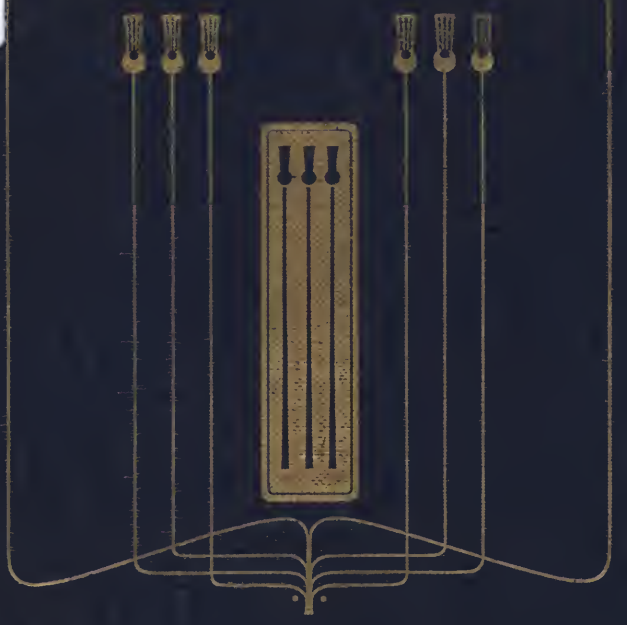
# THE · SCOTTISH · PARLIAMENT
## BEFORE · THE · UNION · OF · THE · CROWNS



# The Scottish Parliament

# The Scottish Parliament before The Union of the Crowns

BY

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# PREFATORY NOTE

The outline of the history of the Scottish Parliament, up to the Union of the Crowns, contained in the present work, is based upon the Essay on the Scottish Parliament, to which was adjudged, in 1899, the Stanhope Prize in the University of Oxford. A large portion of it has appeared in the *English Historical Review* for April and July 1900, and to the Editors of that periodical thanks are due for their courteous permission to reprint. Although the main theme closes with the Union of the Crowns in 1603, it has been thought desirable to include a brief sketch of the history of the Estates up to the Union of the Kingdoms in 1707; but the section dealing with the seventeenth century makes no attempt to do more than provide a very brief outline of general tendencies.

The writer wishes to make acknowledgments of helpful criticism, received in the later stages of the preparation of this book, from Professor Lodge of Edinburgh, and from Mr. H. A. L. Fisher, Fellow and Tutor of New College. To Mr. Fisher, his former teacher (not of History alone), who continues to the colleague the same unfailing sympathy and kindness which he bestowed upon the pupil, the author gladly takes this opportunity of expressing his especial gratitude, together with the hope that a debt so pleasant may be allowed to increase through many years to come.

R. S. R.

New College, Oxford,
*January, 1901.*

# INTRODUCTION

The History of Institutions scarcely requires to-day, the eloquent defence with which the Bishop of Oxford prefaced his great book, almost thirty years ago. His own work has proved more than sufficient defence for his field of labour, and universal assent would now be given to his claim that "nothing in the past is dead to the man who would learn how the present comes to be what it is". Within the last few years, Professor Maitland has shown us the importance of much in the past that was generally regarded as trivial and incidental. He has illumined, with the torch of history, the dungeons of learning which have been generally supposed to form the abode of the antiquary, and, apart from the brilliant results he has personally attained, the present generation of investigators owes to him a clearer conception of the relation that should exist between more purely antiquarian pursuits and wider historical studies.

It is true that the institutions which have provided a theme for Bishop Stubbs and Professor Maitland, have in part survived from the seventh century to the twentieth, and that they still form the basis of the constitutional life of a great people. For a period of a thousand years,

historical inquirers have been attempting to discover their origin, and, within the last two centuries, distinguished thinkers and writers have, from time to time, attempted to leave to posterity a worthy record of their history. They have served as models for continents the very existence of which was unknown for centuries after English institutions had assumed a definite shape, and they have proved capable of a development so important that they have become the centre of an empire more than one hundred times the size of the country in which they originated.

Nothing of this description can be written of the history of Scottish institutions. They have, in large measure, disappeared, and it is not always easy to trace any influence in modern life which may fairly be attributed to the fact that they once existed. The constitutional history of Scotland is partially unrecorded and is, in any formal way, wholly unwritten. Of the constitution of the kingdom, as it was when the sixth James took his seat on the throne of Elizabeth, only one portion has survived to our own day. It is a large portion, for it comprises the legal and judicial system which furnishes so great a proof of the wisdom of our ancestors, and which still serves to differentiate a nationality that inventions and commerce have combined to destroy. All else has gone. There is still

in Edinburgh "a ghost of speech" which reminds the curious that men once did more in the Scottish capital than merely administer the law; but the "Parliament House" is only a name—*vox et praeterea nihil.* The system of administration, the methods of finance, the royal prerogative, the Privy Council, the hereditary jurisdictions, have vanished. Local jealousies, clan and family hatreds, the hopes and fears of noble and burgess and peasant have ceased to find a place in the national records. The relations between Church and State, after undergoing numerous transformations, have been decided in accordance with the Revolution Settlement, and have once and again been modified under Queen Anne and under Queen Victoria. The General Assembly still meets, but it is not, and could not be, the General Assembly of John Knox or of Andrew Melville. The Royal Burghs maintain their wonted Conventions, but only to take counsel, and never to act. It is no longer possible to recognize the fabric of the constitution of the kingdom which King James left in 1603.

Such a subject as this must, of necessity, occupy the border between antiquities and history, and it possesses its full share of the difficulties that beset the antiquary more than the historian. The information which it is the antiquary's duty to collect is widely scattered in bounds of space, and

is possessed of but a meagre connection in thought. He must be prepared to bring together his material from many different quarters and to find it in many varying forms. Facts that have been preserved because of their local import, and have been buried in local records far from the scene of his interest, rumours and legends that continue to exist in connection with some individual who finds no place in his main theme, casual remarks of accidental observers, inferences deduced from half-forgotten customs and from dying myths, carefully kept records which, either wilfully or by chance, are designed to give a false impression unless read in the light of some apparently irrelevant circumstance—such are the materials on which the antiquary depends. The writer who is bold enough to undertake an investigation into the Scottish Constitution will find the difficulties of the antiquary added to the troubles of the historian. His task is that which, of old, Pharaoh set to the children of Israel—"Go yourselves, get ye straw where ye can . . . for there shall no straw be given you, yet shall ye deliver the tale of bricks". The student of the English Constitution can point to a body of documentary evidence such as no other nation can produce. What would not the Scottish student give for the *corpus* of Anglo-Saxon law, the magnificent record of Domesday Book, the

Dialogue concerning the Exchequer, and the *Modus Tenendi Parliamentum*? Yet these constitute only a small fraction of the material which now lies ready for the beginner in the study of English history, and he may learn more in a month than years of patient labour will yield to the investigator of the *origines* of Scottish civilization. The Scottish Constitution began to take shape between the reigns of David I and Alexander III, that is, in the twelfth and thirteenth centuries, and the records of these years have been, in large measure, destroyed. The shock of the War of Independence arrested its development, but constitutional movements can again be traced under David II and James I, and for the century which connects their reigns (1329–1437) our information is scattered and meagre. The English historian knows definitely the racial distribution with which he has to deal, and he can disintegrate the influence of Saxon and Dane and Norman. In Scotland, we have to face at the very outset, a racial problem as yet unsolved, and we are called upon to disassociate influences of the origin of which we are ignorant, and whose effects we meet only in the mass.

The student who would attempt such a problem as this must be familiar with the outlines of English constitutional development, but he must also be prepared to banish from his mind all prejudices

and prepossessions derived from such knowledge. For he will find here no record of liberty slowly broadening from precedent to precedent, no statesmen kings, surrounded by sagacious advisers, defining the scope and the purpose of a legal system, no patriotic barons, banded together to wrest from an unwilling monarch a power which was not being wielded for the national good, no common aim uniting reformers of the thirteenth century with reformers of the seventeenth. He can name here no great names in the progress of constitutional freedom or in the growth of a consistent system of law; Scotland produced no Henry the Second, no Simon de Montfort, no Edward the First, no Hampden and no Sydney. He must divest himself of the atmosphere of English history and be prepared to find a separate people, affected by influences widely different, and responding to impulses clearly divergent from the familiar movements of English history. The story is not without its heroes, but they are of a wilder and more romantic type than in England. James I, throwing himself bravely and fiercely against the system of abuses which he found in Scotland, and paying with his life for his courage and devotion, is a constitutional hero utterly unlike a Henry or an Edward. This aspect of Scottish history is the less interesting and the less definite because it is so largely

impersonal; there are many famous names in the political and in the ecclesiastical story of Scotland, but few indeed lend themselves to brighten the pages that tell of constitutional development. It is, perhaps, for this reason that historians have left it alone. Writers on Scottish history from Boece and Major to Tytler and Hill Burton have ignored its existence; even the learned editors of such constitutional documents as the Privy Council Register and the Treasurer's Accounts have been pre-occupied by the varying scenes of the political drama, and are largely silent on questions relating to the constitution.[1] The conditions of government, justice, and finance before the reign of Malcolm Canmore, and the relations of the king to his seven mormaers or earls, are unexplored mysteries. Not less difficult are the questions that relate to the next period. How did the burghs come into being, and whence did they derive that system of law and custom which was administered by the Four Burghs and the Hanse Burghs, and which even Edward I was unable to ignore? How did the clan-system of the tenth century pass, in the Lowlands, into the family-system of the twelfth? Who were the good men who formed the com-

