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Its Early  
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notwithstanding any request of the King or Queen." There was a similar measure for the constant administration of justice in criminal matters, and for police throughout the realm.

*The Par-  
liament  
of 1525.*

The next Parliament, which assembled at Edinburgh early in 1525, was marked by strong dissensions. No sooner had the Lords of the Articles been chosen than the Register of Parliament was crowded with protests against the elections. The Queen led the way. The Bishop of Ross protested against everything that should be done in the Parliament prejudicial to the King and country, and in that protest all the Lords of the Articles joined. The Earl of Eglinton, the Earl of Arran, and the Bishop-elect of Ross, each protested that the Lords of the Articles had not been duly elected, and that those should be Lords of the Articles whom they themselves had severally voted for. There were strange jarrings and recriminations in this national Parliament; but the Lords of the Articles went on to elect for the Secret Council—to execute and put in force the King's authority—four bishops for the spirituality, and four lords for the temporality, of the party opposed to the Queen.

*The  
Church  
of Rome.*

One of the most remarkable legislative developments of this reign was the action of Parliament with regard to the Church of Rome. In 1540 acts were passed, respectively, "for honour to the holy sacraments," "for worship to be had of the Virgin Mary," and against private conventions "to dispute in the Scripture." The word "conventicle," which afterwards passed into such common use, appeared in this last act. One brief statute, consisting of only thirty words, denounced the "pain of death," with confiscation of goods, upon any one who impugned the power of the Pope. Rewards were ordered to be given out of the confiscations to those who denounced heretics. At the same time an act was passed calling upon the Church to strengthen itself by purging itself of its abuses.

*Death of  
James V.*

The fifth James died soon after the defeat of his army, gathered to invade England, at Solway Moss in December,

1542. This monarch was accomplished, but indolent and exceedingly lavish in display. He was no friend to the nobles, but was beloved by the bulk of his people, by whom he was spoken of as "the King of the Commons."

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Arran was regent during the first eleven years of the minority of the beautiful and unfortunate Mary, Queen of Scots. In 1543 a treaty of alliance was entered into with England, and a treaty for the marriage of Prince Edward to the infant Queen, a union which was set aside by other events. But consent had been wrung from a packed House of Parliament, and great opposition arose in Scotland to the proposals of Henry VIII. The Estates met in December, 1543, and repudiated the treaties on the ground of their having been broken by King Henry by the seizure of Scots vessels and other acts of hostility. At the same time the Estates ratified and renewed the compacts with France, receiving from the French ambassadors promise of "aid and supply to our sovereign lady the Queen's grace and nobles of this realm for the defence of the same, and liberty thereof, against the King of England." Then ensued Henry's "burning and slaying expedition," with the defeat of the English at Ancrum Moor.

Minority  
of Mary.

Mary married the Dauphin of France in April, 1558, and at her request the marriage commissioners requested Parliament to confer the crown matrimonial on her husband. Fearing that this proposition would be somewhat unpalatable, the commissioners were careful to state that it was to be "by way of gratification during the marriage, without any manner of prejudice to her Highness's self, the succession of her body, or lawful succession of her blood whatsoever." The Estates authorised the act with this limitation, and a declaration that the distinction of king was to last "during the marriage allenarly."<sup>1</sup>

The  
Estates  
and the  
Queen's  
marriage.

Before the Reformation had made much progress in Scotland, the provincial councils endeavoured to deal with abuses in the Church. Injunctions had been issued

Purifying  
the  
Church.

<sup>1</sup> Only.

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by the provincial ecclesiastical council of Scotland in 1549 against the profligacy, extravagance, and idleness of the clergy; and a council held in the spring of 1559 had before it "articles proponit to the queen-regent of Scotland by some temporal lords and barons, which had been forwarded by her Grace "to the hail prelates and principals of the clergy convened in their provincial council in Edinburgh."<sup>1</sup> Although the members of the council were no sympathisers with the new doctrines, they recommended various reforms, especially as affecting internal discipline among the clergy. The Reformation now began to work its way rapidly, and its principles had not such great difficulties to contend with as in other countries. As early as 1542 Parliament had passed an act authorising the common reading of the Scriptures, "baith the New Testament and the Auld, in the vulgar tongue, in Inglis or Scottis, of ane good and true translation." The Edinburgh Council of 1559 adjourned till the following year, but it never met again, for John Knox had boldly entered upon his aggressive work against the Church of Rome, and the Reformation zeal was permeating the masses.

The Re-  
formation  
estab-  
lished.

