (2002), pp. 23-51; A.J. Mann, 'Inglorious revolution: administrative muddle and constitutional change in the Scottish parliament of William and Mary' in *Parliamentary History,* 22 (2003), pp. 121-44. For an older view, R.S. Rait, *The Parliaments of Scotland* (Glasgow, 1924), pp. 7-9, 59-60 and 349-93, and R.S. Rait, 'Parliamentary representation in Scotland: V. The lords of the articles', *SHR*, xiii (1915), pp. 68-83.

1702 matters tended to be considered in plain (or full) parliament as members were suspicious that the crown was packing committees with placemen. Extra parliamentary commissions, with powers to deliberate between sessions, were also a feature of the post-1690 period, such as commissions for the visitation of schools and universities (1690-1702), for the communication of trade (1698-1701), and of course the commissions for union of 1702-3 and 1706.[33]

In terms of its composition, the most significant difference between the early modern and medieval parliaments was the reduced importance of the first or clerical estate. The failure to seize the opportunity to reform fundamentally the first estate in 1560 has been interpreted as a lost opportunity to reinvigorate parliament, a point that carries more weight than the view that the new general assembly was a rival to parliament.[34] Before 1560 the first estate was represented by two archbishops, eleven bishops and some twenty-seven heads of religious houses. However, most heads of religious houses were commendators, who were in minor orders and often members of noble families. This process of secularisation continued apace after 1560 until in 1606 when 'lay' commendators became hereditary 'lords of erection' ensuring that the king would not be able to pack parliament with appointed 'abbots'. In effect, a majority of church representation in parliament, formerly in the gift of the crown, was handed over to the landed nobility.

Furthermore, because of the insistence by the mainstream within the new general assembly of the Church of Scotland on a separation of church and state and on a presbyterian church polity, the bishops had only a tenuous relationship with the church. The bishoprics ceased to be filled by men with *de facto* ecclesiastical roles, and instead were

[33] Rait, *Parliaments*, pp. 385-92; C.S. Terry, *The Scottish Parliament: its Constitution and Procedure* (Glasgow, 1905), pp.121-4. For sub-committees of the lords of the articles see the appendices to 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*, pp. 184-207.

[34] Rait, *Parliaments*, pp. 49-50.

granted to a combination of noble clients, royal servants and some compliant Protestant clergy. Meanwhile, the general assembly evolved from its origins in 1560 as a powerful lobby with an independent voice. However, from 1605 James VI began to exert greater crown management that culminated in the assembly not meeting for twenty years after 1618. The presence of lay elders in the general assembly meant that it was not a wholly clerical body, but it should be considered alongside parliament when discussing the question of representative assemblies. In the later sixteenth century attitudes in the kirk and at the royal court towards church representation were relatively fluid, the more important issue for the clergy being how its representatives would be selected. From 1597 James VI's determination to exert greater control over the church hardened, and in 1606 parliament passed an act formally restoring the estate of bishops, although it was another six years before the bishops reacquired the full range of their former ecclesiastical authority.[35] However, the role of the clerical estate remained controversial, especially as they became associated with an unpopular royal liturgical policy and with Charles I's authoritarian government. Bishops were removed from parliament in 1640, they returned in 1662 as servants of the Restoration monarchy, and the clerical estate was finally abolished in 1690.

The other significant change in composition concerns the lesser barons or lairds. Although parliamentary attendance was generally good before 1496, it occasionally decreased to low levels during the royal majorities of the early sixteenth century, reflecting the lack of controversial business that came before the estates. As in the fifteenth century, dynastic succession and taxation remained likely to arouse the interest of the estates after 1496, and both these issues were high on the political agenda in mid-sixteenth-century

[35] Goodare, 'The Scottish parliament and its early modern 'rivals', pp. 6-12; A.R. MacDonald, 'Ecclesiastical representation in parliament in post-Reformation Scotland: the two kingdoms theory in practice', *Journal of Ecclesiastical History*, 50 (1999), pp. 38-61; G. Donaldson, *Scotland. James V to James VII* (Edinburgh, 1965), pp. 276-7; D.G. Mullan, *Episcopacy in Scotland. The History of an Idea 1560-1638* (Edinburgh, 1986).

Scotland. Hence the high attendance of lairds, or barons, in 1556 in response to concerns about proposed taxation. In this context it is more difficult to see the large numbers of lesser barons attending the 1560 parliament as reflective of the rise of the 'middling sort' or of a historically crucial shift of power away from the magnates. The attendance of ninety-nine lesser barons, or lairds, at the Reformation parliament, although recorded on a greater scale than in earlier sources, is indicative of a return to a fifteenth-century norm rather than proof of a radical shift in early modern society.[36]

After 1560 the lesser nobility continued to attend parliament irregularly, being present in at least eleven of the eighteen or so conventions of the estates between 1567-86 as well as, at the very least, three of the twelve full parliaments in the same period. Indeed, proposals to place this attendance on a more sure footing were discussed at the parliaments of December 1567, 1571 and 1585. No decision was taken, probably because this was an issue of sufficient importance to await the king's majority in 1587. In return for a tax of £40,000 from the barons, the disused 1428 legislation that excused all barons from attending on condition that they elected shire representatives, was dusted down and adapted. Each shire was allocated two commissioners (although the small shires of Clackmannan and Kinross had only one each) to be annually elected from the resident barons of the shire in readiness for a parliament should one be summoned. However, each shire had only one vote, requiring the two commissioners to resolve any differences, although they appear to have been invested with *plena potestas*, allowing them to vote without having to consult their electorates. The franchise was granted to tenants-in-chief who held their land in ward and blench from the crown, and who met a relatively high property qualification of forty shilling freehold land (valued in old extent) held of the king.

[36] Tanner, *Parliament*, p. 199; Tanner, 'Political role of the three estates', table 1, pp. 244-5; Ritchie, 'Marie de Guise and the three estates', pp. 195-6; J. Goodare, *State and Society in Early Modern Scotland* (Oxford, 1999), pp. 40-1; Goodare, 'The estates in the Scottish parliament', pp. 11-32; K.M. Brown, 'The Reformation parliament', in Brown and Tanner (eds), *Parliament and Politics in Scotland, 1235-1560*, pp. 203-32.

At least six barons were required to sign the electoral commission of their chosen representative. Liferenters, sub-tenants and feuars were excluded.[37]

In fact, the lesser barons were slow to take up their seats, and the earliest election for which evidence survives is 31 January 1596 when John Leslie of Balquhain and Sir Alexander Fraser of Fraserburgh were elected for Aberdeenshire, and a full attendance by all shires was not attained until 1681. However, in the constitutional arrangements put in place by the covenanting regime in 1640, the removal of the clerical estate was compensated for by allowing each shire commissioner a separate vote, a doubling of the shire vote that was continued after the Restoration. In the parliaments of 1661 and 1681 there were further refinements to the property qualifications that extended the franchise, undermining its feudal nature. Finally, in 1690 shire representation was increased when some larger shires were permitted three or four commissioners depending on their size, and from 1693 to 1707 the maximum shire representation stood at ninety-two commissioners. By the early eighteenth century, therefore, the shire electorate had grown significantly, while the number of elected shire commissioners in parliament had risen.[38]

Therefore what might be regarded as a fourth estate of untitled landlords, with a right to be represented on the lords of the articles, was emerging. It seems likely that the presence of the lairds was due to the king's need to broaden consent for taxes, and perhaps to widen the geographic network of links between the crown and the localities.[39] James VI himself was emphatic about the place of lairds in Scottish society, insisting in *Basilikon Doron* that 'the small Barrones are but an inferiour part of the Nobilitie and of

37 W. Ferguson, 'The electoral system in the Scottish counties before 1832', *Stair Society Miscellany II*, ed. D. Sellar (Edinburgh, 1984), pp. 261-94 at pp. 263-5; *RPS*, 1587/7/143.