[1] The later volumes of the Privy Council Register, under the editorship of Professor Masson and Mr. P. Hume Brown, deal with the period immediately before and after the Union of the Crowns, and so do not fall within our subject.

munity of the kingdom, and on whose advice the kings granted charters and liberties? What was the real signification of these charters themselves, and what privileges did they confer? What was the precise nature of the threat implied in the warning that a man who neglected the king's ordinances should lose his court for evermore? All these are as uncertain as are the powers of the Executive, the administration of justice, the police-system outside the towns, or the arrangements for national defence. Even in the centuries of our separate history which are most fully known, the fourteenth, fifteenth, and sixteenth, we are beset by many of the same problems and by others not less obscure. How far was constitutional development in Scotland affected by the short-lived union under Edward I? How far by the three hundred years of alliance with France? Can we infer any connection between the German Diet and the Scottish Estates, between the Lords of the Articles and the Committee by which Richard II attempted to supersede the English Parliament? What is the explanation of the relative position of the Estates of Scotland, and of their seemingly capricious periods of importance under David II and Robert II? Questions like these, to which no answer has yet been attempted, await the student of Scottish institutions, along with the usual problems of finance

and justice, the Church, the Crown, and the Legislature.

The present Essay is an attempt to deal, in outline, with a single aspect of this constitutional problem. It is the part of the subject on which most evidence is available, and yet the limits of evidence are such as to render many of the difficulties incapable of solution. Almost our only sources for the earlier period are formal charters and incidental references by chroniclers. The scribes who drew up the formal documents were not concerned with the actual circumstances which had produced these deeds; it was their duty to follow the recognized rules of Diplomatic, rules which had originated in foreign Chanceries and which bore the impress of a different civilization. The technical terms in which they abound are not of Scottish origin, and are frequently used to describe conditions to which, in reality, they are totally inapplicable.[1] The historians often belong to an era much later than that of which they write, and they apply, to questions dealing with origins, the phraseology of a relatively late stage of development. When the records of the Acts of Parliament begin, in the twelfth century, they yield us only incidental enactments mainly relating to police methods, and, as they become

[1] On this subject, cf. Maitland, *Domesday Book and Beyond*, pp. 226–244.

more numerous, they retain their characteristic of dealing, almost exclusively, with administrative detail. We possess no writs summoning a Parliament, no report of a debate in the Scottish Estates. The constitution of a valid Parliament, the procedure necessary for prorogation and dissolution, the rights of the burgess members, were never definitely decided. The "three Estates" was a technical term having a different meaning at different times, and the word Parliament was applied to bodies so diverse as the great Council which negotiated the ransom of King David II and the nobles who entered into a hasty consultation with James IV at Twiselhaugh. As English constitutional liberty advanced, phrases borrowed from the English Commons find a place in the Scottish records, but they possess no real significance, and they render more difficult the task of interpreting the Acts. It is only now and again that we can speak with certainty of the membership of Parliament, or of the proportion of burgesses to barons and ecclesiastics. The Acts of the Parliament of Scotland give as little assistance to the historian as it is possible for such documents to yield.

Our information certainly becomes less meagre as time goes on. The publications of the Burgh Records Society are important evidence of the state of administration in the most favourable

circumstances. The professed histories become more valuable, and from the beginning of the sixteenth century there is a large amount of contemporary description, mainly incidental. Such references must be collected from the works of historians like Boece and Major; from the writings of controversialists like John Knox, George Buchanan, and James VI; from the diaries of private gentlemen, preserved to us by an unusually benignant fate, or from the reports of ambassadors. We owe more to the intelligent curiosity of Pedro de Ayala (the emissary of Ferdinand and Isabella), and of Thomas Randolph (the agent of Elizabeth), than to many more serious sources. But contemporary evidence of this kind must be subjected to rigid scrutiny. The historian of his own times is seldom free from the taint of political prejudice, and the eyes of controversialists are blinded that they cannot see. The simple diarist is not impressed by the even tenour of life; his pen finds an inspiration only in the unusual and the abnormal, and it is difficult for us to discover the rules when we are given only the exceptions, or to keep a true proportion in our mental vision when we can find no standard of comparison. Least of all can we give implicit trust to the political agent, whose motives are uncertain, and who was himself quite likely to mistake the

accidental for the normal. Lastly, there are the formal accounts and the figures, facts, and dates which appear in official records; but such evidence is only of subsidiary importance, and, of itself, can rarely give adequate support to any theory.[1]

The effect of these limits of evidence will be obvious on every page of the present work, and such conclusions as the writer has drawn must, of necessity, be merely tentative. It is, in some respects, unfortunate that these conclusions should be so largely negative in character: that the general effect is, not so much to show what the Parliament was, as to point out what it might have been and was not. One may claim, however, that even these negative conclusions will produce ultimately a positive effect, for the reader must seek out other causes for the results that the Parliament did not achieve, and other means for the training that was not supplied by the Estates; and such an essay as this may serve to warn him from the wrong track. It may also be useful as exemplifying the limitations of the doctrine that national progress can be measured by constitutional advance. It is impossible to question

[1] After the Union of the Crowns, the sources of information became very much more numerous, and the subject has been treated with much greater fulness. The work of Professor Masson, Mr. Gardiner, and Mr. Firth on the period between 1603 and 1660 has placed the constitutional history of Scotland for that period in a position quite different from that which it occupies in the centuries preceding the Union.

the progress of Scotland between the murder of the first and the death of the fourth James; a comparison of the description of Scotland written by Aeneas Sylvius[1] (Pius II), who visited it about 1438, and the account of the resources of the kingdom supplied by Pedro de Ayala to Ferdinand and Isabella,[2] is a satisfactory object-lesson. The future Pope writes of a poverty-stricken land, with miserable inhabitants, dwelling in wretched houses. The Spaniard found considerable prosperity and increasing commerce, with houses "all built of hewn stone, and provided with doors, glass windows, and chimneys", and Italian and French furniture. But between 1437 and 1513 it is not easy to discover any single token of definite constitutional development, either in the direction of absolute government or in that of popular liberty. Not only does Scotland fail to produce a constitutional movement like that which characterizes the history of England; she does not develop any kind of constitution at all. No absolute monarch, no oligarchical council, no democratic parliament occupies the stage of her history for any length of time, nor does she know any free cities or any independent duchies. This constant condition of unstable equilibrium is not precisely

[1] *Opera Geographica et historica*, edition of 1707, p. 318.
[2] *Spanish Calendar*, i, 210.

analogous to the history of any other European country, and least of all is it like that of England, where we are apt to judge of national, by constitutional, progress. Yet, advance there certainly was, if not unbroken, still persistent, and persistently unconnected with questions relating to the constitution.

The conclusions here stated with regard to the Scottish Parliament are, however, not entirely negative. The work of the Estates has left some positive and definite results of more than incidental character. The long series of administrative enactments, dealing mainly with police methods and with trade, helped the rise and growth of the Scottish burghs, and, even outside the burghs, they added something to the forces that made for peace and good order. There are occasional measures which found a lasting influence upon the character of the people. The Education Act of 1496, which provided that "all barons and freeholders that are of substance put their eldest sons and heirs to the schools, fra they be aught or nine years of age, to remain at the grammar schools until they be competently founded and have perfect Latin, and thereafter to remain at the schools of art and jure (*i.e.* the universities), so that they may have knowledge of the laws", forms a fitting conclusion to a century in which

the spirit of poetry had deserted England for her northern neighbour, and in which the successors of Chaucer are to be found beyond the Tweed. It was not obeyed in the letter (although we do find the barons of the sixteenth century possessed of clerkly skill), but its influence may be traced in the provision for education made at the Reformation. Even when the definite results were less clearly marked, the existence, in the statute book, of words and phrases to which a constitutional meaning might conceivably be attached (like the existence of parliamentary institutions themselves), served as a rallying cry for men who desired reform, and gave to what was really a new demand the advantage of ancient tradition. As we proceed, we shall note some instances of this. The greatest and most lasting effect of the Scottish Parliament is, however, the judicial system of the country. Alone among European countries, Scotland still possesses a judicature which is the direct descendant of a Committee of the Estates. The College of Justice, which, in its present form, was established in the year 1540, ultimately derives its powers from the Scottish Parliament, which, in 1370, first appointed a small committee to deal with its judicial work. The system of Scots law, which the Senators of the College

of Justice are appointed to administer, is, in so far as it differs from the law of England, the product, direct or indirect, of the wisdom of the Scottish Estates, working on the material supplied by the civil and the canon law. In the thirteenth century, the law of Scotland, which had supplanted the ancient customs of the Picts and Scots, was largely based on English law. The Saxon and Norman influences, which had altered the Scottish Church and the Scottish language, had introduced into Scotland many of the leading features of Anglo-Norman law. "It seems clear enough", says Professor Maitland,[1] "that, at the outbreak of the War of Independence, the law of Scotland, or of southern Scotland, was closely akin to English law. That it had been less Romanized than English law had been is highly probable: no Bracton had set it in order. . . . Romanism must come sooner or later; the later it comes the stronger it will be, for it will have gone half-way to meet the mediæval facts." We find, accordingly, that, later and stronger, the Roman law did come. After the War of Independence, Scottish lawyers borrowed little from England, and, gradually, important differences began to emerge. Mr. Hill Burton has pointed out that the statement, frequently made, that the civil

