

The History of the Scottish Parliament. Volume 3: Parliament in Context, 1235-1707

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Editor: Keith Brown

Alan R. MacDonald

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Reviewer: Charles McKean

To a political historian, little is more important than politics (in the broad sense, as in the case of this book, incorporating religious division and the Reformation), and a book about a parliament is pre-eminently political. To a non-political historian like this reviewer, politics has to earn the priority accorded to it for, as shall, be discussed, there were other priorities – and sometimes higher ones such as rank, lineage, loyalty, kinship and estate for which both political preferment and religion would not infrequently be sacrificed. Historians of governance will certainly wish to study this volume; but what might attract non-political or non-Scottish historians, on the other hand, would be an examination of the evolution of the Scottish Parliament reflected the broader nature of the country and how it was run, and the extent of similarity/dissimilarity with other nations.

This is the third volume in the *History of the Scottish Parliament* series. The first two tackled significant episodes in national parliamentary history in a roughly chronological manner. The editors charged the contributors to this volume, by contrast, to adopt ‘a loftier approach that seeks to address the broad themes’. So the early chapters cover how Parliament was comprised: the relationship between Parliament and Crown (although that informs almost every chapter), and the nature of each Estate (with the addition of Shire Commissioners after 1587, there were technically four estates for a few decades – shire, burghs, nobility and clergy – before, with the increasing political emasculation of the clergy in Parliament, back to three). The middle chapters focus upon procedures, the relationship between parliament and the judiciary, and parliament’s entanglement with social *mores*. The concluding essays address broader political ideas and, in particular, the extent of Parliament’s role in the shaping of Scottish history. Some chapters are almost entirely historiographical whereas others are peppered with new research and primary sources; and collectively they demonstrate how the dismissive perception of an ineffectual and disorganised Scottish parliament entirely under the whim of the monarch peddled by Enlightenment historians is so wide of the mark.

Indeed, most historiography about the Scottish parliament has followed the Enlightenment’s lead: namely that Scotland suffered from the malign combination of a supine parliament, arbitrary rule and self-interested and remote aristocrats. Indeed, during the 17th century, as the 1752 *Proposals for certain Public Works in Edinburgh*

put it, 'we remained in a strange equivocal situation little better than that of a conquered province'; and that remained the received wisdom until the late 20th century.

Scottish parliamentary history can be taken back confidently to at least 1286 with the use of the term 'the community of the realm', although James Burns points out that William the Lion was recorded as having held a full parliament over a century earlier. The centre of gravity of this volume, however, lies generally between 1450 and 1688, when a body already profoundly important to Scots history broadened and deepened its role. Its relative decline during the early 17th century with the monarch absent in London was reversed effectively by the revolution of the 1640s, when the Covenanters governed through parliament to the extent that it could be described as 'the beating heart of the nation'. In 1689, once again, Scottish government *was* the parliament.

Since, despite the editors' exhortations, no chapter presents an overview of the *nature and distinctiveness* of this parliament, these must be inferred from this volume; and a very intriguing picture of Scots governance emerges. In essence, it was essentially collaborative and inclusive, with the king-in-parliament at its apex, held in place by subtle checks and balances in a manner that seems rare within a European context. It perhaps reached its apogee in the 1590s – not surprisingly given the modernising nature of its intelligent and highly educated king who had, already, had his country mapped (by Timothy Pont), its weights and measures revamped, and its landowners and their seats listed by the Privy Council. It was all of a piece in a modern kingdom.

The key points were these. First, the Scots monarch was *primus inter pares* (first among equals), a fact of whose implications Charles I was to show himself dangerously ignorant in 1633. This state was symbolised by the monarch's central position in a single-chamber parliament, arranged in a horseshoe form, with the monarch at the centre. From his throne, James VI would have viewed the nobility, barons and their guests, all appropriately ranked, on his left; and on his right, the burgh and shire commissioners, the residual clergy (but 13 of them at maximum) and *their* guests. Standing, facing him, were the lesser barons and lairds. Those permitted to remain with their hats on in the king's presence, were those who had a vote. (Before the Reformation, the clergy had been the First Estate – albeit a quiescent one, even if it did furnish the country's ablest administrators such as Bishop James Kennedy – whereas after it, they slipped to a weak fourth prior to being annihilated by the Covenanters in 1639). This, therefore, was the representation of the 'community of the realm' of Scotland.