38 *Records of the Sheriff Court of Aberdeenshire* (New Spalding Club, Aberdeen, 1904), i, pp. 372-3; Rait, *Parliament*, pp. 211-13; Ferguson, 'Electoral system', pp. 267-71; Donaldson, *James V to James VII*, pp. 278-80; Terry, *Scottish Parliament*, pp.19-46.

39 For various interpretations see Rait, *Parliaments*, pp. 203-10; M. Lee, *John Maitland of Thirlestane and the Foundation of Stewart Despotism in Scotland* (Princeton, 1959), pp. 146-51; Wormald, *Court, Kirk and Community*, p. 157; J. Goodare, 'Estates in the Scottish parliament', pp. 17-20; J. Goodare, 'The admission of lairds to the Scottish parliament', in *EHR,* cxvi (2001), pp. 1103-33, and Goodare, 'Scottish politics', p. 38.

their estate', although he later conceded that within parliament they had come to form a distinct estate of their own.[40] However, during the 1640s revolution, warfare and faction altered the composition of parliament and its committees such that lairds and burgh commissioners had a numerical majority, raising the possibility that something like a Scottish commons was emerging.[41] The Restoration reversed that trend and the hereditary peerage continued to constitute the most important estate, expanding in numbers from fifty-one in the 1560s to 143 peers in 1707.

The early seventeenth century saw some enhancement of the political influence of the royal burghs as the financiers of the crown and then the covenanting cause. It is unclear if the expansion in the number of royal burghs from forty-six in 1560 to fifty-eight in 1640 and sixty-seven by 1700 (each burgh was represented by one commissioner except Edinburgh which had two commissioners) was driven by a royal policy to increase the representation of an estate it could more easily manage. However, it was the royal burghs that drove the development of a multicameral approach to policy-making in parliament. Uniquely, the burghs had a corporate existence outside parliament, and their commissioners met at least annually, often three times per year, in the convention of royal burghs that determined collective burgh agendas for forthcoming meetings of the estates. Because of their weakness in the face of the ranks of landed nobles, the burghs realised that a unified front in pursuing their own interests in parliament was crucial. Hence during the sitting of parliament burgh commissioners continued to act collectively, and the convention of royal burghs, which provided an efficient and effective means of co-ordinating burgh opinion and lobbying for the collective interests of the royal burghs,

40 J.P. Sommerville (ed.), *King James VI and I Political Writings* (Cambridge, 1994), p. 29.

41 J.R. Young, *The Scottish Parliament 1639-1661: A Political and Constitutional Analysis* (Edinburgh, 1996); J.R. 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), pp. 164-81. However, see K.M. Brown, 'Parliament, crown and nobility in late medieval and early modern Scotland, c. 1250-1707', in L. Casella (ed.), *Rappresentanze e Territori. Parlamento Friulano e Istituzioni Rappresentative Territoriali nell'Europa Moderna* (Udine, 2003), pp. 119-39.

often met during parliamentary sessions. In 1600 that assembly agreed that when the king summoned a convention of the estates those burghs not selected to send a commissioner should ensure that commissioners were on hand to advise colleagues expected to speak on their behalf. Three years later, the burghs petitioned unsuccessfully that all parliamentary acts be approved by each estate in turn in an effort to prevent their interests being disregarded by an assembly so dominated by the landed nobility.[42]

Unsurprisingly, given their distaste for Charles I's trade, taxation and religious policies, the burghs, particularly Edinburgh, were to the fore in supporting the covenanting revolution both outside and within parliament where their commissioners played a significant role in committees and in helping to shape the more radical policies of the later 1640s.[43] Unfortunately, the high cost of revolution and war impacted heavily on Scotland's towns, and after the Restoration the burghs lapsed back into a more passive role in parliament, lobbying for their own sectional interests as royal burghs jealous of their privileges, but avoiding political controversy. The 1689 revolution marked a return to greater political engagement, but economic uncertainty ensured that the main role burgh commissioners played in parliament was in lobbying for compensation as a consequence of the collapse of the company of Scotland, or against the act of union on the grounds that it would hurt the protected manufacturing sector. Furthermore, after 1689 the more regular parliaments, longer sessions, and more fulsome debates mitigated

42 Rait, *Parliaments*, pp. 251-6; MacDonald, 'Deliberative processes', pp. 29-35; A.R. MacDonald, '"Tedious to rehers"? Parliament and locality in Scotland c. 1500-1651: the burghs of north-east Fife', *PER*, 20 (2000), pp. 31-58; A.R. MacDonald, *The Burghs and Parliament in Scotland, c. 1550-1651* (Aldershot, 2007).

43 D. Stevenson, 'The burghs and the Scottish revolution', in M. Lynch (ed.), *The Early Modern Town in Scotland* (London, 1987), pp. 167-91; A.I. Macinnes, 'Covenanting revolution and municipal enterprise', in J. Wormald (ed.), *Scotland Revisited* (London, 1991), pp. 97-106; MacDonald, *Burghs and Parliament*; L.A.M. Stewart, *Urban Politics and the British Civil Wars* (Leiden, 2007), *passim*; Young, *Scottish Parliament*.

against regular parallel meetings of parliament and the convention of royal burghs, although this did happen in 1690 and 1695.[44]

As well as becoming a larger and less easily manageable body, parliament had been transformed into a wholly secular assembly dominated numerically and politically by noble landlords who by the 1700s nominally held seventy per cent of seats. An attendance of around sixty would have been average for the later sixteenth century, but in the unlikely event of a full turn-out, in 1563 there would have been fifty-three clerics, fifty-one peers, forty-four burgh commissioners and an indeterminate number of barons.[45] The combination of new peerage creations, royal burgh erections, and franchise reforms from the later sixteenth century incrementally grew the size of parliament to a chamber of potentially over 300 members by 1707.[46] However, attendance had always been below the nominal figure, and from 1603 to 1660 parliamentary membership exceeded 150 on only six occasions and never rose above 183. During one meeting of the 1641 session less than thirty members attended, though at subsequent meetings of the same session numbers rose to over 150. After the Restoration attendance only twice exceeded 190 until 1703-6 when it averaged 226.

A constant difficulty facing historians of Scotland's parliament has been the nature of the sources. However, one of the advantages of the early modern period is the existence of regular parliamentary registers that survive largely uninterrupted from 1567 to 1707 and are located in the National Archives of Scotland. The printed volumes of acts fill some gaps between 1560 and 1603, and in spite of some missing sederunts in the early

44 T.C. Smout, 'The Glasgow merchant community in the seventeenth century', *SHR*, xxxxvii (1968), pp. 53-70; T.M. Devine, 'The Scottish merchant community, 1680-1740', in R.H. Campbell and A.S. Skinner (eds), *The Origins and Nature of the Scottish Enlightenment* (Edinburgh, 1982), pp. 26-41. The modest role in parliament by burgh commissioners post-Restoration is analysed in G.H. MacIntosh, *The Scottish Parliament under Charles II 1660-1685* (Edinburgh, 2007), and D.J. Patrick, 'People and parliament in Scotland 1689-1702', (unpublished Ph.D. thesis, St Andrews University, 2002).