[1] *History of English Law*, vol. i, pp. 222–224 (1st edn., pp. 201–203).

law is part of the law of Scotland, "can only be true of those portions which have from time to time been incorporated with it". The selection of these portions and their local adaptation formed part of the work of the Judicial Committee of the Estates. No attempt was made to codify Scots law for forty years after the Judicial Committee had been constituted as the Court of Session, but, in 1574, a commission was appointed to investigate into the condition of the law and to report on what they considered "meet and convenient to be statute".[1] The source of such additions as those made in accordance with this enactment was the Roman law, and the result has been to produce many discrepancies between Scots and English judicial institutions. The distinction between law and equity, for example, so important in England, is unknown to Scots law, for there never arose in Scotland a separate series of courts to administer a common law differing from the Roman civil law. The fact that the College of Justice was, in theory, a Committee of the Estates, has produced some interesting results. The idea of appeal was unknown in Scotland, or almost so. The records of the Privy Council

[1] Cf. Pitscottie's *Chronicles of Scotland*, vol. ii, p. 477. Scottish Text Soc. Edn., ed. Aeneas Mackay. Sheriff Mackay's notes are specially valuable from the legal stand-point, and his edition gives a new importance to Pitscottie's work.

show that the acts of the Court of Session were sometimes rendered null and void by the Council,[1] but the Council in no way exercised an appellate jurisdiction. In the reign of Charles II, an attempt was made to create the Estates into a Court of Appeal from the College of Justice, and it failed, for the technical and historical reason that the Parliament had already delegated its powers to the Senators. At the Revolution, the Claim of Right demanded the introduction of some process of appeal, but the Union negotiations did not deal with the question, and when, about 1711, in a case between the Presbytery of Edinburgh and an episcopal clergyman, the House of Lords heard an appeal from the Court of Session, they afforded the first instance of an appellate jurisdiction in Scottish causes. It is another consequence of the parliamentary origin of the Courts of Law that the High Court of Justiciary still possesses authority "competently to punish (with the exception of life and limb) every act which is obviously of a criminal nature, though it be such which in times past has never been the subject of prosecution".[2] The English courts have no such powers of "declaring" a crime.

[1] Cf. Hill Burton's Introduction to the Privy Council Register, vol. ii.

[2] Baron Hume, quoted in Renton's *Encyclopaedia of the Laws of England*, vol. xi, p. 402.

There are also such familiar technical differences as those relating to Conveyancing and the Law of Purchase, and such divergencies from English custom as the number of a Scottish jury, and its power to bring in a verdict which is not unanimous, or the judgment of "Not Proven", which is unknown to English law. But beyond all such debatable issues, there are many important respects in which the law of Scotland is more considerate of the rights of the weak than is the law of England. In questions relating to movable succession, for example, widows and children are protected from the eccentricities of death-bed piety; in cases of legitimacy and marriage the weak can claim privileges refused to them by English law; and with regard to divorce, the rights of husband and wife are equal. The principles of Scots law which protect the lease-holder and the tenant against the caprice of the landlord can be traced to an Act of the Scottish Parliament as far back as 1449. If the general tendency of the Romanization of Scots law has been to render it less harsh, it forms an interesting contrast to the Romanization of German law, which met with strenuous opposition, and which increased the severity of German municipal legislation.

If the production of a legal system forms but a small *apologia* for a Parliament which existed

for several centuries, it nevertheless entitles the Scottish Estates to be reckoned among the forces which have made the nation; and it is legitimate cause of satisfaction that, in spite of all the forces of misgovernment which held sway for so long, the peculiarity of the law of Scotland is its regard for the poor and the weak. If Scottish parliamentary institutions never produced the complacent Whiggism of the triumphant middle class of England, it certainly produced many worse things, and it is pleasant to find some few that are better.

# THE SCOTTISH PARLIAMENT

BEFORE

## THE UNION OF THE CROWNS

"In Sterling, the king being convoyit to the parliament hous, and set at the burde, be fortune he espyit a hole in the burde-cloth; so that, as young childer are alwayis unconstant and restles, he preissit to attene to the hole with his finger, and askit of a lord wha sat nar by him to know what hous that was; and he answerit that it was the parliament hous. 'Then', said the king, 'this parliament hes a hole into it.' Whether God inspyrit the babe then with prophecie at that tyme or not, I will not dispute."[1]

The chronicler wrote of the year 1571; but there are on record few meetings of the Scottish Parliament at which the "prophecie" might not with propriety have been made. "This parliament" throughout nearly all its history "hes a hole into it". The ruler of Scotland might be the king; the supreme power might be in the hands of this or that noble or of this or that combination of nobles; or it might belong to the General Assembly of the Church: but rarely

[1] *History of King James the Sext*, p. 88 (Bannatyne Club ed.).

indeed was the country governed or guided by the Estates.

The people of Scotland have ever had a wholesome horror of works of supererogation. The Parliament did not meet to rule the country, but it did meet nevertheless, and those who summoned it had a definite purpose in view. What that purpose was may be best understood if we take, as an illustration, one small section of Scottish history and note the action of the parliaments that met during these years. The reign of Queen Mary nominally lasted from 1542 to 1567; her actual period of rule commenced with her arrival in Scotland in the summer of 1561, and ended six years later. During these six years, four parliaments were summoned. The first of these met in June 1563. While it transacted some details of business, the main purpose of its meeting was the forfeiture of the Earl of Huntly. But the forfeiture of Huntly was already an accomplished fact, and it gained nothing in reality from the ghastly scene when sentence was pronounced upon the half-embalmed corpse of the rebel lord. A year later Parliament again met, and annulled the sentence of forfeiture which had been pronounced, in 1544, upon the Earl of Lennox. A contemporary inserted in his diary the innocent remark: "In this parliament, thair was nathing done, except the reductioun of the said proces of forfaltoure".[1] But the Earl

[1] *Diurnal of Occurrents in Scotland*, p. 76 (Bannatyne Club).

of Lennox had already been some months in Scotland. In the spring of 1566, a parliament was summoned which never met. It was called together to pass sentence of forfeiture upon the Earl of Murray and his accomplices in the "Run-about-Raid", and the murder of Rizzio prevented its assembling. But the insurgent lords had been exiles for nearly a year. Finally, in April 1567, Parliament made certain ratifications of lands—mainly to nobles against whom sentences had been passed by the secret council for their share in the Run-about-Raid and in the Rizzio murder. But all these lords had returned and had for some time been in quiet possession of their estates. The explanation of all these forfeitures and reductions of forfeitures belongs to political history. The student of the constitution will note that the Parliament had no voice in the matter. The Estates were convoked because their sanction gave an unquestionable legality to what had already been done by the executive power, whatever that might be. Their function was that of the official who places the necessary stamp upon an agreement. If the official were to decline to stamp the paper, questions about its lawfulness might arise. But it was just as certain that the three Estates would sanction the forfeiture of Huntly or the return of Lennox as it is to-day that an agreement may be stamped and so made to hold in law.

This is not the view that has appealed to

Scottish historians. The late Mr. Hill Burton maintained a position almost the reverse of the thesis we have proposed. But, with all deference to that distinguished scholar, one may be allowed to argue that he wrote with all the prejudices of a Whig of the middle of the nineteenth century. Constitutional progress was, for him, as for other writers on this subject, the only justification of a nation's existence. It did not seem possible that a people could advance worthily, except as England had advanced. This predisposition to find in Scotland an analogy to English parliamentary institutions was encouraged by the occurrence of many words and phrases in the rolls of the Scottish Parliament which seem to the English student quite decisive in favour of a "constitutional" point of view. But the history of institutions cannot be written from their own records. If we possessed, as material for the constitutional history of Scotland, only the "Acts" of the Scottish Parliament, our conclusions would be more radically false than if there remained to us only the narratives of the chroniclers and the more strictly political documents. The "Acts" are written in cipher and we have to find the key. An important part, for example, of the records of the revolutions of 1560 and 1640 is to be found in the volumes which contain the parliamentary proceedings; but, as we shall have occasion to notice, the explanation lies elsewhere. It is a further illus-

tration of our contention, that so few contemporary writers were sufficiently impressed by the Parliament to give any space to the story of its growth. No man knew the powers of his time better than did John Knox; and in Knox's *History of the Reformation in Scotland* there are very few references to the Scottish Parliament, and only one of these is more than incidental. In this respect, Knox is a fair specimen of early historians. The only exception is George Buchanan, who tells of many meetings of "the Estates, who possess the supreme power in everything".[1] Buchanan's historical reputation is not sufficiently high to lend much importance to his unattested word; and the emphasis which he lays upon the action of Parliament is so unusual that it has led to Father Innes's conjecture that he wrote his "History" in the interests of a republican theory of government.[2] Although Innes had all the prejudices of a Jacobite who lived before Culloden, his scholarship was undoubted, and his accusation is striking testimony to the small place held by Parliament in the pages of Buchanan's predecessors and contemporaries.

