

Parliament in Context, 1235–1707

Edited by

Keith M. Brown and Alan R. MacDonald



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THE HISTORY OF THE SCOTTISH PARLIAMENT

Volume 3

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General editor: Keith M. Brown

Volume 1

Parliament and Politics in Scotland, 1235–1560

Edited by Keith M. Brown and Roland J. Tanner

Volume 2

Parliament and Politics in Scotland, 1567–1707

Edited by Keith M. Brown and Alastair J. Mann

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Alan R. MacDonald
St Andrews, December 2009

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Abbreviations and Conventions

For this volume personal names and place names have been modernised where identified. Personal names conform in general to G. S. Black, *The Surnames of Scotland* (New York, 1946). Place names have been modernised according to the Ordnance Survey *Gazetteer of Great Britain* (London, 1987). Sums of money are in pounds Scots unless otherwise stated (the pound Scots being worth roughly half a pound sterling before c.1450, and roughly a third thereafter, falling to a quarter by the late 1560s and then to a fixed rate of twelve pounds Scots to the pound sterling from 1601 onwards). The letters *thorn* and *yogh* are represented by *th* and *y* (except where *z* is the normal form) respectively. Dates have been modernised with the year change on 1 January rather than on 25 March.

With the exception of those abbreviations given below, sources are cited in full when first mentioned in individual chapters and then given in abbreviated form thereafter in each chapter.

<i>APS</i>	<i>Acts of the Parliaments of Scotland</i> , T. Thomson and C. Innes (eds) (12 vols, Edinburgh, 1814–75).
Brown and Tanner (eds), <i>Parliament and Politics in Scotland 1235–1560</i>	K. M. Brown and R. Tanner (eds), <i>The History of the Scottish Parliament Volume 1: Parliament and Politics in Scotland 1235–1560</i> (Edinburgh, 2004).
Brown and Mann (eds), <i>Parliament and Politics in Scotland, 1567–1707</i>	K. M. Brown and A. J. Mann (eds), <i>The History of the Scottish Parliament Volume 2: Parliament and Politics in Scotland 1567–1707</i> (Edinburgh, 2005).
Calderwood, <i>History</i>	<i>History of the Kirk of Scotland by Mr David Calderwood</i> , T. Thomson (ed.) (8 vols, Wodrow Society, 1842–9).

<i>CDS</i>	<i>Calendar of Documents Relating to Scotland Preserved</i> , J. Bain (ed.) (5 vols, Edinburgh, 1881–8).
<i>CSP Scot</i>	<i>Calendar of State Papers Relating to Scotland and Mary, Queen of Scots, 1547–1603</i> , J. Bain, W. K. Boyd and A. I. Cameron (eds) (Edinburgh, 1888–1969).
<i>EHR</i>	<i>English Historical Review</i> .
<i>ER</i>	<i>The Exchequer Rolls of Scotland</i> , J. Stuart et al. (eds) (23 vols, Edinburgh, 1878–1906).
<i>HMC</i>	<i>Historical Manuscripts Commission</i> .
<i>NAS</i>	National Archives of Scotland (formerly the Scottish Record Office), Edinburgh.
<i>NLS</i>	National Library of Scotland, Edinburgh.
<i>NRA(S)</i>	National Register of Archives (Scotland).
<i>PER</i>	<i>Parliaments, Estates and Representation</i> .
<i>Rait, Parliaments</i>	R. S. Rait, <i>The Parliaments of Scotland</i> (Glasgow, 1924).
<i>RCRBS</i>	<i>Extracts from the Records of the Convention of Royal Burghs of Scotland, 1295–1738</i> , J. D. Marwick (ed.) (5 vols, Edinburgh, 1867–85).
<i>RMS</i>	<i>Registrum Magni Sigilli Regum Scotorum</i> , J. M. Thomson et al. (eds) (Edinburgh, 1882–1914).
<i>RPC</i>	<i>Register of the Privy Council of Scotland</i> (37 vols over three series, 1545–1691).
<i>RPS</i>	<i>The Records of the Parliaments of Scotland to 1707</i> , K. M. Brown et al. (eds) (St Andrews, 2007–). Accessed between November 2007 and November 2009.
<i>RRS</i>	<i>Regesta Regum Scottorum</i> , G. W. S. Barrow et al. (eds) (Edinburgh, 1960–).
<i>RSCHS</i>	<i>Records of the Scottish Church History Society</i> .
<i>Scots Peerage</i>	<i>The Scots Peerage</i> , J. B. Paul (ed.) (9 vols, Edinburgh, 1904–14).