45 J. Goodare, 'The Scottish political community and the parliament of 1563', *Albion*, 35 (2003), p. 375.

46 The theoretical maximum in 1707 being perhaps 143 hereditary peers plus sixty-seven burgh commissioners and ninety-two shire commissioners (302), with the addition of those few officers of state who were not peers.

seventeenth century, after 1603 the registers are comprehensive. Unfortunately the nineteenth-century edition of parliament's acts has not inspired intensive research, and it is only now that historians are returning to the manuscript record and uncovering a range of previously unused supplementary official parliamentary material. Much new or freshly considered evidence is now being utilised; for example, a diary of parliamentary proceedings kept in 1648 by the first duke of Hamilton, a range of minutes of parliament and of the lords of the articles, and an analysis of electoral politics from numerous shire and burgh commissions.[47] No doubt new discoveries will continue to enhance our knowledge of the early modern parliament and its proceedings.

The Reformation, 1560-1603

The Reformation parliament of 1560 proved to be an occasion when the Protestant party, or faction, engineered an unstoppable majority within the estates, and used it to carry forward a revolution in diplomacy and in religion that looked simultaneously backwards to medieval constitutionalism and forward to the construction of a new godly community. The political and religious divisions of 1559-60 shaped the politics of the next quarter century, a period of great political instability when parliament continued to be the tool of faction and party. During the personal rule of Mary, 1561-7, there were three parliaments and two conventions of the estates, of which only the 1563 parliament pursued a substantial legislative agenda. In 1566 the first edition of the complete acts of parliament was published, although not without controversy as the first printing contained anti-Protestant legislation and had to be quickly reprinted.[48]

47 J. Goodare, 'The Scottish parliamentary records', *Historical Research*, 72 (1999), pp. 244-67; J.R. Young, 'Seventeenth-century Scottish parliamentary rolls and political factionalism: the experience of the covenanting movement', *Parliamentary History*, 16 (1997), pp. 148-70.

48 Brown, 'Reformation parliament'; Goodare, 'Scottish political community'; J. Goodare, 'The first parliament of Mary Queen of Scots', *Sixteenth Century Journal*, 36 (2005), pp. 55-75; Goodare, 'Scottish parliamentary records', pp. 255-7.

The civil war of 1567-73 and the subsequent decades of political instability saw parliament remain a tool in the hands of rival factions determined by confessional allegiance, political ideology with regard to crown authority, and intensified family feuds. The two parliaments of 1567 demonstrate this point. That in April attempted to shore up Queen Mary's ailing authority, while that in December was an assembly of the now imprisoned queen's enemies that recognised her son, James VI, as king and passed the controversial religious legislation approved by the estates in 1560 and from which royal assent had been withheld. That same political instability ensured that there were many more meetings of the estates; there were fourteen parliaments and about seventeen conventions of the estates between 1567 and 1584. At the height of the civil war, in 1571-3, there were seven parliaments alone. In May 1571, the king's party held the thinly attended 'Creeping Parliament' (a derogatory reference to the fact that its members had to creep around to avoid the gunfire of their enemies) in the Canongate beside Edinburgh, while in June the queen's party assembled a parliament a few hundred yards away in Edinburgh's tolbooth.[49]

The regent, James Douglas, fourth earl of Morton, achieved a degree of stability and order between 1573 and the end of the regency in 1578, but was reluctant to summon parliament, holding only two parliaments in 1573 and a single convention of estates in 1575. Thereafter the kingdom was pitched back into a confusing round of factional conflicts in which parliament was used as a crude political weapon. For example, in 1582 a convention of estates approved the Ruthven Raid which saw the king abducted by a faction of Protestant nobles, while in December 1583, following the king's escape, another convention condemned it, ordering that the previous declaration be torn out of its records. In 1585, following yet another palace coup, parliament restored to favour all the formerly forfeited Ruthven Raiders. From the parliament held in July 1578,

[49] G. Donaldson, *All the Queen's Men. Power and Politics in Mary Stewart's Scotland* (London, 1983).

immediately after the palace coup that ousted Morton as regent, until the parliament in December 1585, following the coup that removed the Chancellor, James Stewart, earl of Arran, from power, there were six parliaments and about eleven conventions of the estates. There appears to be little doubt that the high number of parliaments in this period, being similar to the fifteenth century, and especially the unusual number of conventions of estates, was due to the absence of strong royal government alongside deeply factional politics.[50]

Furthermore, parliament had become a battleground for rival interpretations of the Reformation. The legislation of 1560 was ratified in December 1567, following Mary's abdication, but there remained the thorny question of the kirk's relationship to the crown, and related to this issue was the church's ambivalent relationship with parliament that remained unresolved until 1690. John Knox and his colleagues ultimately appealed to a higher divine authority, but they also sought parliament's approval in constructing their new church. Unfortunately, the waters were further muddied by the contest between rival episcopalian and presbyterian visions for the future of the church. The May 1584 parliament passed the 'Black Acts' recognising a royal supremacy, only for this high-water mark of crown control to be subverted as a consequence of the political change of fortune that occurred a year later. Yet while presbyterian leaders like Andrew Melville attacked vigorously the erastian nature of the 1584 legislation, such critics were forced to accept parliament's authority by campaigning implicitly for the repeal of those laws and the enactment of more favourable legislation.[51]

50 *RPS*, A1582/10/2; A1583/12/2 and 1585/12/49; Donaldson, *James V to James VII*, pp. 107-31, 157-83; Lee, *Maitland of Thirlestane*, pp. 44-76; K.M. Brown, *Bloodfeud in Scotland 1573-1625. Violence, Justice and Politics in an Early Modern Society* (Edinburgh, 1986); J. Goodare, 'Scottish politics in the reign of James VI', in J. Goodare and M. Lynch (eds), *The Reign of James VI* (East Linton, 2000), pp. 36-7; for the sources, Goodare, 'Scottish parliamentary records', pp. 256-63.

51 A.R. MacDonald, 'The subscription crisis and church-state relations, 1584-1586', *Records of the Scottish Church History Society*, xxv (1994), pp. 222-55; and more generally, A.R. MacDonald, *The Jacobean Kirk 1567-1625. Sovereignty, Polity and Liturgy* (Aldershot, 1998).

For the crown, the parliamentary history of this turbulent quarter of a century was unsettling, and the resistance theories of John Mair in the early sixteenth century and George Buchanan in the mid-sixteenth century, popularised ideas of limited monarchy, collective authority, and of the subject's right to resist. To some extent this was seen in action when the Reformation Parliament of 1560 wittingly acted in defiance of the crown. Subsequently, Mary was little more than the head of a faction throughout her short personal rule, and in 1567 a parliament of her enemies gave its approval to an enforced abdication. The success of the king's party in the subsequent civil war was a triumph for a political faction that used parliament to legitimise limitations on royal authority. Indeed, that is exactly what the Ruthven Raiders did in the 1582 convention. Unfortunately, George Buchanan's polemical defence of Mary's deposition (ostensibly only an abdication) was vague about the mechanism for removing a tyrant. Historians, therefore, remain unclear about whether he thought that the people, or their representatives, could remove a tyrannical king by using parliament, and whether this should be done by a full parliament, or by the lords of the articles. Nevertheless, it is difficult to avoid concluding that this revival of medieval constitutionalism raised awareness within the political community of the role that the estates were expected to play in legitimising any action taken against a king or queen.[52]