[1] Aikman, *Buchanan*, i. 437. Buchanan is the source of the whole constitutional myth. The second founder of the legend was George Ridpath, who published, anonymously, in 1703, *An Historical Account of the Ancient Rights and Power of the Parliament of Scotland.* This brilliant and ingenious political tract is based on Buchanan, who is always the real, and frequently the avowed, authority for Ridpath's view; and by Ridpath, in turn, many more recent writers have been influenced.

[2] Innes, *Critical Essay*, i. 361–95.

An obvious parallel may be drawn between the Scottish Parliament, as we have described it, and the English Parliament under the Houses of York and Tudor. Historians of English constitutional history have frequently pointed out that these sovereigns were, by their use of Parliament, establishing, not their own power, but that of the institution which they regarded as a passive instrument in their hands; that Edward IV and Henry VIII were preparing difficulties for James I and Charles I. The force of this argument, as applied to Scotland, is greatly lessened by the fact that the rulers of Scotland did not regard as essential the consent even of a subservient body of Estates. Parliamentary ratification was, at best, a convenient method of declaring and recording what had been done. But it was no obstacle to an act of the executive that it had not been thus sanctioned. This want of the continuous and normal employment of parliamentary procedure combined with political causes to prevent the appearance of the effect produced in England.

The view that we have stated can, of course, be pressed too far. The mere existence of parliamentary institutions, whatever be their condition at any given time, is in itself a menace to any government not founded on the will of the people. They represent what physicists call "potential energy". It is, moreover, impossible for such institutions not to affect, in some way,

the life of the people, and to influence the civilization of the country. There were various times when the Scottish Parliament gave an earnest of what power lay underneath its acquiescence. There were occasions when the rise of a constitutional opposition was even probable; and there are places of which we can definitely say that here or there occurred an event in constitutional progress. But an investigation in the light of political history will, we think, go to establish the general truth of the theory we have adopted. It might be objected, *a priori*, that such a theory does not afford sufficient reason for the continuous existence of the Estates. But in the troubled story of mediæval Scotland we find, readily enough, the explanation at once of the continuous existence of Parliament and of the place that it occupied. It was a strictly feudal society, but it lacked the redeeming features of feudal government. Feudalism as a system of land tenure was complete, and it still remains the basis of Scots law. As a system of government founded upon land tenure, Scottish feudalism was, from one point of view, equally efficient, while, in another aspect, it could scarcely be said to exist. The Scottish baron was also the Scottish chief, and to the power of the oath of allegiance was added the mighty influence of clan loyalty. But outside this feudal hierarchy stood the king. Every land-owner in Scotland held from him, and none regarded him as de-

serving of more than tolerance. The royal domains were not large enough to enable the Crown to cope with the resources of the greater nobles. The king's best policy was to ally himself with one faction to destroy another, as James II overthrew the great house of Douglas. We cannot speak of any definite coalescence of the nobles against the king. The jealousy of noble house to noble house was always greater than their common dislike of the Crown. So far were they from being able to unite, that a comparatively insignificant family like the Crichtons or the Livingstones were now and again able to place themselves at the head of affairs.

The frequent occurrence of royal minorities was at once a cause and a consequence of this condition of matters. The reigns of the first five kings of the name of James cover, nominally, a period of one hundred and thirty-six years. For fifty-seven years during that time the sovereign was a minor, and two of the five kings met their death at the hands of rebellious subjects. One of them—James III—can scarcely be said to have ruled at all. The weakness of the Crown is the formula of the explanation of which we are in search. That weakness was a consequence, largely, of the action of Edward I of England. The Bruce was occupied with guarding against the enemy, and could not offend the nobles, whose desertion would have been fatal to the cause of Scotland. The War of Indepen-

dence was the source of the bitter hatred which separated Scotland from England from the fourteenth century to the seventeenth, and disputes with England were directly responsible for the premature death of the second, the fourth, and the fifth James, and for the exile of James I—that is to say, for four out of the six minorities between 1406 and 1560.

It is obvious that, in such circumstances, each of the ever-changing factions who strove for political importance had an object in availing themselves of the advantage of parliamentary and legal sanction. The delegation of work to committees made it certain that the party in power could absolutely rely on having its own way, and the form of law was desirable as legalizing their present action, and as forming some kind of defence, should misfortune overtake them. Similarly the king, when he chanced to be powerful, found in his parliament a most useful instrument for carrying out his wishes. It was, for ruling faction and for powerful king alike, the best method of registering and declaring the will or the policy of the rulers of Scotland for the time being. A parliament, and just this kind of parliament, was always wanted by the government.

An alliance between the Crown, the Church, and the burgesses was, in the circumstances, out of the question. It was rendered so, in the first place, by the constant recurrence of minor-

ities. Any such alliance was impossible between 1437 and 1450; between 1460 and 1488; between 1513 and 1530. Moreover, the bishoprics were often private appanages of noble families,[1] and the burgesses were not desirous, so far as we can judge, of taking any part in political life. At times, the burgh records are full of instructions to the commissioners sent to Parliament. These refer invariably to administrative detail, never to great political questions. The burgesses were left to fight for their liberties alone and unaided. Scotland did not produce, till after the Reformation, a great middle class of country gentlemen. The smaller freeholders, influenced by their strong sense of clan and family loyalty, attached themselves to the great barons. They were, as we shall see, never really represented in Parliament till the reign of James VI, and not till religious questions assumed a position of importance did they find any bond of union with the representatives of the burghs. The growth of English parliamentary liberty is largely due to the coalescence of the knights of the shires with the burgesses, and no such alliance was made in Scotland before the reign of Queen Mary. It was in the General Assembly of the Church that they learned the lesson of combination.

As we have already indicated, the most valuable work of the Parliament is its record as an

[1] For a typical instance of this cf. Boece, *Lives of the Bishops of Aberdeen* (New Spalding Club ed.), pp. 112–13.

instrument for the peace of the country. It was a court of justice, and the existing judicature of Scotland is directly traceable to a committee of the Estates. It was also the source of administrative order. Amid all the struggles of contending factions in the interests of which the Estates were summoned, there were always a few—bishops, or permanent officials, or burgesses—who desired to see some acts passed for the peace of the land. The kings, too, were never neglectful of this aspect of the work of Parliament. The great lords had no motive for opposing; it was always sufficiently easy to ignore; and, in point of fact, an overwhelming proportion of the many administrative pronouncements of the Estates dealt with details of burghal life, and largely with seaport commerce. When the Crown was powerful, acts were passed against the misgovernment of the great lords; but we know that they were almost invariably futile, although they offered, at times, a strong offensive weapon against a noble house which was, for the moment, in the minority. In this way they were used alike by king against noble and by clique against clique. In all that we have to say of the subservience of the Estates, this great work of administrative order must not be forgotten; nor is the student of municipal history likely to forget it. Parliament, too, was, if not the originator, the instrument of taxation, although its importance in

this respect was lessened by the fact that the hereditary revenues were secured without the possibility of interference, and it was not till the close of its history that the Scottish Estates used the English rallying cry of redress before supply.[1]

In treating of the subject we propose first to discuss the origin of the Scottish Parliament, its membership, and its methods of transacting business, for on these, in the first place, the power of any assembly must depend. Afterwards the question may properly be asked: What value can we ascribe to the Parliament as an element in the life of the nation?

[1] Pedro de Ayala, writing to Ferdinand and Isabella in July, 1498 (*Spanish Calendar*, i. 210), divides the revenue of James IV into six main heads—(1) Leases of Crown lands, held for three years and redeemable by a fine. (2) Customs. "The import duties are insignificant, but the exports yield a considerable sum of money, because there are three principal articles of export, that is to say, wood, hides, and fish." (3) The profits of justice. James's predecessors "farmed it to certain persons called justices. . . . This king does not like to farm the administration of the law, because justice is not well administered in that way." (4) The ordinary feudal incidents—reliefs, wardships, and marriage. (5) Vacant bishoprics, abbacies, &c. (6) Rent in kind, from meat and poultry, and especially from fisheries. Only one of these, namely, customs duties, could have been regulated by the Estates, and there is on record no instance of any attempt to do so. The revenue was collected on the English system, described in the *Dialogus de Scaccario*. The sheriffs and the king's stewards collected the sums due in the counties, and the bailiffs and "custumars" had charge of the amercement of the burghs and the collection of the customs. The main differences between the system in Scotland under James IV and that of England under Henry II is that the Scottish Exchequer Court was not so fully organized as the English, and that the system of checks on the honesty of the sheriffs, &c., was much less elaborate. All the sources of revenue were, as a rule, "farmed out"; the king received a composition, and the actual collector made as much profit as he could.