This impression of a communal approach to Scottish government was reinforced by the existence of three other institutions at the heart of governance. It was to the Court of Session, founded in 1532, that Parliament divested itself of most of its judicial powers, although its role as a court of final appeal remained uncertain. The Convention of Royal Burghs emerged from the chrysalis of the Court of the Four Burghs to be established in 1487 'for the welfare of the merchants and the common profit of the burghs'. It became, as Alan Macdonald points out, unique in Europe in that it organised merchants on a national basis, and provided both monarch and legislators with an urban sounding-board (it was virtually an urban parliament). It was responsible for raising urban tax revenues, in proportions determined by it. It also had the power to authorise the raising of subscriptions for burghs either hit by a natural disaster, or seeking to invest. It generally summoned itself to meet before Parliament, and its relationship to Parliament was expressed through the elected burgesses. Possibly from the late 13th century, when towns were expected to wage war alongside clergy and nobility, burgesses from royal burghs (some one some two, elected by the burgh council) were attending Parliament. Their number eventually reached 67 although the arrival of shire commissioners in 1587 diminished their significance.

The third of these bodies was the General Assembly of the Church of Scotland, which came into being following the Reformation Parliament of August 1560 to govern the national kirk. Although independent of Parliament, it was to Parliament in 1560 that it owed the existence of its church, and the two bodies were inter-dependent with a strong relationship. Prior to this, there had been little legislation on ecclesiastical matters, but that was to change. Moreover, commendators – lay holders of ecclesiastical property and

therefore a titular part of the clergy – now sat in Parliament as clergy. A crucial period was the 1640s, once the General Assembly had been released from a 20-year purdah. As Kirsty McAlister and Roland Tanner discuss, despite the extremely close relationships between the Assembly and Parliament, the two bodies remained distinct.

This impression of an essentially collaborative approach to governance is enhanced by considering parliamentary management. The business was formulated in the Privy Council, and the agenda prepared by the Lords of the Articles (a drafting committee of 40 representative members abolished only in 1689). Historiography has regarded the Articles with much hilarity, depicting them as mere creatures of the crown, whereas they turn out to have been appropriately efficient and, when required, suitably independent. Once the business was determined, and debated as necessary in prior meetings of the estates, the business was placed before Parliament with the intention that decisions would be reached by consensus (although that withered in the 17th century). Voting was in public. Thus, before the 1633 coronation of that most unsubtle monarch Charles I, there was a subtlety of checks and balances between institutions and groups that could withstand periodic tensions. Indeed, parliament was becoming stronger at a time when equivalents in Europe were declining and, as Gillian MacIntosh and Roland Tanner point out, it could show considerable independence. Unafraid of obstructing the monarch, it helped scupper James' plans for a Union with England in 1605.

To a great extent, the emphasis upon king-in-parliament lay at the core of the concept. There is some dispute as to whether the monarch was present in Parliament quite as regularly as claimed by Alastair Mann, but regal authority was nonetheless required. When it found itself lacking both monarch and regalia in 1571, the baby King James VI's parliament commissioned a substitute crown to signal legitimacy. The momentous decisions of the 1560 Reformation Parliament remained questionable for years afterwards, since it had sat without the monarch (then in France). Mary Queen of Scots always dissembled on the matter, and ratification only became possible upon her forcible abdication seven years later. That raises the question of mutual need: could the monarch do without Parliament or vice versa? At bottom, the king could avoid calling parliament only if he had no need of money, was making no constitutional or religious change, no treaty to approve, no embassy to send or receive, no marriage to negotiate, nobody to forfeit, and no financing and planning of military expeditions: above all, no ratification of regime change. Thus, in the latter years of James IV (when he had the comfort of a Tudor dowry) Parliament met rarely. Once his great-grandson James VI had moved down to the munificence of London, it was the same. But generally, in this relatively unwealthy country, monarchs required both money and the parliaments to provide it.