The frequent meetings of the estates during this period of royal weakness, a time that might be dated from 1542, revived parliament's awareness of its authority. In reacting to the many problems facing him - and until the later 1590s most of his kingship was reactive – James VI's use of and relationship with parliament was important. He wrote about parliament in his book *Basilikon Doron* (1599), describing it as 'the honourablest and

[52] Tanner, 'Outside the acts', pp. 57-70; Mason, *Kingship and the Commonweal*, pp. 68-9; J.H. Burns, *The True Law of Kingship: Concepts of Monarchy in Early Modern Scotland* (Oxford, 1996), pp. 185-221, 288-90; Goodare, *State and Society*, pp. 302-3; R.A. Mason and M.A. Smith (eds), *A Dialogue on the Law of Kingship among the Scots. A Critical Edition and Translation of George Buchanan's De Jure Regni apud Scotos Dialogus* (Aldershot, 2004), pp. lviii-lx; Goodare, 'The estates in the Scottish parliament, 1286-1707' pp. 17-19; J. Goodare, *The Government of Scotland 1560-1625* (Oxford, 2004), *passim*.

highest judgement in the land', but he did counsel 'hold no Parliaments, but for necessitie of new Lawes, which would be but seldome'. This conventional and common-sense advice, that the king often ignored in practice, contrasts with a more imperious tone in *The Trew Law of Free Monarchies* (1598) where parliament was downgraded to an instrument of royal power – 'nothing but the head Court of the king and his vassals' – a point of view consistent with the origins of parliament if not its subsequent medieval development.[53] In fact, James VI attended his first parliament in 1578, and appears to have been present at all eleven parliaments and sixty-odd conventions of estates before his removal to London in 1603. The reasons for the continuing high frequency of parliament and conventions after 1585 lay in the political instability, religious controversy and political factionalism that endured at least until 1596 along with the king's constant financial problems.[54]

One of the difficulties created by older parliamentary histories is a tendency to situate parliament within an institutional understanding of royal government rather than the more revisionist view of parliament as an extension of personal monarchy in which court faction, conciliar negotiation, personal contacts and connections to localities all played a part. Thus a compromise between the crown and other interest groups operated amidst the heated, adversarial political atmosphere of the violent Moray-Huntly feud and the destabilising Bothwell crisis that formed the backdrop to the 1592 parliament. What the 1592 parliament demonstrates is the considerable effort required by the crown to manage the estates, both before it sat down and during its proceedings, and how much it had to concede – including the so-called 'Golden Act' ratifying a Presbyterian polity - to other interested parties in order to achieve its relatively limited objectives.[55]

53 Sommerville (ed.), *Political Writings*, pp. 21-2, 74.

54 Wormald, *Court, Kirk and Community*, pp. 149-76; Goodare and Lynch (eds), *Reign of James VI*; Donaldson, *James V to James VII*, pp. 183-237; Brown, *Bloodfeud*.

55 A.R. MacDonald, 'The parliament of 1592: a crisis averted?', in Brown and Mann (eds), *Parliament and Politics in Scotland, 1567-1707*, pp. 57-81.

In addition, unlike James IV and even James V, who were wealthy enough to ignore the estates, James VI was always short of money, making it impossible to avoid the question of taxation. The crown's ordinary revenue had fallen in real terms such that it could not afford an army, it employed a tiny number of officials, and the court was threadbare. The importance of regular taxation in the 1580s and 1590s has probably been overstated, since all the large grants were earmarked for extraordinary occasions such as the king's marriage in 1588, Prince Henry's baptism in 1594, and embassies in 1597 and 1601. However, in spite of the injustices and irrationality of the centuries-old customary system of valuation, and the inefficiencies in collection, tax receipts did rise. From 1606 regular taxation was the norm with the estates making grants for three or four years at a time, a practice that determined the timing of parliaments. Naturally there was resistance to tax demands, and to the manner of asking, both in parliament, where all estates were subject to taxation, and elsewhere. The crown often attempted to use conventions of the estates to get approval for taxes, but it was repeatedly disappointed. Conventions of the estates in 1578, 1583 and 1586 all proved uncooperative, resentment rose during the 1590s, and the crown's financial plans in 1599-1600 were thrown into chaos by the refusal of five successive conventions of estates to grant the desired taxes. The most vocal opposition came from the barons and the burghs who benefited least from the recycling of taxes as royal patronage.[56]

Regal Union, Multiple Monarchy and the War of the Three Kingdoms, 1603-1660

If James VI had had his way Scotland's distinct parliamentary history would have ended in the years immediately after 1603. The king's vision of union was far deeper than the dynastic accident that resulted in the Stewarts ruling over the separate kingdoms of

[56] J. Goodare, 'Parliamentary taxation in Scotland, 1560-1603', *SHR*, lxviii (1989), pp. 23-52.

England, Ireland and Scotland. He aimed at something much more ambitious, imagining a British people ruled by a British emperor. One crucial step on the road to that ambition was the union of the English and Scottish parliaments, a project James set in motion almost immediately, placing it before his two parliaments in 1604. What he encountered was outright hostility in England where the house of commons would consider only a 'perfect union' in which the Scottish parliament was folded into Westminster. Although the king's stubbornness ensured that union remained on the agenda until 1608, English opposition killed off the project right at the start, helping to sour James's relations with his Westminster parliament. The king forgot the problems he had previously encountered with his Scottish estates and instead lectured the English parliament on its virtues. James VI and I also came to believe his own rhetoric because he no longer saw at first hand the difficulties encountered by his councillors in delivering crown policy in Scotland. In fact, on the issue of union the Scottish parliament was equally unenthusiastic, even if it avoided direct opposition and preferred to allow English MPs to take the lead in wrecking James's project. Interestingly, in contrast to the king's propaganda about the manageable nature of the Scottish parliament, one of the chief English objections to union was the perceived weakness of the royal prerogative in Scotland. This was based on the widespread and mistaken belief that royal assent was not required for legislation to be enacted by parliament.[57]

Even without parliamentary union, James VI's accession to the English throne had a significant impact on the crown's relations with the Scottish estates that, after 1603, met less often, although more frequently than either of the king's other parliaments in London and Dublin. The 1617 parliament was the only occasion when the absentee king attended, although James VI continued to be the guiding spirit behind all seven meetings of

[57] B. Galloway, *The Union of England and Scotland 1603-1608* (Edinburgh, 1986); J. Wormald, 'The union of 1603', in R.A. Mason (ed.), *Scots and Britons. Scottish Political Thought and the Union of 1603* (Cambridge, 1994), pp. 24-5; B. Levack, *The Formation of the British State. England, Scotland and the Union 1603-1707* (Oxford, 1987), p. 57.

parliament and nine conventions of the estates that took place before his death in 1625. Paradoxically it was the physical absence of the king from the country and his removal from a forum in which he could be criticised in person that led to his greater power over parliament, although subsequent monarchs found absence merely encouraged attacks on crown ministers. In addition, the enhanced power of the crown was directly related to the massive increase in royal patronage under James VI, and the parliaments of 1604, 1606, 1607, 1609, 1612, 1617 and 1621 saw a steady improvement in royal management. By the 1606 parliament, enhanced crown patronage had already led to a noticeable improvement in the king's grip over the estates.[58]