## I.—Origin, Membership, and Method

1. The two most important dividing lines in Scottish history between the tenth century and the sixteenth are the reign of David I (1124–1153) and the War of Independence, which forms a distinct period not less in constitutional than in political history. Before the reign of David I, the Scottish kings had a council of seven mormaers or earls; but it is difficult to assign to these any definite status or power, and we are unable to speak definitely of a General Council till the mormaers had become feudal barons. The change is to be attributed to the work of David I. His Saxon mother, St. Margaret, had made many changes in her husband's kingdom, and, by bringing Scotland into line with other European nations in ecclesiastical matters, had prepared the way for her son, who was to place his people under the sway of the great feudal impulse which was transforming the nations of Europe. Under David, the new influences were Norman rather than Saxon. Norman adventurers, like those who had made for themselves kingdoms in England, in Italy, and in the Holy Land, came to the Scottish court, and received grants of land in the south and east of Scotland. In this connection, we find, first of all, names which were to be the most illustrious in the annals of the country. To David I the Bruces owed their lands of

Annandale, and the Fitzalans, who were to become the royal house of Stewart, received from him their earliest possessions in their future kingdom. By such grants of land Scotland was transformed from a tribal into a feudal country, and there arose a royal council formed on the normal feudal theory. The "sair sanct for the crown" completed his work by adding five to the four already existing bishoprics, and by founding the great abbeys which were to gain for him the honour of popular canonization. Thus bishop and abbot and prior could come with earl and baron to take counsel for the weal of the land. Burghs arose and became prosperous; but two centuries had to elapse ere the burgesses found a place among the advisers of the king.

Many of the charters after the time of David I describe, in somewhat vague terms, those who gave their consent and attestation; and their descriptions have been interpreted so as to afford ground for a theory of popular representation in the great council which developed into the Scottish Parliament. Gilbert Stuart convinced himself that he had proved that Scotland possessed a full parliament long before the English burgesses found a place at Westminster.[1] Even the more cautious Hill Burton considered that "these curious intimations stand by them-

[1] Gilbert Stuart, *Of the Public Law and Constitution of Scotland*, note xxviii.

selves, an acknowledgment—sincere or not—of the admission of popular influence in the actions of the government".[1] The claim to have anticipated the mother of parliaments rests, however, upon a misconstruction. The phrases on which it is founded are of three kinds. Some of them are vague words used by chroniclers, into which an exact constitutional meaning has been read. Others are the commonplaces of diplomatic, used without any appreciation of their strict signification.[2] The rest depend upon a mis-

[1] Hill Burton, *History of Scotland*, ii. 82.

[2] The evidence upon which the theory of popular representation is based is as vague as the theory itself. Eadmer (*Hist. Nov.* p. 97, Lond. 1623; cf. also p. 134) tells us of an election, in 1107, of a bishop of St. Andrews "by Alexander, king of Scotland, the clergy, and the people". The Book of Scone (*Liber de Scon.* p. 1) describes the re-foundation of the abbey in 1114–15 by King Alexander. It is confirmed by his wife and nephew, several bishops, and a number of nobles, "consilio proborum hominum". Ten years later, at the foundation of the abbey of Dunfermline (*Registrum de Dunfermelyn*, p. 3; cf. also the Charters of Holyrood), we find a phrase employed to which some importance has been attached. Bishops and nobles confirm as usual, but with the acquiescence of the people and clergy. The form "clero etiam acquiescente et populo" is of frequent occurrence. The phrase "all the community of the kingryk" has been treated in the text. The similar phrases "probi homines" and "clero acquiescente et populo" are simply common technical terms belonging to the Chancery imitated by the Scottish scribe. The latter does not even imply consultation, and the former means the smaller tenants-in-chief. In the *Laws of the Burghs* we find it used for the leading men—the *optimates*—of the town. It is not a popular term at all. On the other hand, too, we have councils described in quite different terms. In 1174 William the Lion held a council at Stirling, and asked an aid from his "optimates" (Fordun, viii. 73). In 1190 the "prelati et proceres" of Scotland gave the king 10,000 marks (Fordun, viii. 62). On the death of Alexander III the guardians describe themselves as "de communi consilio constituti" (*Hist. Doc. relating to Scotland*, i. 95), while Rishanger tells how "omnes Scoti" chose Wallace. The change in the political circumstances is sufficient to account for whatever importance may be attached to the words. It is true that

reading of the texts from which they are taken. The most important term which comes under the last-mentioned head is one on which Stuart laid special emphasis. The phrases "all gude men of the kynrik" and "all the community of the kynrik" are frequently found in the assizes.[1] The king statutes "be the counsel of the communite". But there is an assize of William the Lion, which is quite definite as to the meaning of the word. It was made at Perth, on St. Augustine's Day, 1184, and it bound "bysch-oppis, abbotis, erlis, baronis, and thanys, and all the communyte of the kynrik . . . for to seyk and to get all misdoaris".[2] The penalty for disobedience was the loss of a manorial court. "Gif ony of thaim be attayntit of brekand this assyse, he sall tyne his court for evirmar." The whole "community" were lords of manors. The king, the prelates, and the barons, great and small, were "the community of the kingdom".

The burgesses had, indeed, a method of communicating with the king. Fordun tells us that in 1211 "King William held a great council at Stirling, when there were present

Fordun, speaking of the same period, frequently uses the word Estates ("communitates"). But Fordun was not a contemporary, and the word had acquired a technical meaning by his time. Moreover, he uses the word very loosely. Sometimes he intends by it the land itself, as when he tells us how the English ravaged it.

[1] *Acts of the Parliament of Scotland*, i. 371, &c.

[2] *Ibid.* i. 377. The use of the word "community" appealed more strongly than anything else to the older historians.

his optimates, who gave him ten thousand marks, besides six thousand marks promised by the burgesses". It was with this quotation that Stuart clinched his argument. But the chronicler's words do not imply that the grants were made at the same meeting. We know, too, that each town sometimes treated separately with the king; and that for centuries before they were represented in the Great Councils the burgesses met in purely burghal assemblies. The "four burghs" of the South,[1] of which Edinburgh was the head, and the "Hanse burghs" of the North, which grouped themselves round Aberdeen, held their own conventions, legislated for themselves, and dealt directly with the king.[2] There was no necessity for their representation in the council. Beyond statements of chroniclers about the whole people's choosing a king[3] and so forth, we have absolutely no evidence that the Great Council, before the War of Independence, was anything more than a strictly feudal assembly, attended by such tenants-in-chief as chose to be present.

2. We pass now to consider the membership of the Scottish Parliament after the War of Independence. The first instance of the use of the word "parliamentum" is in connection with the

[1] Cf. *Ancient Laws of the Burghs of Scotland* (Burgh Record Soc.).

[2] So important was their meeting that when Edward I of England held a parliament at Newcastle in 1292, and some question arose regarding their privileges, the four burghs were consulted, and the decision was made in conformity with their laws and customs (*Rot. Parl.*, i. 107).

[3] Fordun, viii. 1.

treaty of Brigham, made in 1289 between Edward I of England and the Scots; but the terminology is obviously due to English influence, and there is no evidence whatsoever of any popular representation. It is not till the year 1326 that we find a complete parliament, containing lords and commons, and this must be kept in mind while we proceed to the consideration of the normal form of the "Estates of Scotland".

In the first place, we have the clergy. Bishops, abbots, and priors possessed, as tenants-in-chief, the same right of attendance in councils as secular freeholders had, and they could more easily make use of their opportunities. At the Reformation, the bishops who became protestants, the lay commendators, and the "tulchan bishops", seem to have kept their seats. But acts between 1560 and 1597 speak of the "decay of the ecclesiastical estate", and we know from the lists of Lords of the Articles that the clergy almost ceased to be an essential portion of the Scottish Parliament. Presbyterianism neither desired nor claimed any such right. Its aim, as we shall see, was higher. We do, indeed, find that in 1567 Parliament

> thocht expedient . . . that thair be adjoynit unto thame in treating of the thingis concerning the kirkis, thir personis underwritten, to wit, Maister John Spottiswood, Maister Johne Craig, Johne Knox, Maister Johne Row, and Maister David Lindesay or any three or foure of thame.

This, of course, was a special arrangement to

meet a particular contingency. But in 1597 James VI, acting on his principle of "No bishop, no king", found himself strong enough to enact that

> sik pasturis and ministeris . . . as at ony tyme his maiestie sall pleis to provyid to the office, place, title, and dignitie of ane bischoip, abbott, or other prelat sall at all tyme heirafter haif voitt in Parliament.

Next year, the ranks of "sik pasturis and ministeris" produced three bishops and five abbots, and thenceforward they increase in numbers, being reinforced by the Act of 1606 which established Episcopacy. The Parliament of 1640, acting on the claim of the General Assembly of the Church, that "the civill power and place of kirkmen" was "predjudiciall to hir Liberties, and incompatible with hir spirituall nature", ordained "all parliaments to consist of noblemen, barronis, and burgesses", and of these alone. At the Restoration, bishops again formed one of the Estates; but they appear for the last time on the rolls of Parliament in 1689.