In the midst of great religious excitement, the Scots Parliament of 1560 assembled. Its sittings were very eventful, for the Estates established the Reformation in Scotland. On August 17th the Geneva Confession of Faith was approved of as "hailsom and sound doctrine, grounded upon the infallible truth of God's word." Eight days later all acts authorising any other form of belief or worship were repealed, and the authority of the Bishop of Rome was abjured. The administering of the Mass, or presence thereat, was declared to be punishable on the first offence by forfeiture of goods and corporal infliction at the discretion of the magistrates, on the second by banishment from the realm, and on the third by "justifying to the death." So far as the Estates were concerned, the Romish hierarchy, which on the morning

<sup>1</sup> *Statuta Ecclesie Scotice.*



of August 25th was supreme, was deposed by the evening of the same day, and Calvinistic Protestantism established in its place. There were still troublous days in store, however, before the work of the Reformers was complete.

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Thomas Randolph, English ambassador to Queen Mary, wrote an entertaining account of the early proceedings of the Parliament of 1560 to Cecil.<sup>1</sup> After premising that he "never heard matters of such great importance sooner despatched, nor with better will agreed unto," he proceeds to say, "The matters concluded and past by common consent upon Saturday last (August 17th) are, first, that the barons (according to an old act made in A.D. 1427) should have free voice in Parliament. This act passed without contradiction, as well of the bishops Papists as all others present. The next was the ratification of the Confession of Faith, which the Bishop of St. Andrews said was a matter he had not been accustomed with, and he had had no sufficient time to examine or confer with his friends; howbeit, as he would not utterly condemn it, so was he loath to give his consent thereunto. To that effect also spake the Bishops of Dunkeld and Dumblane. Of the lords temporal, the Earls of Cassilis and Caithness said, No. The rest of the lords with common consent and glad will allowed the same; divers, with protestation of their conscience and faith, desired rather presently to end their lives than ever to think contrary to it; many offered to shed their blood in defence of the same. The old Lord Lindsay, as grave and goodly a man as ever he saw, said, 'I have lived many years; I am the oldest in this company of my sort; now that it has pleased God to let me see this day where so many nobles and others have allowed so worthy a work, I will say, with Simeon, *Nunc dimittis*.' The Lord Marshall said, though he were otherwise assured it were true, yet might he be the bolder to pronounce it for that he saw there present the pillars of

*Interest-  
ing scene  
in Par-  
liament.*

<sup>1</sup> By an unaccountable error, Burton (vol. iii.) attributes this report to Sir Nicolas Throckmorton, who was then the English ambassador to France.

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*The  
Queen and  
the Re-  
formation  
statutes.*

*The  
Estates  
press  
Eliza-  
beth's  
marriage.*

*The  
Scheme  
fails.*

the Pope's Church, and not one of them would speak against it. Many other spoke to like effect, as the Laird of Erskine, the Laird of Newbottle, the Sub-Prior of St. Andrews, concluding all in one, that that was the faith in which they ought all to live and die."<sup>1</sup>

Although the Reformation statutes were not confirmed by the Crown, Mary being then in France, the people were well satisfied with their effects, which involved the separation of the Church of Scotland from that of Rome. The Queen herself, on her return in 1561, did not attempt to restore the Romish religion, although she demanded toleration for herself and her attendants, and re-established the Mass in her private chapel.

The Estates were at this time most anxious to please Queen Elizabeth. Maitland of Lethington promised that if she would specify what she disliked in the Scottish policy, he would see it "further altered or modified." Parliament seconded Maitland, and was ready to yield anything if she would only consent to the proposal for her marriage with the Earl of Arran. The Estates resolved upon a special embassy to London, but Elizabeth temporised. The Estates, interpreting her silence as a favourable omen, proceeded to draw up a formal address to the English Council, pressing the marriage as the only means to make the alliance between the two countries permanent.

"Other devices may seem probable for a time," said the Estates in this important document, "but, we fear, not for long. We wish the best, but many incidents which may fall out make us to fear the worst; but if this may take place, then are all doubts removed for ever. You need not fear that by marriage of a king of Scotland unto a queen of England the pre-eminence of England might be defaced, for that should always remain still for the worthiness thereof, neither need you fear any alteration of the laws, seeing the laws of Scotland were taken out

<sup>1</sup> *Calendar of State Papers of the Reign of Elizabeth (1560—1561, Foreign Series).*

of England, and therefore both these realms are ruled by one fashion. By these means Ireland might be reformed, and thus the Queen of England become the strongest princess upon the seas, and establish a certain monarchy by itself in the ocean, divided from the rest of the world.”<sup>1</sup> The allusion to the ocean supremacy of England proved to be prophetic. In regard to the main burden of their address, the Estates were not successful. The husband of Mary Stuart having died, Elizabeth would not seem to conspire against a widowed queen, so she took the opportunity to dismiss the Scots commissioners with a virtual refusal of their offer, and the union between the English and Scottish crowns was thereby delayed.