Yet management of parliament remained a challenge for royal officers. The king's absenteeism created a new procedural dilemma since, prior to 1603, the king attended in person, addressing the estates, managing affairs, debating in the lords of the articles, and granting royal assent to acts. The solution was the office of king's commissioner, an individual appointed for the duration of a parliament to represent the crown and to perform the role of the crown's parliamentary manager, thus usurping the presiding role of the chancellor. For the parliament such a 'viceroy' was a mixed blessing: on the one hand he was no substitute for the king or queen, but on the other he provided a target of complaint who had behind him a monarch once removed and who could act as an occasional court of appeal. Crown management was also facilitated by shifts in the composition of parliament. Having almost disappeared as a meaningful estate, the restored episcopate of thirteen archbishops and bishops (fourteen after the creation of the bishopric of Edinburgh in 1633) was entirely dependent on the crown. The rapid expansion of the noble estate meant that there were some new peers who were at least temporarily grateful to the king, but royal interference in burgh council elections and the

[58] M. Lee, *Government by Pen. Scotland under James VI and I* (Urbana, 1980); K.M. Brown, *Kingdom or Province? Scotland and the Regal Union 1603-1715* (Basingstoke, 1992), pp. 86-99.

influence of the court in shire elections was modest. Nevertheless, even cautious intervention helped to shape a chamber more predisposed towards the king's interests. Further support for the king was provided by the more formal recognition of the role in parliament of the seven or eight officers of state and from among the larger body of over thirty privy councillors.[59]

The key to the crown's success in driving the agenda in early seventeenth-century parliaments lay in royal manipulation of the lords of the articles, a highly efficient clearing house for proposed legislation and ratifications that prevented the clogging up of business. Throughout the later sixteenth century, and even in the early seventeenth century, parliamentary acts were subject to a series of deliberative processes. These included consideration by the separate estates meeting independently and careful scrutiny by the relatively large and reasonably representative lords of the articles, membership of which was not controlled by the king. By the time of the 1612 parliament, increasingly successful management procedures were taking effect, but the crown still had to withdraw controversial legislation and negotiate down its taxation demands in order to secure parliament's ratification of the restoration of episcopacy and a significant grant of taxation. The resolution of differences suggests an underlying trust between James VI and parliament, nevertheless the conclusion drawn by the king and his advisers was that in future even greater care would have to be taken in managing the composition of the lords of the articles. This conflict possibly represents a stage in a longer-term constitutional clash between king and parliament that emerged in the disagreements over taxation in

[59] The number of appointed officers of state varied, but in 1617 king and parliament agreed to limit their number to eight in both voting and numerical strength on committees. See Terry, *Scottish Parliament*, pp. 4-9. The number of privy councillors also varied during the seventeenth century. The factional divisions among councillors is hugely unexplored.

1599 and 1600, and that grew more pronounced in the parliaments of 1609, 1612, 1617 and 1621.[60]

In spite of these difficulties, James VI did not develop an aversion to parliament, indeed it was not in the interest of rulers to lose the momentum in parliamentary management by having too infrequent meetings. Compared to the politically unstable later sixteenth century, the estates sat less often, but meetings were held at regular intervals, their timing determined largely by the crown's need for new taxes. Furthermore, the king placed great emphasis on enhancing the dignity of the occasion, instituting more refined ritual, prescribing elaborate dress codes for the riding of the 1606 parliament, and taking a firm line over unjustified absence of members in 1617.[61]

But James VI's determination to ensure that crown business was conducted effectively did see a progressive thwarting of opportunities for open deliberation and constructive debate, alongside ever tighter control over the proceedings of the lords of the articles. By 1621 ruthless crown management succeeded in forcing through parliament an unpopular liturgical policy along with a heavy taxation. On this occasion nothing was left to chance in the election of the lords of the articles, but even with a huge investment in management by crown ministers, the five articles of Perth faced determined opposition within the committee and in the full house where between forty-eight and fifty-one members voted against the crown.[62] Yet this confrontation needs to be placed in perspective. James VI's astute management gave him the political initiative over the estates, and while there was a legacy of frustration and irritation over aspects of royal

60 MacDonald, 'Deliberative processes'; V.T. Wells, 'Constitutional conflict after the union of the crowns: contention and continuity in the parliaments of 1612 and 1621', in Brown and Mann (eds), *Parliament and Politics in Scotland, 1567-1707*, pp. 82-101.

61 *Register of the Privy Council of Scotland*, first series, eds J.H. Burton and D. Masson (14 vols. Edinburgh, 1877-98), vii, pp. 57-8, 488-9 and 208-9; *RPC*, first series viii, pp. 233-4. For a summary see Terry, *Scottish Parliament*, pp. 97-100; *RPS*, 1609/4/27; and on ritual generally 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 E. Crewe and M. Müller (eds), *Rituals in Parliament. Political, Anthropological and Historical Perspectives on Europe and the United States* (Frankfurt, 2006), pp. 135-58.

62 MacDonald, 'Deliberative processes', pp. 37-8, 40-4; J. Goodare, 'The Scottish parliament of 1621', *Historical Journal*, xxxviii (1995), pp. 29-51.

policy, it would be unhelpful to overlook the extent to which king and parliament co-operated in pursuing a broad legislative agenda.

Charles I continued his father's programme of enhancing parliament's status as a royal court by having a new and costly Parliament House built in Edinburgh.[63] Unfortunately, his grand, Renaissance construction was not finished until 1639 by which time parliament was in the hands of the covenanters who set about dismantling royal authority. Yet initially there was little indication of the revolutionary events that would overthrow Charles I's authority in the meetings of the estates, there being satisfactory deals on taxation at the conventions of 1625, 1630 and at the parliament of 1633. On the other hand, the unease that surfaced in 1621 did not dissipate entirely, and there was opposition to royal demands at the 1625 convention. Furthermore, the parliament of 1633, the first full parliament for twelve years, took place against a background of rising anger at the revocation which threatened the security of noble rights to their estates, the teind commission, the tax burden, the growing influence of bishops, an unpopular liturgical policy, and the narrowing of counsel at court.[64]

To date, evidence for the crown dabbling in electoral politics has been slight, but it is now possible to demonstrate the unprecedented and systematic attempts to establish electoral control in preparation for the parliament of 1633. Furthermore, the continuity of parliamentary membership from 1621 to the 1640s supports the argument for the emergence of an opposition party, or at least oppositional ideas, formed by the men who objected to royal policies in 1612, 1621, 1633 and who later dismantled royal authority in parliament between 1639 and 1641. Arguably, the 1633 parliament represented a high point of crown control exercised through the lords of the articles, but the formal success

63 A. Mackechnie, 'Housing Scotland's parliament, 1603-1707', in C. Jones and S. Kelsey (eds), *Housing Parliament. Dublin, Edinburgh and Westminster* (Edinburgh, 2002), pp. 99-130.