<i>SHR</i>	<i>Scottish Historical Review.</i>
SHS	Scottish History Society.
Tanner, <i>Parliament</i>	R. Tanner, <i>The Late Medieval Scottish Parliament: Politics and the Three Estates, 1424–1488</i> (East Linton, 2001).
Terry, <i>Scottish Parliament</i>	C. S. Terry, <i>The Scottish Parliament: Its Constitution and Procedure 1603–1707</i> (Glasgow, 1905).
<i>TRHS</i>	<i>Transactions of the Royal Historical Society.</i>
Young, <i>Commissioners</i>	M. Young (ed.), <i>The Parliaments of Scotland. Burgh and Shire Commissioners</i> (2 vols, Edinburgh, 1992–3).
Young, <i>Scottish Parliament</i>	J. R. Young, <i>The Scottish Parliament 1639–1661: A Political and Constitutional Analysis</i> (Edinburgh, 1996).

Preface

This, the third and final volume of *The History of the Scottish Parliament*, marks the culmination of a project which began in the summer of 2001 with a British Academy sponsored symposium at St Andrews. As an adjunct to its primary purpose of publishing a revised, digital edition of the parliamentary record from the thirteenth century until 1707, the Scottish Parliament Project undertook to carry out and promote research into the broader contextual history of the institution. These three volumes, as well as three monographs, one resulting from a PhD thesis funded by the project, two further PhD theses, and numerous journal articles by the project's staff, all of which have altered significantly our understanding of the history of parliament, represent the fruits of that research to date. Furthermore, in 2007 *The Records of the Parliament of Scotland to 1707* became available online at www.rps.ac.uk, making research into the history of Scotland's parliament more accessible than ever before.

It was never our intention to produce a comprehensive or definitive history of the Scottish parliament in these three volumes. In volumes 1 and 2 the contributions are organised chronologically, with individual essays drilling down into particular periods and even individual parliaments in order to demonstrate how new sources and new uses of previously known sources might be deployed to rewrite late medieval and early modern Scotland's political and constitutional history. The point was not to tell the whole story but to suggest how the story might be told. In the introductions to those volumes, the editors also set out the European context for developments in Scotland, and placed the case studies within a broader political narrative. The result of that output may not be an entirely coherent view of parliament, because the many authors offer different interpretations, but there is a common understanding that parliament was important and that its history has not been adequately appreciated. We hope that others will continue to use the online *Records of the Parliament of Scotland*, and the methodologies pioneered in these two volumes, to fill in the many gaps that remain in that political history and also to challenge the ideas expressed therein.

This third volume is intended to fulfil a quite different role. In deliberate

contrast to the highly empirical, ground-level approach of volumes 1 and 2, the contributors of this volume were charged with adopting a loftier approach that seeks to address broad themes running through the centuries. In a sense, these essays represent progress reports on what we have learned since the 1980s when historians began to show a revived interest in parliament. These themes are broadly organised around the people who participated in parliament who, in contemporary jargon might be described as stakeholders; the values and processes of parliament, or what we might think of as the organisational culture; and the business that parliament conducted, or what could be considered to be its outcomes.

To be properly constituted, parliament required the presence of the king and the three estates, and individual chapters address the role of each of these parts of the body politic. Roland Tanner and Gillian MacIntosh discuss the extent to which parliament was an instrument of crown power, suggesting that, while some kings came close to domineering over parliament, and a few sought to rule without it for short periods, kings could not ignore parliament and some were forced to submit to its authority. It is unnecessary to think in terms of a crown–parliament struggle raging through the centuries but kings did push their luck and it was parliament that more often than not pulled them back down to earth or which legitimised extra-parliamentary action against overbearing kings. In large part that was because the other groups present in parliament were too important to be ignored. Roland Tanner and Kirsty McAlister examine the contribution of the first estate which had disappeared entirely by the time parliament’s history came to an end. It is clear that the church’s role in parliament evolved. While prelates were present by the end of the thirteenth century, it was not until around the turn of the sixteenth century that significant ecclesiastical legislation began to emerge. After the Reformation, the Protestant church found itself represented by Erastian bishops, or with no representation at all, its influence on parliament remained strong and parliament’s tendency to legislate on ecclesiastical matters grew. Keith Brown sees the noble estate as the most powerful parliamentarians and, over the centuries of parliament’s existence, that noble power not only endured but it increased at the expense of the other estates. Even if one accepts that after 1587 the shire commissioners emerged as a new fourth estate, their presence represented a further enhancement of noble power and influence rather than social and political division within noble society. Furthermore, it would be unhelpful and unsophisticated to see parliament simply as a forum for crown–noble power struggles or to imagine that nobles saw parliaments only as occasions for engaging in high politics when they were more likely to be interested in getting parliamentary ratification for some piece of private business. Similarly, Alan MacDonald presents



Frontispiece from Sir Thomas Murray of Glendook, *The Laws and Acts of Parliament Made by King James the First, Second, Third, Fourth, Fifth, Queen Mary, King James the Sixth, King Charles the First, King Charles the Second who now presently reigns, Kings and Queens of Scotland* (Edinburgh, 1681).