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The Estates met in January, 1561, to receive in form Elizabeth's refusal of the Earl of Arran. Bothwell and others had returned from Paris to be present, bringing with them as many as three hundred letters from Mary to different noblemen and gentlemen. All eyes were now turned towards her. The Catholic party sent Leslie, afterwards Bishop of Ross, to Mary, to invite her to land at Aberdeen, where they would join her with twenty thousand men and march on Edinburgh; while the Protestants sent Lord James Stuart to bid her come to them in the name of the Parliament which had passed the Confession of Faith.

*Movements on  
Mary's  
behalf.*

Some observations may well be offered at this juncture on the powers and action of the Scots Parliament from the time of the War of Independence to the Reformation. Scottish historians admit the superiority of the practice of the present British Parliament on all points in which it differs from the practice of the Scots Estates anterior to the Reformation. Yet the Scots Estates were notable in one important respect: they would not admit the irresponsibility of the sovereign. James III. was expressly censured by them, and they endeavoured to dethrone him. The Estates also kept in their own hands the power of making peace and declaring war. They gave

*Powers of  
the Scots  
Parliament.*

<sup>1</sup> Scots MSS. Rolls House.



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instructions to ambassadors, and were very careful of Parliamentary usages in treaties and the like. Their power was such that down to the time of the Union with England the question whether the consent of the sovereign was necessary to an act of Parliament was left undecided. Few conflicts occurred between the Crown of Scotland and the Estates, and those which did arise had their origin in the resolve of the Estates to permit no temporising or treating with England on the part of the sovereign.

*Proce-  
 dure.*

From the fourteenth to the beginning of the seventeenth century, there is no evidence that any article or bill was brought in and discussed, opposed, supported, voted upon, in Parliament—that is, in plain and open Parliament. The accident of the Three Estates meeting in one chamber, as the Three Estates had met in England of old, was only a small part of the cause which destroyed freedom of discussion, and prevented the growth of what may be called Parliamentary feeling in Scotland for centuries. “The time was not Parliamentary. No one thought of making a party in Parliament. No one looked *there* for redress of grievances. During all that time—for three centuries—when a party were displeased with the conduct of the existing Government, they did not attack its favourite measure or Minister in Parliament, nor try to pass a vote of want of confidence in the Government. The leaders of the Opposition in Scotland took another way of righting themselves—they laid a trap for the young King, and carried him off to Stirling or St. Andrews, as the case might be, surrounded him with their armed followers, Douglasses or Ruthvens, Homes or Hamiltons, and then summoned a Parliament of their own friends, which they took care to declare a *free Parliament*. In that Parliament they proceeded to carry on the government, and always in the first place to pass a long series of forfeitures of the estates of the opposite party.”<sup>1</sup>

<sup>1</sup> *Lectures on Scotch Legal Antiquities*, by Cosmo Innes,—a very valuable work; but in this one instance of forfeitures the author is too sweeping. There were some notable exceptions.

The formation of the body known as the Lords of the Articles has already been explained ; but there was also a committee called the Lords Auditors of Complaints, which gave remedy of law to those who might apply for it. The proceedings of this committee from 1466 to 1494 have been printed by the Record Commission. Then there was the body styled the Lords of Council, whose proceedings likewise from 1478 to 1495 have been recovered and published. The Council was recast in 1503, when an act of the Estates declared that the lords were to be appointed by the Crown, and were to sit continually in Edinburgh, "or where the King makes residence, or where he pleases." As the Lords Auditors had authority only during the sitting of Parliament, it was necessary for some court or council to have the power of sitting during the recess, and this was given to the Lords of Council, who had the same jurisdiction as the Auditors, and completed their unfinished causes.

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Lords  
Auditors.

Lords of  
Council.

The Secret Council was yet another committee for advising the sovereign ; and we have here perhaps "the cradle of an organisation which afterwards passed into the hands of the Crown itself to exercise an authority inimical to the constitutional action of the Estates." When the sheriffs, as representing the Crown, sometimes resisted the orders of the Auditors, questions of "privilege" would arise analogous to those which frequently formed the subject of animated debate in the English Parliament. The Auditors, holding delegated power from the Estates as the supreme court of Parliament, counted themselves a court of review on appeals from the King's courts, and promulgated their decisions with singular distinctness and emphasis. Occasionally they adjudicated in international questions, as when they endorsed a decree against one William Lennox, of Kail, obtained from a French court of law by William Richardson, a burghess of Dieppe.

The  
Secret  
Council.