The place of the greater lords in the Scottish Parliament has long been understood. The brilliant pen of Professor Innes and the accurate investigations of Mr. Robertson have, in this respect, added little to the statement of the case made by George Wallace more than a century ago.[1] The earl or the duke had just the same

[1] *Thoughts on the Origin of Feudal Tenures and the Descent of Ancient Peerages in Scotland*, by George Wallace, 1783.

right to sit in Parliament as the smaller freeholder. His title gave him only rank, not power. It did not even necessarily entail jurisdiction, for we have instances of earldoms being raised to the position of regalities.[1] The king in creating an earldom did not directly confer the title upon the new possessor. He created the lands into an earldom. When the lands were sold the title fell to the purchaser. Territorial honours could descend to a female—although no female might sit in the king's council—and could be borne by the husband of the female possessor. In criminal trials, lairds were the peers of earls. Had the Act of 1427 been carried out, it would have led to an assimilation to the English system of peerage. The actual change is to be attributed to the Act of 1587. Really, as we shall see, this act was a guarantee that the freeholders should have some influence in Parliament; theoretically, it involved the abolition of their right to sit in person, and so converted that right, as it remained to the greater barons, into the essentials of a peerage. Personal honours were certainly known in Scotland before 1587;[2] but they were not peerages in the English sense. The bearers of these purely personal titles—the earliest of which belong to the fifteenth century—sat in Parliament in virtue of other claims. But, after the Act of 1587, all honours became personal, and the rules

[1] *E.g.* Wigton in 1342, and Sutherland in 1347.
[2] Wallace, *op. cit.*, p. 163.

of descent were altered.[1] In 1689, the Scottish nobles obtained a strictly legal recognition of their rights as possessors of peerages.

The right of the smaller barons to attend councils as tenants-in-chief of the king had never been denied; but there was little to induce them to take advantage of their opportunities. Travelling was expensive and dangerous, and unpleasant incidents were not unlikely to occur in their absence. Their power in Parliament was small. Most of them felt that they were sufficiently represented by the great lord to whose person and interest they had attached themselves. We frequently find them appearing by procurators. When King James I returned from his long imprisonment in England he adopted the policy of using the smaller barons against the too powerful nobles. He had been captured by Henry IV, and educated amid the influences of Lancastrian constitutionalism. His aim in Scotland was to introduce a "new monarchy", and he determined to make the existence of Parliament the main weapon in the encounter with his rebellious lords. Accordingly, in the year 1425, we find that all prelates, earls, barons, and freeholders, "since they are holden to give their presence in the king's parliament and general council", are enjoined to appear in person "and not by a procuratour, but if that procuratour allege and prove lawful cause of his absence". The result perhaps

[1] Wallace, *op. cit.*, p. 192, &c.

surprised the king. There were many "lawful causes". We have no record of the form they took; nor do we need any record, for the political history of the period is clear enough. All that the rolls of Parliament can tell us is that the experiment was unsuccessful, for two years later James adopted a much bolder plan, and introduced a serious modification of the constitution:

> Item, the king, with consent of his whole council general, has statute and ordained that the small barons and free tenandry need not to come to parliament nor general councils, so that of every shiredome there be sent chosen at the head court of the shiredome, two or more wise men after the largeness of the shiredome, except the shiredomes of Clackmannan and Kinross, of the which one be sent of ilk ane of them, the which shall be called commissioners of the shire.

It was not, of course, the English system of representation. The English voter had no right to be present in Parliament. His representative did more than merely save him the trouble of attendance. King James did not propose to extend the franchise as it had been extended in England. His proposal was much more conservative. But it was never operative, and, in a few years, it was completely forgotten. The smaller barons continued to be regarded as bound to give attendance in Parliament, and occasionally some of them were punished for absence.

There is here no indication of the rise of a constitutional spirit. It was a method of private

revenge, and measures were passed to relieve the smaller barons. In 1457 Parliament declared that "all freeholders under twenty pounds" were exempted. The limit was raised in 1503 to "a hundred marks of this extent [*i.e.* assessment] that now is". All whose holdings were under that amount might send procurators, unless they were specially summoned by the king's own writ. The procurators were to attend "with the barons of the shire or the most famous persons". The phraseology suggests that the "procurators" might be merely retainers of the greater lords. All "above the extent of a hundred marks" were bound to attend "under the pain of the old unlaw". These acts are generally regarded as freeing the lesser barons from the burden of attending Parliament. From all that is known, alike of the political and of the constitutional condition of the country, it seems much more likely that the real burden from which it freed them was that of "the old unlaw". The distinction is not without a difference. It was a protection from the occasional arbitrary employment of a partially obsolete penalty. The result was the entire absence of the smaller barons from the meetings of Parliament. In 1560, when a great question fell to be decided, and the leaders of the revolutionary party desired the presence of the freeholders, the old right was so far doubtful that a petition was laid before the Estates, in which the smaller barons claimed—adopting unwonted lan-

guage—that "statutes which they had not been required and suffered to reason and to vote at making, should not bind them".[1] The proceedings of the parliament of that year were not confirmed, and our knowledge of them is incomplete. But we learn from a letter written by Randolph, the English ambassador, to Cecil, that among the acts passed on the first day of meeting was this: "That the Barons, according to ane old Act of Parliament, made in James's tyme the first, the year of God 1427, shall have free voice in Parliament. This Acte passed without aine contradiction as well of the Bishopes, Papysts, as all other present."[2] Randolph has not merely recorded the fact: he has given us the key to the situation. It would not have surprised him if the "Papysts" had objected to the proposal. The smaller barons were notoriously attached to the reforming party, and the reassertion of their right was a precaution taken to secure an overwhelming preponderance for the new movement. In 1567, Parliament was again divided. There was a "queen's party" and a "king's party". It is not improbable that the experience of 1560 led the insurgent lords to enact that, because "the

[1] Robertson, *Hist. of Scotland*, App. iv. The claim is not based upon any constitutional right or theory. It is stated as a matter founded on common sense, and the efficacy of the petition lay in the support of those who had special reasons for desiring the presence of the smaller barons. The language of Randolph's letter shows how far the strictly legal position was from being understood.

[2] *Foreign Calendar*, 19th Aug., 1560; Laing, *Knox*, vi. 116.

barons of this realm ought to have vote in Parliament as a part of the nobility", each sheriff was to be instructed to summon the barons of his shire "by open proclamation at the market cross of the head burgh of the same, to compear within the Tolbooth upon eight days' warning . . . and there to choose one or two of the most qualified barons . . . to be commissioners for the whole shire". Once again legislation was fruitless, and the fact confirms the suggestion that it was a mere party move. But it called attention to a constitutional grievance, and twenty years later the matter was taken up in earnest. It is not easy to believe that action was taken in 1585 purely out of love for constitutional principles. A keen religious contest was in progress, and the smaller barons were, as in 1560 and 1567, on the side of the General Assembly. One is therefore inclined to infer that the "article" which was presented to Parliament urging how "necessary it is that his highness and they be well and truly informed of the needs and causes pertaining to his loving subjects in all Estates, especially the commons of the Realm", originated in ecclesiastical quarters. It was decided to reaffirm the "gude and lovable" Act of 1427. The details of machinery need not detain us. There was to be an election of "two wise men being the king's freeholders resident indwellers of the shire of good rent", chosen by "all freeholders of the king under the degree of prelates and lords

of Parliament", who have "forty shillings land in free tenandry of the king and their actual dwelling and residence within the same shire". The act was ratified two years later, when his Majesty had reached "his lawful and perfect age of twenty-one years complete"; and it was added that the shires should be taxed to pay the expenses of their commissioners. No other alteration of principle took place until the Reform Act of 1832. In the reign of William and Mary the proportion of members to each shire was readjusted. But the Acts of 1585 and 1587, succeeding where the Act of 1427 had failed, detached the small barons from the greater freeholders and created a new "Estate" of the realm.

3. We have seen that down to the War of Independence there is no ground for believing that burgesses attended the great council of the kings. When the first Scottish "Parliament" met after the battle of Bannockburn, there was no indication that anything had happened in the interval to change its constitution. In 1314, and again in 1315, in 1318 and in 1320, we read of "full parliaments", the members of which are described in the old terms. At none of these meetings, so far as we know, was any momentary business transacted. But in 1326 King Robert summoned to meet him, at the Abbey of Cambuskenneth, associated with the victory of Wallace, and almost within sight of the field of

Bannockburn, a parliament which was to settle the pecuniary relationships of king and people, and reimburse the king for the expenses of the war. To this parliament King Robert called not only noblemen, but "burgesses and all other free tenants of the kingdom". To the agreement then made, the seals of the burghs were appended. To what circumstances are we to attribute this development? It is, of course, natural that the royal burghs should come to be represented in a council of tenants-in-chief, as the "barons of London" and the imperial cities found their way into the Parliament of England and the Diet of the Empire. But the institutions of the Courts of the Four Burghs and of the Hanse Burghs offered an alternative line along which the development of burghal representation might have gone; and, in point of fact, the Convention of Royal Burghs did continue to possess and to exercise certain powers which appear to us proper to Parliament. The meeting at Cambuskenneth in 1326 is thus, to some extent, a critical point, and its importance is increased by the king's attempts to render burghs dependent on great nobles instead of upon the Crown.[1] These attempts were rendered illegal by Parliament in the reign of David II; but plainly, if they had not possessed, at this juncture, a voice in Parliament, the history of the burghs might have been widely different.

[1] Cf. Innes, *Legal Antiquities*, p. 116.