From the above list, it is evident both that Parliament's locus was a wide one. It existed because Scottish monarchs were not absolute, albeit since its origins may lie, as Mark Godfrey suggests, as a court of law presided over by the monarch, required to exercise justice and determine legal disputes, that was a concept that evolved. For it became much more than that. James Burns observes that the term 'community of the realm' implied that the realm was distinct from the ruler, and that Parliament was the guardian of the status of the kingdom and its people. Its agreement legitimised crown/government policy. For example, in 1309, Robert I was said to have been chosen king 'with the concurrence and consent of the people' as expressed through Parliament. The Three Estates first appeared as such in 1357, at about the time that the concept of conditional rather than absolute political power was developing. As Keith Brown points out when considering the destruction of house of Albany in 1425, no noble family could resist the combined power of king and Parliament. In 1444, James II vowed not to take any action regarding the 'common profit of realm' without parliamentary consent, and by the end of the century, it was accepted that Parliament could restrain tyrannical monarchs. By the time John Mair wrote his *Historia Majoris Britanniae* in 1521, he could state that Parliament could make laws that bound the monarch. It is surely noticeable, on the other hand, that it was parliament that had held the country together during Scotland's sadly frequent minorities, avoiding the potential for ruinous civil wars.

An emerging question that this volume does not address is the extent to which James VI's increasingly authoritarian views were made possible only by his transfer to England. James was a considerable author –

he had written both on poetry and witches (the latter possibly a weapon in his struggle with his cousin Francis Stewart earl of Bothwell), and it is little surprise, given his upbringing by George Buchanan and his fractured childhood, that he turned his writing to kingship and governance. By 1600, James had published *The True Lawe of Free Monarchies* and *Basilikon Doron* in which he claimed that since there had been kings before Parliament, kings had precedence, and so he advised his son to avoid holding any. What is more debatable is whether this represented, as Julian Goodare puts it, 'a trend to absolute monarchy' particularly given the king's careful and moderate relations with Parliament during the closing years of the century.

The context was Parliament's possibly most effective period during the early 1590s when it undertook its busiest legislative programme. Indeed, petitions to it had become so numerous (it would have been fascinating to know what they concerned) that a vetting committee was proposed in 1594. The explosion of legislation in this period included the social legislation outlined by Mann – such as interference in marriage, consanguinity, divorce, clandestine marriages, protection of property through the control of marriage processes, legal guardianship, and noble education abroad – but it is frustrating not to have comparatives from other countries to examine whether Scotland was being typical or extreme in its measures. How did, for example, its blasphemy laws compare, and why – as compared to England – did Scotland execute so few religious martyrs in the later 16th century?

But these parliaments had also been fractious, and the king was deeply angry at being imprisoned by a religious mob during a meeting of the Privy Council in Edinburgh's tolbooth in 1596. A desire to redefine the rules to prevent such an occurrence would have been understandable. It is equally possible that had he not moved down to the more rarefied position as King of England, James's political tomes would have had as much effect as his blast against tobacco. But there was no *primus inter pares* in London: for, as David Stevenson has pointed out, nobles were on their knees before the king down there. Never in Scotland, as Charles I was to discover in 1633 to the mutual fury of the king and the earl of Rothes. Moreover, there was no shortage of cash when compared to Scotland. So whether the Scots' subtle approach to governance would have permitted James VI to realise his absolutist fantasies had he remained up north is an open question.

However, whilst the Scottish Parliament would naturally be important to Scots, what was its significance beyond? To some extent, the authors appear to expect of the reader pretty detailed knowledge of the country. There are a number of instances of this – notably the brief reference to the de Soulis conspirators without any further information as to who they were (those who conspired to replace Robert I – Robert the Bruce – with a Baliol only a few years after Bannockburn). Or why Crail was unsuccessful in its appeal to the Convention of Royal Burghs against the erection of nearby Anstruther Easter into a royal burgh. After all, there was a very good case: for by comparison with Europe, there were far too many royal burghs too close to each other in Fife for any to develop deep and long term economic momentum.