64 Brown, *Kingdom or Province?*, pp. 99-111; M. Lee, *The Road to Revolution. Scotland under Charles I 1625-1637* (Urbana, 1985); A.I. Macinnes, *Charles I and the Making of the Covenanting Movement 1625-1641* (Edinburgh, 1991), pp. 1-154.

enjoyed by the king masked a fundamental evaporation of trust. The 1633 parliament also acted as a point of contact for disparate dissenters for, in spite of all Charles I's efforts to silence dissent, he failed to prevent the spread of critical opinion of his government. In fact, parliament was crucial in the formulation of an active dissenting party in the nation, and as a manifestation of broader discontent in all sectors of society.[65]

In cutting off all means of legitimate debate and petitioning, Charles I pushed his critics towards a public protest against the liturgy in 1637, while his subsequent intransigence towards the series of protests led to the establishment of a revolutionary parliamentary government that was only overthrown by English conquest in 1651.[66] Although Charles I lost his grip on Scotland before parliament sat in the autumn of 1639, the crown's failure to retain control of the lords of the articles in that session proved crucial in breaking free of royal dominance. However, it was the 1640 session of parliament, assembled without the king's assent, that carried out a constitutional revolution. The clerical estate had been abolished by the general assembly in 1639 and bishops did not appear at the parliament that sat a few months later, but it was the 1640 parliament that passed an act to this effect. Officers of state were also prevented from sitting in parliament *ex officio*. The committee of the lords of the articles became optional and did not meet again after 1640 until after the Restoration of the monarchy. That same session of parliament passed a triennial act requiring that parliament meet at least once

65 Rait, *Parliament of Scotland*, pp. 62, 304-5, 408-9; Goodare, 'Admission of lairds', p. 1122; J.R. Young, 'Charles I and the 1633 parliament', in Brown and Mann (eds), *Parliament and Politics in Scotland, 1567-1707*, pp. 101-37; J.R. Young, 'The Scottish parliament and the covenanting heritage of constitutional reform', in A.I. Macinnes and J. Ohlmeyer (eds), *The Stuart Kingdoms in the Seventeenth Century* (Dublin, 2002), pp. 226-50; J. Scally, 'Constitutional revolution, party and faction in the Scottish parliaments of Charles I', in C. Jones (ed.), *The Scots and Parliament* (Edinburgh, 1996), pp. 55-9; Lee, *Road to Revolution*, pp. 131-3; Macinnes, *Charles I and the Making of the Covenanting Movement*, pp. 86-9.

66 See Brown, *Kingdom or Province?*, pp. 112-36; D. Stevenson, *The Scottish Revolution 1637-44. The Triumph of the Covenanters* (Newton Abbot, 1973); D. Stevenson, *Revolution and Counter Revolution in Scotland 1644-1651* (London, 1977); Macinnes, *Charles I and the Making of the Covenanting Movement*, pp. 183-213; A.I. Macinnes, 'The Scottish constitution, 1638-51: the rise and fall of oligarchic centralism', in J. Morrill (ed.), *The Scottish National Covenant in its British Context 1638-51* (Edinburgh, 1990), pp. 106-33; P. Donald, *An Uncounselled King. Charles I and the Scottish Troubles 1637-1641* (Cambridge, 1990), pp. 206-17, 237-9, 276-8, 310-12.

every three years, and agreed that each shire commissioner vote individually instead of through shared voting for each shire, thus doubling the size of the shire vote. Foreigners were forbidden from sitting in parliament, removing a recent abuse by which Englishmen with Scottish peerages might provide the crown with proxy votes. The 1640 parliament also instituted the committee of estates to govern in the intervals between parliamentary sessions. At the 1641 session the king was present to confirm this new constitution and to concede that parliament would advise him on the appointment of officers of state, privy councillors and judges of the court of session. What Charles I was forced to sign up to in the 1641 settlement was limited monarchy and a form of parliamentary government in which a complex system of session and interval committees was established. The committee of estates that sat from June 1640 until 1651 effectively usurped the place of the privy council in the daily conduct of government and oversaw, for example, the regular business of foreign policy and the conduct of warfare. It was primarily on these committees that the numerical strength of the shire and burgh commissioners was deployed increasingly to overawe more conservative members of the higher nobility. Parliament now met regularly and more often: three sessions in the parliament of 1639-41, two sessions in the 1643-4 convention of estates, six sessions in the parliament of 1644-7, and eight sessions in the parliament of 1648-51.[67]

However, the extent to which the covenanters were engaged in creating a new kind of parliament is problematic, and arguably the thrust of the agenda to reform parliament was a reaction against Charles I's subversion of parliamentary liberty. Instead of seeing the covenanters' reforms as wholly innovative, many of the measures were designed to rejuvenate the representative and deliberative nature of parliament. Meanwhile, political

[67] Young, *Scottish Parliament*; Young, 'Scottish parliament and the covenanting revolution'; J.R. Young, 'The Scottish parliament and the war of the three kingdoms, 1639-1651', *PER*, 21 (2001), pp. 103-23; J.R. Young, 'Scottish covenanting radicalism, the commission of the kirk and the establishment of the parliamentary regime of 1648-1649', in *RSCHS*, xxv (1995), pp. 342-75; Stevenson, *Scottish Revolution*, pp. 166-76, 192-7, 227-41; D. Stevenson (ed.), *The Government of Scotland under the Covenanters 1637-1651* (SHS, fourth series 18, Edinburgh, 1982).

leadership continued to be located with those magnates who were pre-eminent in what remained an intensely hierarchic society, although the groupings of factions based on customary notions of kinship, lordship and geography were increasingly identified by religious beliefs and constitutional principles that gave vent to behaviour that hints at the origin of party and of open adversarial politics within the house. Ultimately it was those divisions that led to the downfall of the covenanter form of parliamentary government.[68]

The English conquest of Scotland and the capture of the committee of estates in 1651 was followed by a constitutional experiment in which the kingdom was united with England. Unlike Edward I's conquest of the late thirteenth century, when a separate Scottish parliament was maintained, though with some derogation of its powers as a supreme court, Oliver Cromwell did away with an assembly that in 1648 had waged war on England in support of the imprisoned Charles I, and in 1649 had invited further warfare by proclaiming Charles II king of Great Britain. Instead, the Scots were offered representation at Westminster in a parliament shorn of any dissenting members. Unsurprisingly, those Scots who were permitted to take up these thirty seats had to satisfy the regime of their loyalty. It was a short-lived and failed experiment, like much that emanated from the commonwealth and protectorate parliaments, and none of those who sat in Westminster ever held seats in the restored Scottish parliament.[69]

Restoration, Revolution and Union, 1660-1707

Restoration Scotland (1660-89) has traditionally been characterised as an era of authoritarian and often brutal government, deep religious divisions, and economic

[68] MacDonald, 'Deliberative processes', pp. 23-4; J.J. Scally, 'The rise and fall of the Covenanter parliaments, 1639-51', in Brown and Mann (eds), *Parliament and Politics in Scotland, 1567-1707*, pp. 138-62; Scally, 'Constitutional revolution, party and faction'.

[69] F. Dow, *Cromwellian Scotland 1651-1660* (Edinburgh, 1979); P.J. Pinckney, 'The Scottish representation in the Cromwellian parliament of 1656', *SHR*, xlvi (1967), pp. 95-114; J.A. Casada, 'The Scottish representation in Richard Cromwell's parliament', *SHR*, li (1972), pp. 124-47; D.L. Smith, *The Stuart Parliaments 1603-1689* (Oxford, 1999), pp. 136-46.

depression with only the hint of cultural renaissance in the 1680s.[70] When parliament did reassemble in 1661 it was dominated by nobles determined to restore their power, believing that the best means to achieve this ambition was a strong monarchy supported by a submissive church and a co-operative parliament. Everything the covenanters had achieved was swept away by an assembly in which less than half the members had any experience of previous parliaments. The imposition of an oath of allegiance, the restoration of the lords of the articles, the assertion of the king's right to choose his ministers and councillors, to summon, prorogue and dismiss parliament at will, and to make war and peace signalled a return to the pre-1639 constitutional arrangements with all the potential for tight management this implied. The act rescissory of 1661 explicitly annulled the legislation of 1640-8 and in effect the legislation of all parliaments since 1633; the restoration of the episcopate in 1662 provided the crown with a useful block vote, and the estates also handed Charles II a generous taxation for life along with a small standing army.[71]