We may hazard a guess why King Robert did not negotiate with the burghs in the accustomed way. In 1305, when the chances of the independence of Scotland seemed very small, Edward held a parliament in London, which was attended by Scots representatives—by whom elected or chosen, we do not know. Robert the Bruce was also present, as an English lord. Possibly he found his model in the burgesses who thronged the English Parliament. It must also be recollected that, since the end of the war, King Robert had entered into a new relation with a burgh. Hitherto the Scottish kings had spoken of the burgesses rather than of the burgh. But, in 1319, Robert I gave a charter to the city of Aberdeen, in which he recognized it as a corporation, and granted it certain possessions, on condition of an annual payment, assessed by the burgh itself.[1] Edinburgh received a similar charter in 1329.

It is generally assumed that the presence of burgesses at Cambuskenneth in 1326 was an admission of their right to a share in the work of Parliament. "From henceforth," says Professor Innes, "undoubtedly, the representatives of the burghs formed the Third Estate, and an essential part of all parliaments and general councils."[2] The records, as we possess them, do not bear

[1] *Charters of the Burgh of Aberdeen*, ed. P. J. Anderson; also in the Spalding Club edition of Gordon's *Description of Aberdeen*.

[2] Innes, *op. cit.*, p. 116.

this out. It is true that the "parliaments" of Edward Balliol refer to the "assent des Prelatz Countes Barouns Chivalers et toux autres assemblez":[1] but this is merely a return to the older nomenclature. In 1339, Robert the Steward of Scotland speaks of the prelates and magnates of the kingdom alone as constituting a "full parliament". Two years later, a "full parliament" was held at Aberdeen, and although part of its business was to grant a charter to the burgh, only bishops, lords, and freeholders ("milites") were present. Similarly, in 1358 and 1359, we have no record of the presence of burgesses. The Parliament of 1363 speaks of the "three estates", but we know that there were present only the "prelati et proceres" of the realm.[2] But in 1356–57, and again in 1363, councils were held at which burgesses were present. On both these occasions the subject under discussion was the raising of money. It is probable that the constitutional theory at this date was that the burghs were to be consulted only on pecuniary matters. In confirmation of this view, we may point to the wording of the record of the Council of 1363. It tells us that the lords were present as usual, and that there were also summoned others "who are wont to

[1] *Acts*, vol. i. References to acts when no authority is quoted are always from the volumes of *Acts of the Parliaments of Scotland.*

[2] *Acts*, i. 492. We have no reason for supposing that "proceres" included burgesses, as it is generally used in contradistinction to them.

be called to a council of this kind", *i.e.* a money council. Three years later, money was again needed. A convention was held at Holyrood in May 1366, to consider the terms of peace with England, which involved considerable pecuniary adjustment. The nobles decided to call a parliament and to summon the common people "who will not be present and will not promise to be present".[1] Bishops, abbots, and lords were called "in the accustomed manner", and there attended "from every burgh certain burgesses, who were cited for this purpose". They were represented in 1367, in June 1368, possibly in March 1368–69, and certainly in February 1369–70 and March 1371–72. It is possible that from the end of the fourteenth century the burgesses took their place in every parliament; but there are many instances between 1372 and 1455 in which we cannot trace their presence. From 1455 onwards they are found in every parliament and on the regular committees.[2]

[1] "Plebanos, qui ad parliamentum non erunt, nec voluerint promittere interesse ibidem."

[2] Although the burgesses had thus successfully asserted their right to a place in Parliament, the theory was not at once extended to the meetings known as conventions, which could impose taxes, and possessed every parliamentary power except that of passing general laws. In 1503 an act was passed, ordering that "commissioners and head men of burghs be warned" to attend conventions; but it had to be re-enacted in 1563, and even after that date it was not completely operative. Between 1566 (the first date of their recorded presence) and the end of the sixteenth century burgesses were present at only half of the conventions which were held. It is important to note that the royal burghs alone had parliamentary representation up to the year 1832.

It remains, in this connection, to determine how far the burgess members were elective or representative in the strict sense of the word. In the early references to the presence of burgesses in Parliament, we have no hint of any idea of a definite representation constituted by a form of election. To the Cambuskenneth Parliament of 1326 the burgesses seem to have come as other free tenants came. There attended "burgesses and all other free tenants of the kingdom". We know nothing of the conditions of attendance of the burgesses in 1356–57; and in 1366, as we have seen, "certain burgesses" were present, who had been specially summoned. In neither case, nor anywhere else, do we find any suggestion that the burghs chose representatives. We are brought, therefore, to the year 1367. In that year, when the Estates met, it was found that so many burgesses attended that their presence would interfere with harvesting operations, and, accordingly, "certain persons were elected to hold parliament, and permission was given to the rest to go home, because of the harvest". This, then, is the first record of the election of a committee to do the work of Parliament. The wording of the record is important. "On the part of the burgesses there were elected: from Edinburgh, Adam de Bronhill and Andro Bec; from Aberdeen, William of Leth and Johne Crab; from Perth, Johne Gill and Johne of Petscoty; from Dundee, William of Harden and

William of Inverpeffer", and so forth. Burgesses were present in considerable numbers—at all events, in such numbers that two members could be chosen (*electi*) to represent each town. Similarly, in the next instance (1369), "it did not seem fitting that the whole community should be kept in attendance", and two committees were appointed, one for the general work of legislation, and the other to conduct the judicial business which belonged to the Estates. It seems not improbable that we have here a system according to which any burgess that chose might attend. If so, these elections to committees were really the earliest efforts at parliamentary representation in Scotland.[1] In short, the evidence, positive and negative, warrants, perhaps, the conjecture that, at the first, the burghs chose no representatives, but that such burgesses as cared to attend were the representatives of the burgh; that the appointment of committees formed really the germ of the elective idea, by necessitating a choice after Parliament met; and that, in course of time, it became apparent that the election might as well be made at home as in Edinburgh or at Scone.[2] The earliest records

[1] We have no evidence that the Court of the Four Burghs was in any sense strictly representative.

[2] The possible objection that a similar theory of burghal representation has been stated and rejected by English constitutional historians is scarcely applicable. For it is agreed that the idea of representation existed in England before the towns were summoned to Parliament, while in Scotland no such idea is traceable, nor are there any writs such

of parliamentary elections that we possess are statements, in burgh accounts, of payments made to commissioners to the Estates. It is significant that they date from the beginning of the fifteenth century, by which time the device of appointing committees had been frequently employed.

There are two other points in the membership of the Scottish Parliament which must deserve mention. The great officers of state[1] possessed *ex officio* seats in Parliament. It was an arrangement which had much to commend it; but there was a tendency for it to become burdensome; and in 1617 an act was passed prohibiting more than eight officers of state from possessing official seats in Parliament. It was customary also, from an early period, for the eldest sons of the great nobles to be present at meetings of the Estates.[2] They were in no sense members of Parliament. They had no right either of speaking or of voting. But had circumstances been more favourable to the growth of the power of Parliament, the conception of such a training

as were issued for the English towns. It might even be argued that, in strict theory, there was no representation in Scotland till 1832; that commissioners both from shires and burghs only saved their fellows the trouble of attendance, the right to attend being, not *de facto* but in ultimate theory, possessed by all who were entitled to vote. Such a statement is certainly true of the shire, at all events.

[1] The chief officers of state were the lord chancellor, the lord high treasurer, and the lord privy seal, who took precedence of all the nobility; the secretary, the clerk of register, the king's advocate, the treasurer's deputy, and the lord justice clerk.

[2] They were excluded from 1640 to 1662.

for legislative responsibility might have been rich in practical results.

The composition of the Scottish Estates offers a tempting parallel to that of the German Diet after the Great Interregnum. Constitutional development ran in the two countries on somewhat similar lines: the position of the king of Scotland was often analogous to the place held by the emperor; nobles and prelates correspond to the temporal and ecclesiastical princes, and the royal burghs to the free cities, while in neither assembly were there any members like the English "knights of the shire". But there does not seem to be any ground for regarding the likeness as more than a coincidence, or for disputing the "orthodox" theory which declines to admit the existence of German influence over Scotland before the sixteenth century. Had we any definite constitutional life to record, it would be of interest to discover in what relation the three Estates stood to each other. But as to this we have almost no evidence. The first instance of the occurrence of the term the "three Estates" (*tres communitates*) in the acts belongs to the year 1357.[1] In mediæval times, the three Estates are the clergy, barons, and burgesses. When James I attempted to introduce commissioners from shires into Parliament,[2]

[1] *Acts*, i. 491. The use of the term in connection with the coronation of Alexander II in 1214 (*Acts*, i. 67) is explained by its being simply a quotation from Fordun (ix. 1).

[2] Cf. *supra*, pp. 21-25.

he really contemplated the creation of an additional Estate, and after his scheme was actually carried out by James VI[1] there were three or four Estates according as the clergy were represented or not.[2] The word "Estates" is not specially appropriate, and the Estates of the realm of Scotland must not be confused with the English use of the word.