There is also an occasional myopia. The reason why the 1527 Parliament was so poorly attended was surely because the king remained in the hands of the Douglases. It was the last throw in the Douglases' 60-year campaign to regain their position as first family of the kingdom from the upstart Hamiltons, and, depending upon their allegiance, a large number of Scots might have felt it dangerous to attend. Equally, the observation that Charles I had less experience of his Scottish realm than his father is something of an understatement. As David Stevenson has pointed out, regal ignorance and cultural incomprehension between the two countries was a major factor in the build-up to the wars after 1637 – particularly the negative impact, in Patrick Gordon of Ruthven's term, of 'the English devil of keeping state'.

Occasionally a slip may be detected. Mann's view that the Reformation Parliament was 'surprisingly slow' to take action on alcohol and drunkenness reveals either a knowledge of 16th-century revelry not vouchsafed to the reader, or a somewhat anachronistic expectation of moral restrictions from the new religious regime. That expectation makes it all the more surprising to learn that the banning of Robin Hood, the Abbot of Misrule and the Queen of the May was not the work of the miserable Presbyterians of the 1560s, but of the gay catholic Mary of Guise in 1555. It is equally curious, given parliament's vigour in defending the

country's interests, to learn of its willingness three years later to agree to grant Mary Queen of Scots' husband the crown matrimonial, which put Scotland on track to become a colony of France. To confuse the matter further, it was a total novelty to this reviewer to learn that the Estates then debated deposing the queen in August 1559.

To some degree, these points reflect how the political perspective of this volume dominates the approach. Keith Brown observes, for example, that distinctions between old and new nobility had 'no meaning beyond signifying rank within the nobility'. That meaning must, therefore, have been enormous. As recent research by Charles Wemyss and others into aristocratic priorities and behaviour has revealed, rank had supreme significance, followed by kinship, lineage and estate. Politics and religion took their place thereafter. Moreover, after Parliament had instructed the preparation of the Decree of Ranking in 1606, there were instances where aristocrats came to private agreements whereby the rank of an office of state remained subordinated to aristocratic rank.

It would appear that the parliaments of the 1640s were the most dramatic, those of the 1690s the most parliamentarian in the modern sense, and those of the 1590s the most alluring. Yet those of the 1690s demonstrate, perhaps, the essential weaknesses of a system governed by consensus. Despite the presence of burgesses in parliament and the activities of the convention of royal burghs, most Scots burghs were in a parlous financial state by 1700, many bankrupt. They were wholly unable to invest in harbours and the development of trade in the manner of their Dutch contemporaries. The system to do so was lacking. A voluntary whip-round amongst other penniless burghs was hardly likely to provide the necessary level of capital. Indeed, it would have required favouring a few burghs over the others who would nonetheless have had to have contributed; and as the EU is discovering, such a *dirigiste* course sits ill with consensus. It is possibly worth noting that Scottish urbanism accelerated between 1707, when Scots burghs lost their individual parliamentary seats, and 1832, when they got them back again. Perhaps this example raises a question about the effectiveness of the way the Scottish Parliament did its business.

Conclusion

Whether there was a significant distinction in the way the Scots governed themselves before 1707 remains inferential, and like all inferences, subject to misapprehension. Although the contributors to volume three were required to be overarching, that takes the form of examining fairly tightly-circumscribed subject areas over the span of Scottish parliamentary existence. Inevitably, there is some overlap and repetition: but that is valuable for providing credence for the larger stories that are trying to be heard. In a major research project like that into the Scottish Parliament, there are evolutionary stages once the base information is to hand. Volumes one and two addressed parliament through case studies. Volume three does so through themes. From volume three emerges the need for something further: namely an overarching examination of both its effectiveness and its distinctiveness within Europe.

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