Understandably, perhaps, historians have been unkind to the parliaments of the Restoration monarchy, seeing them as little more than assemblies summoned to do the king's will. Arguably the significance of parliament within the ambience of Scotland's conservative and royalist political culture was essential in legitimising the king's authority, but such a view emphasises parliament's relative weakness and lack of visibility, for example, drawing attention to its failure to become a regular feature of the constitutional landscape.[72] Yet parliament met relatively often. There were three sessions of parliament in 1661-3, a convention of estates in 1665 and 1667, a new parliament that sat with four sessions in the years 1669-70 and 1672-4, a convention of estates in 1678 (the last to be

70 Brown, *Kingdom or Province?*, pp. 143-69; Jackson, *Restoration Scotland.*

71 Young, *Scottish Parliament*, pp. 304-23; R. Lee, 'Retreat from revolution: the Scottish parliament and the restored monarchy', in Young (ed.), *Celtic Dimensions*, pp. 185-204; Macintosh, *Parliament*, pp. 1-56.

72 Lee, 'Retreat from revolution', p.186 and pp. 200-1; Young, 'The Scottish parliament and national identity', pp. 118-22; D.L. Smith, *A History of the Modern British Isles 1603-1707: The Double Crown* (Oxford, 1998), pp. 210-13; Jackson, *Restoration Scotland*, pp. 84-5 and in general pp. 21-5, 73-103.

summoned by the crown), a third parliament in 1681, and James VII's only parliament in two sessions in 1685 and 1686, amounting to fourteen of the twenty-eight years between 1661 and 1688. A meeting of the estates every two years was not unreasonable, comparing favourably with much of parliament's previous history, although on average sessions now lasted for around eight weeks, producing a growing volume of public and private legislation. A closer examination of the frequency of meetings reveals that from 1675 the estates met only four times in fourteen years in contrast to ten meetings in the fourteen years between 1661 and 1674.[73]

What is more surprising about parliament in this era is that after the initial flourish of royalist enthusiasm at the Restoration, and in spite of the fact that many of the constitutional gains achieved by the estates in the 1640s were surrendered by parliament in 1661, Scottish political culture never lost a parliamentary dimension. Of course, there was no guarantee that parliament would be revived, or that it would be anything more than an instrument of royal administration. Yet historians generally have overstated the Restoration monarchy's control in parliament, even if research has progressively pushed back the origins of dissent from 1679 to 1673 and now to 1669. By then a full parliament had not met for six years, the government's popularity had been damaged by a range of policies, and the question of Anglo-Scottish union was again on the agenda, having been roundly rejected at the Restoration. From the first day it was clear that Commissioner Lauderdale intended to proceed in an authoritarian manner but would not have an easy time. Much of the opposition was directed at the commissioner and his colleagues by rival nobles, but in addition there were indications that members were straining to express constitutional objections to the crown's stranglehold over parliamentary business. Members of the 1669 parliament contested the crown's control of the selection of the

[73] MacIntosh, *Parliament*; MacIntosh, 'Arise King John: commissioner Lauderdale and parliament in the Restoration era', in Brown and Mann (eds), *Parliament and Politics in Scotland, 1567-1707*, pp. 163-83.

committee of the articles and the commission to negotiate union, forced the crown to redraft the militia act, and bitterly opposed the act for excise and customs.[74]

Consequently, Lauderdale took steps to manage more tightly the subsequent sessions of 1670 and 1672, although this did not prevent further expressions of opposition in 1673-4 and 1678 and the emergence of what contemporaries recognised as a 'party' led by William Douglas, third duke of Hamilton. Even allowing for factional rivalries between individual nobles, this nascent country party aspired to an alternative political vision for parliament from Lauderdale's view that the estates should merely ratify decisions made by the crown's ministers. Here was a parliamentary ideology that feared a return to 1633, and that would mature in the revolution of 1689, in the ambitions of the Club, that opposition grouping of jacobites, episcopalians and rogue presbyterians, and in the country party's drive for limitations on royal power in the later 1690s and early 1700s. Furthermore, the extent to which this parliamentary opposition had connections with the ongoing extra-parliamentary resistance by presbyterian covenanters requires further exploration.[75]

But for some contemporaries benign absolutism was preferable to noble dictatorship and the political anarchy of the 1640s and 1650s, hence Sir George Mackenzie of Rosehaugh, author of *Jus Regium, Or the Just and Solid Foundation of the Monarchy of Scotland* (1684), saw the king as a bulwark against parliamentary dictatorship.[76] Aside from the increasingly extreme activities of militant covenanters, such was the support for the monarchy in Scotland that the English Exclusion Crisis (the attempt to block a Catholic succession to the English crown) made little impact, and the Catholic James, duke of York, found refuge in Scotland where he held court and presided successfully over

74 Donaldson, *James V to James VII*, pp. 286, 377-8; J.R. Jones, 'The Scottish constitutional opposition in 1679', *SHR*, xxxvii (1958), pp. 37-41; J. Patrick, 'The origins of opposition to Lauderdale in the Scottish parliament of 1673', *SHR*, liii (1974), pp. 1-21; MacIntosh, *Parliament*, pp. 75-104.

75 MacIntosh, *Parliament*, pp. 105-78; MacIntosh, 'Arise King John'.

76 Jackson, *Restoration Scotland*, pp. 73-103; Sir George Mackenzie of Rosehaugh, *Jus Regium, Or the Just and Solid Foundation of the Monarchy of Scotland* (Edinburgh, 1684), pp. 4, 8-9 and 41-2; A.J. Mann, 'Parliaments, princes and presses: voices of tradition and protest in early modern Scotland' in U. Böker and J.A. Hibbard (eds), *Sites of Discourse: Public and Private Spheres – Legal Culture* (Amsterdam, 2002), pp. 79-91.

parliament in 1681. As king, James VII took a detailed interest in the parliaments of 1685 and 1686, and he knew that the key to controlling parliament lay in the composition of the lords of the articles. Unsurprisingly, that committee was restored in 1661 (although it was 1663 before the 1621 rules for election to it were revived), but in spite of Lauderdale's efforts to establish control the deliberative mechanisms of the committee ensured behind-the-scenes checks and balances did exist. Thus even James VII experienced difficulty in exercising control over the lords of the articles along with what had become by the 1680s a large and complex body of inter-connected sub-committees. On major constitutional issues like the introduction of the test act in 1681, or the attempt to pass a toleration act in 1686, the opposition was organised and determined, while the management practices that had served Lauderdale relatively well in the 1660s and 1670s, in which he relied on a small group of trusted individuals, no longer worked. Parliament's complex structure and the widespread absorption of country ideas linked to presbyterian religion ensured that James VII's brand of royalist authoritarianism faced a resolute challenge from what looks like an emergent whig party, a party with its roots in the opposition politics and parliamentary tactics of the 1670s.[77]

The revolution of 1688-9 destroyed much that the Restoration monarchy had tried to achieve. Recent analysis of the elections to the convention of the estates in 1689 and of the composition of the resulting Convention Parliament indicate an intense struggle between parties with opposing religious loyalties and political ideas. However, it was the commitment and organisation of the presbyterian revolutionaries, both in contesting the elections and in ruthlessly deploying their majority in the convention, that determined its outcome. A key to this success was the effect on the electorate of ignoring the test act and the strictly illegal device of widening the franchise in the royal burghs to include all

[77] MacIntosh, *Parliament*, pp. 179-211; Mann, 'James VII, king of the articles'; Mann, 'Inglorious revolution', pp. 121-30; Donaldson, *James V to James VII*, pp. 284-6.