As the Lords Auditors and the Lords of the Council failed eventually to work well together, in 1532 the two bodies were practically amalgamated, and the Court of Session was founded, upon the model of the

The  
Court of  
Session.



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Parliament of Paris. Its general remedial powers seemed at times to overlap those of the Legislature; and it was deemed illogical to appeal from the Court of Session to Parliament, since the Court of Session was but the remodelling of that committee of Estates which was itself the high court of appeal, as exercising the full powers of Parliament. The court also made no provision for trial by jury, again thereby asserting that it represented Parliament, the grand jury of the nation.<sup>1</sup>

*Personal  
privileges.*

With regard to the privileges of the subject, there was no precedent in Scotland for privilege of peerage, for forest law, or for game law; and it was only at a very late period that the Scots Legislature, imitating the practice of England, enacted that the ownership of land was a necessary qualification for the privilege of slaying wild animals. While the feudal aristocracy of Scotland had undoubtedly great power, which was in certain cases abused, the Estates passed acts for fixity of tenure to the peasant, and imposed other checks on the arbitrary exercise of feudal power. Peers could not claim to be tried by a separate tribunal of their own, and important cases of treason were generally tried by the Estates, whether the accused were lords or commoners. "The Estates were ever jealous of leaving political offences to be dealt with by the King's courts; but for other offences a lord, however high, had to 'thole an assize,' or stand by the verdict of a jury, like any other subject." The Scots had a wonderful tenacity for "auld laws and lovable customs"; they held well together; and they knew no such risings of class against class as that of Wat Tyler in the sister kingdom.

*Lavities  
of Parlia-  
ment.*

Yet the early Scots were not sufficiently careful of their Parliamentary privileges. For example, the Committee of Articles appointed in 1535 were authorised to make acts with the whole force of Parliament, and they used that power by even imposing a tax. During later and perhaps worse times, the election of the Lords of the

<sup>1</sup> Burton, vol. iii.

Articles "became the great job and juggle of the session." Matters went on thus till the reign of Charles I., when it was decided in 1633 that the bishops should choose eight lay peers, these lay peers elect eight bishops, and these sixteen elect eight commissioners of shires and eight of burghs. Parliament then came to its last degradation, meeting only on two days of the session, the first and the last, the first to choose the Lords of the Articles and the last to give their sanction to what they proposed. The Lords of the Articles were abolished at the beginning of the Civil War; and although the committee was revived in the same form after the Restoration, its power and that of Parliament itself was soon suppressed, when an act was passed "that whatever the King and Council should order respecting all ecclesiastical matters, meetings, and persons should have the force of law." Up to the end of the reign of James II. of England this arbitrary government obtained. In the early Scots Parliaments the King was often present, overawing in part all the Estates; and there was no Speaker to guard and assert the liberties of the Commons.<sup>1</sup>

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Among the grave constitutional defects from which Scotland suffered was the King's prerogative of revoking all grants made during his minority, which proved "a tremendous engine for unsettling the tenure and right of property in Scotland." With this prerogative was associated the statute of annexation, which declared all grants of Crown lands of a certain class to be incurably null and void. The excessive number of regalities and private jurisdictions was another serious evil. "These heritable jurisdictions, perhaps more fatal to political liberty than to justice between man and man, destroyed the independence of the Commons." The jurisdictions existed in all directions; they were not dealt with by the Act of Union; and they were only abolished by an act passed after the suppression of the rising in 1745.

*Abuses  
of the  
King's  
pre-  
rogative.*

<sup>1</sup> Innes's *Scotch Legal Antiquities*.

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Laws  
affecting  
the sub-  
ject.

General  
progress.

The freedom of the subject, moreover, was much less protected in Scotland than in England. There was no *habeas corpus*, or anything equivalent to it. The practice of judicial torture survived for a short time after it had ceased in England ; and the power of putting the dead to trial for treason, borrowed from the law of Rome, was not abolished till after the Union. The law affecting treason also was vague and wide, but the Scotch had not before the Union that terrible concomitant of treason law, the power of punishing the posterity of traitors through the "corruption of blood."

The better aspect of the constitutional picture, however, shows what noble work had already been accomplished. The last claim of serfdom proved in a Scotch court was in 1364, though the institution of slavery still remained to be grappled with and overthrown. In Parliament, the earliest laws we read of were passed in favour of the poor people who tilled the soil, and likewise in favour of the education of all classes of the community—first the barons' sons, and later the class that required an endowment of parish schools. In other directions, individual freedom was secured, justice was well administered, the general well-being of the community was fostered, the privileges of the burghs were extended, and the power of the sovereign for evil was curtailed. These were no mean advantages for the Scottish nation to have gained in this early stage of its constitutional history, and before the influences of the Reformation had permeated the length and breadth of the land.