Contents

Acknowledgements	vi
Contributors	vii
Abbreviations and Conventions	ix
Preface	xii
1 Balancing Acts: The Crown and Parliament	1
<i>Gillian H. MacIntosh and Roland J. Tanner</i>	
2 The First Estate: Parliament and the Church	31
<i>Kirsty F. McAlister and Roland J. Tanner</i>	
3 The Second Estate: Parliament and the Nobility	67
<i>Keith M. Brown</i>	
4 The Third Estate: Parliament and the Burghs	95
<i>Alan R. MacDonald</i>	
5 House Rules: Parliamentary Procedure	122
<i>Alastair J. Mann</i>	
6 Parliament and the Law	157
<i>A. Mark Godfrey</i>	
7 The Law of the Person: Parliament and Social Control	186
<i>Alastair J. Mann</i>	
8 Political Ideas and Parliament	216
<i>James H. Burns</i>	
9 Parliament and Politics	244
<i>Julian Goodare</i>	
Index	275

Balancing Acts: The Crown and Parliament

Gillian H. MacIntosh and Roland J. Tanner

Introduction

Whatever powers they might acquire over the centuries, and however much monarchs might often regret the need to call them, parliaments were royal institutions through and through. Parliaments across Europe had their origins in the Norman *curia regis*, and in Scotland they were summoned at the will of crown, with attendance commanded and required by the king. This royal nature was underlined by the fact that parliament was, and remained, a court of law that heard and settled disputes and legal appeals, and acted as the ultimate arbiter of royal justice. While there was, from the earliest time, a clear difference, noted by clerks, between the king's council and parliament, the latter was, in Robert Rait's words, 'a special function of the king's council',¹ and derived a considerable amount of its authority from this fact. The earliest royal summons to parliament to survive, from 1293, illustrates all three of these points, beginning:

We command that, giving up all other business, you attend by every means you can at our *colloquium* . . . [and] all complainants within the bailiary [are] to be forewarned that they should be in the same place in presence of us and our council.²

This view of parliament is one that was shared by James VI in 1598 who described parliament as a feudal court subject entirely to the king, arguing that the king existed 'before any parliaments were holden, or laws

1. Rait, *Parliaments*, p. 128.

2. *RPS*, 1293/8/1.

made'.³ Judging by their actions, his successors agreed with him, and it is likely that his predecessors would also have liked to think that this was true. Yet the royal nature of the event was tempered by a simple fact: parliaments existed because the medieval and early modern crown was far from absolute. It required genuine support, or at least tolerance, from the estates if its policies, acts and taxations were to be implemented. Legislation passed in parliament was passed publicly, with the consent of the men who would subsequently be employed in its implementation once the meeting dissolved. In theory, any act passed had the publicly witnessed support of the leading men of the realm, and so parliamentary assemblies created a direct link between decision-making and implementation.

As a result, throughout parliament's history there existed a tension between the way in which parliament was viewed, both as the ultimate embodiment of the power of the crown (especially when considered separately from the person of the monarch which was increasingly the case in the early modern period), and the chief means by which the behaviour of the crown could and should be shaped by the advice of the kingdom at large (as embodied in the three estates). The degree of emphasis placed on crown authority or the authority embodied by the three estates could, unsurprisingly, differ sharply between the monarch and parliament's members. The king's opinion, where it can be discerned with any clarity, typically was that his agenda should be acted upon with as little interference as possible and, under kings like Charles II, something close to this was practised by his ministers. Yet the behaviour of the membership of parliament indicates at numerous points that the estates viewed their role as far more significant, at least in restraining royal policy but also at times in initiating policy against the wishes of the crown. The picture of the medieval parliament that has emerged over the last fifteen years has often been of an institution that could be almost relentlessly obstructive and hostile to the crown's agenda. This portrayal has not sufficiently emphasised the royal nature of the institution or the benefits it brought to the crown.⁴ There is also running through the history of the early modern parliament a narrative of political tension between the absolutist pretensions of the crown and those among the estates who believed that sovereign authority lay within a parliament in which the

3. J. P. Sommerville (ed.), *King James VI and I: Political Writings* (Cambridge, 1994), pp. 73-4.

4. E.g. Tanner, *Parliament*. By contrast, Michael Brown has emphasised the degree to which the frequent sessions of parliament were a reflection of the increased power of the fifteenth-century crown in 'Public authority and factional conflict: crown, parliament and polity, 1424-1455', in Brown and Tanner (eds), *Parliament and Politics in Scotland 1235-1560*.