Protestant burgesses instead of only the burgh council. It is also highly likely that intimidation depressed the support for James VII, and the revolution party proved more adept at electioneering strategies than the now deposed king or his supporters. In reaching out to a broader constituency, politicians were increasingly promoting themselves as representatives of the people and even engaging in a dialogue with the populace. A further tool in ensuring that parliament would back revolution was the committee for controverted elections, a regular feature since 1669 but a committee now packed with presbyterian sympathisers who used their numerical advantage to ensure the success of the revolution party in disputed elections. The convention of the estates that gathered in the spring of 1689 forfeited James VII, and negotiated an implicit recognition by the crown that the monarch's office was conditional on contractual obligations spelled out in the Claim of Right and the Articles of Grievance. The convention evolved into a parliament that, in the course of 1689-90, freed the estates from royal control, the principal achievement being William II's agreement to abolish the lords of the articles in return for supply in the 1690 session. Furthermore, no bishops took up their seats at the convention, and the erastian and episcopal church was replaced by a presbyterian church with a general assembly that succeeded in achieving separation from the state. Nevertheless, the constitutional settlement that emerged in parliament during the 1689 and 1690 sessions was less radical than that arrived at in 1641 as William and Mary retained important prerogative powers, the most politically significant being the right to summon, prorogue and dissolve parliament. Hence William II was able to continue the same parliament throughout his reign.[78]

The post-revolution debates exposed differences between a country tradition that held the initiative until the demise of the Club after the 1690 session, and a court faction

[78] D.J. Patrick, 'Unconventional procedure: Scottish electoral politics after the revolution', in Brown and Mann (eds), *Parliament and Politics in Scotland, 1567-1707*, pp. 208-44; Patrick, 'People and parliament'; but also see P.W.J. Riley, *King William and the Scottish Politicians* (Edinburgh, 1979).

prepared to co-operate with a range of ministers in order to monopolise power and patronage. Parliament was able to use as leverage the crown's need for supply to fight an expensive foreign war, but this tool had limited usefulness given that parliament was filled with men who had no choice other than to support a war against the exiled monarch's principal supporter. Once the revolution men became entrenched in office and garlanded with honours they delivered most of what the crown demanded. There was no need to risk holding an election that might weaken the presbyterian dominance, offer hope to the jacobites, and return a parliament that, from the king's point of view, was less manageable. Nevertheless, in its short life the Club successfully pressed for the abolition of the committee of the articles in 1690, defeating the 'managerial' arguments used by King William and his ministers. However, while controlling the Scottish estates now required greater sensitivity, the absence of electoral politics provided court managers with the stability they needed to create working majorities from the demise of the Club in 1690 until the failure of inclusive government from 1698 and the collapse of the company of Scotland 1699-1700 following its failed attempt to establish a trading colony at Darien in Panama, inspired a revival of party conflict.[79]

Of course, no-one can know how long the Convention Parliament would have sat had William II lived beyond 1702, but his death opened up a heated controversy on parliament's legitimacy after thirteen years without elections. It also increased the pressure from those in the country party tradition who wanted to introduce further reform. Analysis of the 1702 election and its aftermath illuminates the extent to which it was contested by emergent political parties, and how that rivalry was translated into the first session of the new parliament. Unlike in 1689, the 1702 election was not held against the peculiar circumstances of military invasion, the collapse of a discredited government and

[79] Patrick, 'People and parliament in Scotland', pp. 195-241; J. Halliday, 'The Club and the revolution in Scotland, 1689-90', *SHR*, xxxxv (1966), pp. 143-59; Riley, *King William and the Scottish Politicians*, *passim*; Mann, 'Inglorious revolution', pp. 121-30.

political and religious revolution. But nor was it certain that jacobites and revolution men, episcopalians and presbyterians, would avoid coming to blows, especially with the onset of war with France. In fact, the election was bloodless and all parties accepted the results, protests being restricted to appeals to parliament on largely technical grounds, while the significant level of local engagement with parliamentary electoral politics confirms the picture of a robust and vibrant popular political culture. The final result of the elections produced a parliament whose ideological centre was still essentially pro-revolution and presbyterian making a Hanoverian and unionist coalition more likely given effective political management.[80]

Anglo-Scottish parliamentary union had been periodically considered since the union of the crowns. The revolution of 1688-9 unleashed pent-up frustrations throughout Britain and Ireland that found expression in the heightened parliamentary politics of the era, creating a range of difficult problems for crown ministers who had to balance the conflicting demands of the different kingdoms while finding adequate supply and holding on to the remaining royal prerogatives. Furthermore, the public sphere within which parliamentary politics were conducted widened considerably following the revolution. The parliamentarians of the 1700s were required to pay far more attention to public opinion outside the chamber than had ever been the case in previous periods of parliament's history. In 1702-3, Queen Anne and her ministers in England and Scotland again turned to the issue of union in the context of the dangerous uncertainty surrounding the succession and war with France. However, even though English and Scottish commissioners met in January and February 1703, mutual distrust, the lack of enthusiasm among the dominant English tories, Scots resentment at the Darien fiasco as well as the post-election parliamentary arithmetic, combined to make progress impossible. It was not

[80] K.M. Brown, 'Party politics and parliament: Scotland's last election and its aftermath', in Brown and Mann (eds), *Parliament and Politics in Scotland, 1567-1707*, pp. 245-86; P.W.J. Riley, 'The Scottish parliament of 1703', *SHR*, xxxxvii (1968), pp. 129-50.

until the autumn of 1706 that the court regained control of parliament, ensuring the passage of the act of union. Parliament's decision to unite with England has commonly been explained in terms of self-interest, corruption and English bullying. However, while there is evidence of all of these factors at play, it is clear that there was a determined unionist coalition of interests within parliament motivated by a desire to secure the revolution, the Protestant religion and the future economic prosperity of Scotland.[81]

[81] J. Goodare, 'Scotland's parliament in its British context 1603-1707', in H.T. Dickinson and M. Lynch (eds), *The Challenge to Westminster. Sovereignty, Devolution and Independence* (East Linton, 2000), pp. 22-32; K. Bowie, *Scottish Public Opinion and the Anglo-Scottish Union, 1699-1707* (Woodbridge, 2007); C.A. Whatley with D.J. Patrick, *The Scots and the Union* (Edinburgh, 2006); J.R. Young, 'The parliamentary incorporating union of 1707: political management, anti-unionism and foreign policy', in T.M. Devine and J.R. Young (eds), *Eighteenth-Century Scotland. New Perspectives* (East Linton, 1999), pp. 24-52; J. Robertson, 'An elusive sovereignty: the course of the union debate in Scotland 1698-1707', in Robertson (ed.),*Union for Empire*, pp. 198-227. For a different perspective see P.W.J. Riley, 'The union of 1707 as an episode in English politics', *EHR*, lxxiv (1969), pp. 498-527; P.W.J. Riley, *The Union of England and Scotland. A Study in Anglo-Scottish Politics in the Eighteenth Century* (Manchester, 1978); W. Ferguson, 'The making of the treaty of union in 1707', *SHR*, xxxxiii (1964), pp. 89-110; W. Ferguson, *Scotland's Relations with England: a Survey to 1707* (Edinburgh, 1977), pp. 166-277.