It has been surmised that the clergy and the burgesses acted with the Crown, in opposition to the nobles; but to state such a formula is to read English ideas into Scottish history. The historian can point to scarcely an instance where the nobles were definitely ranged in a body against the king. If nobles were the most prominent opponents of the Crown, nobles were also its most prominent supporters, although the *personnel* of both parties constantly varied. The bishops, as we have seen, were often dependent upon the great lords. As to the burgesses, it seems to be clear that the three or four of them who were included among the Lords of the Articles acted with the party in power. Only thus can we explain the fact that alike when the Douglases and the Boyds and the Hamiltons ruled the land the administrative enactments of Parliament progressed without any difficulty. These acts were frequently passed "by request of the burgesses", and they were obeyed only in the towns. The people of the towns had

[1] Cf. *supra*, pp. 25–26.

[2] Cf. *supra*, pp. 18–19.

small reason to oppose either noble or king. The hand of the great lord lay heavy on the inhabitants of the country, but the burghs knew no such pressure.

4. Scarcely less important than the membership of a parliamentary body is the method of its deliberation. In this respect the Scottish Parliament was widely different from that which sat at Westminster. The three Estates met in one chamber. In the centre was the seat occupied by the sovereign, when he was present in person; in later times, by his commissioner. On the left hand sat the noblemen and barons; on the right, the prelates and the representatives of burghs. The Estates voted together. The president was, in general, the lord chancellor. He was, at the first, nominated by the king for the purpose, but he gradually came to hold the position *ex officio*. The absence of a speaker for the Commons deprived them of much of the power possessed by the third Estate in England. The Act of 1427, to which we have already referred, included among its provisions the creation of this office; but, like the rest of the act, this clause was not enforced, and it was never resuscitated. The theory of the three Estates was practically complete by the year 1400, although we have occasional instances of legislation without this formality. A parliament of James II, for example, made a statute regarding merchants "with consent of the clergy and

barons alone", and in 1449, on a question of heirship, the prelates and burgesses were "removed" before the decision was made.

The relations of the Estates to the Crown were in an unsatisfactory condition. In times of stress the Parliament had no hesitation in appointing its own president. Randolph, in his letter to Cecil,[1] mentions that, in 1560, Lethington was "chosen harangue-maker". In 1640, again, Robert, Lord Burley, was elected "president of this court and session of Parliament, in the absence of the king's commissioner". In strict legal theory both of these meetings were probably invalid. It is difficult to understand how far the royal assent was necessary to the validity of acts. In ordinary circumstances, a necessary condition of a valid parliament was the presence of the regalia, and the king gave his approval by touching the bills or "articles" with the sceptre, whereupon they became acts of parliament. The want of constitutional life prevented the question from arising in a definitely constitutional manner. When the difficulty did appear, it was, like the similar problem of the presidency, settled without any debate; and we have no instance except in times of revolution. There is an interesting passage in Knox's *History*[2] in which he discusses the matter in connection with the great Parliament of 1560, which established the Protestant faith, and

[1] Vide *supra*, p. 24.

[2] Laing, *Knox*, ii. 87.

which did not receive the royal consent till it was ratified in 1567, when the Earl of Murray had assumed the regency for the infant whom he had made James VI. The historian tells us that Francis and Mary withheld their consent. "But that we litill regarded or yit do regarde; for all that we did was rather to schaw our debtfull obedience, than to beg of thame any strength to our Religion." The point is thus contemptuously dismissed, but Knox considered it necessary to give more attention to a possible objection that the Parliament was not legally summoned in the first instance. "But somewhat most we answer to suche as since hes whispered, that it was bot a pretended parliament." He solved the matter by a legal quibble, and proceeded to affirm, in addition, that it was the only free parliament which had been held: "In it, the votes of men were free and gevin of conscience; in otheris thai war bought or gevin at the devotioun of the prince". Such sentiments as these can scarcely be said to represent any advance in constitutionalism. We may place alongside of them the views of King James VI, as he expressed them to his English Parliament in 1607.[1]

For here I must note unto you the difference of the Parliaments in these two kingdomes, for there they must not speak without the Chancellor's leave, and if any man doe propound or utter any seditious or uncomely speeches, he is straight

[1] Speech at Whitehall, 31st March, 1607.

interrupted and silenced by the Chancellor's authoritie. . . . About a twentie dayes or such a time before the Parliament, Proclamation is made throughout the kingdom, to deliver into the King's Clearke of Register all Bills to be exhibited that Session before a certain day. Then are they brought unto the king, and perused and considered by him, and only such as I allowe of are put into the Chancellor's hand to be propounded to the Parliament. Besides, when they have passed them for lawes, they are presented unto me,[1] and I with my Scepter put into my hand, by the Chancellor, must say: "I ratifie and approve all things done in this present Parliament". And if there bee anything that I dislike, they rase it out before. If this may bee called a negative voyce, then I have one, I am sure, in this Parliament.

The contradictions find, as usual, their reconciliation in fact: King James described the forms normally used; Knox regarded them as not in any degree essential to the validity of Parliament. The rules of procedure certainly

[1] The right of prorogation is tacitly assumed by the king in this speech. It was the cause of a dispute in the troublous times which followed 1638. The Parliament of 1640 protested that "Johne, Erle of Traquair, his Majestie's Commissioner, did take upon him without consent of the Estates, upon a private warrand, procured by himself, against his Majestie's publict patent, under the great seall", to prorogue Parliament. They therefore continued to sit, and took up stronger ground, viz. that prorogation without consent of Parliament was "against the lawes and libertie of the kingdom, . . . without precedent, example, and practice". The language is clearly taken from the contemporary protests of the English Commons, and it cannot be regarded as more than a political weapon, borrowed for this occasion from the English constitutional armoury. It in no way corresponds with the general state of feeling in Scotland. In 1661 the Estates resolved that "the King hath sole power to call and prorogue Parliaments". Both resolutions were recognitions of fact, not of theory. At various times, from 1398 onwards, acts were passed that Parliament should meet once a year. These were probably connected with the judicial powers of the Estates. In point of fact, they were dead letters.

tended to a despotic monarchism. But they owed their existence simply to custom, and could not be regarded with any peculiar reverence, when the popular party was uppermost. There had never been any definite settlement. They governed who had the power; they kept the forms who could.

5. The most characteristic portion of the procedure of the Scottish Parliament was the devolution of the work of legislation upon committees. The origin of the committee which became famous under the title of the Lords of the Articles is one of the standing puzzles of Scottish history. The date of its first appearance is well known, but how or wherefore parliamentary procedure took this peculiar form has been a standing problem.

The first instance of the appointment of a committee (1367) has been already quoted. The record for that year mentions that certain persons were elected by the Estates to hold the Parliament, and leave was given to the rest to go home, on account of the harvest.[1] As we have seen, burgesses found a place on the committee. The next Parliament met in June, 1368, and it contained burgesses among its members, but there is no mention of a committee. In March 1368–69, certain persons were again elected

[1] Convocatis tribus communitatibus Regni . . . certi personae electi fuerunt per easdem ad parliamentum tenendum, data aliis causa autumpni licencia ad propria redeundi.

to hold Parliament,[1] and the reason for allowing the rest to go home is stated to be the political and economic difficulties of the time. On this occasion burgesses do not appear on the list of the committee, and we have no definite assurance of their presence. In February 1369–70 we know that burgesses were present,[2] and we are told that when Parliament met it did not seem expedient that the whole "communitas" should take part in the business ("universalis communitas ad deliberationem huiusmodi intenderet seu eciam expectaret"), and two committees were appointed —one to deal with general business and the other with matters connected with the administration of justice.

At this point it may be well to state the kind of business transacted at these various parliaments. In 1367 financial matters formed the most important portion of the business of Parliament, and we are therefore prepared to find burgesses on the committee. In March 1368–69, when we have no assurance that burgesses were present, the most important item of business was the pacification of the Highlands; but an enactment was made which was of special interest to the burghs, for Lanark and Linlithgow were given places in the Court of the Four Burghs, instead of Berwick and Roxburgh, now held by

[1] De concessu et confirmatione trium communitatum congregatarum, propter importunitatem et caristiam temporis . . . electi fuerunt certi personae ad ipsum parliamentum tenendum, data licencia aliis remeandi.

[2] *Acts*, i. 173.

"our adversaries the English". In 1369, when burgesses were elected to the Committee for Justice, that committee had to deal with a dispute between the town of St. Andrews and the guild of Cupar, while the committee for general business, on which they do not appear, dealt with the question of the king's debts, taxation, police, and the war with England. There is little in all this to give us any guidance as to the origin of committees. The facts, so far, seem equally compatible with the unwillingness of burgesses to attend, of which the nobles had complained in 1366, and with an attempt on the part of the nobles to reduce the burgess element and to monopolize the efficient power of Parliament.

The subsequent history of these committees proves that, whatever was their origin, they did become an instrument in the hands of cliques of nobles. The next instance is in March 1371–72, when the precedent of 1369 was deliberately followed,[1] and two committees were again elected—one for justice, and the other to treat and deliberate upon special business as a preliminary to its being brought before the great council.[2] It is simply stated that leave was given

[1] Imitando videlicet ordinem illum et modum qui servabantur in parliamento tento apud Perth tempore venerandae memoriae domini Regis David, anno Regni ipsius quadragesimo [1369], electi fuerunt quidam . . .

[2] Ad tractandum et deliberandum super certis specialibus Regis et Regni negociis, antequam perveniant ad noticiam consilii generalis, licentiatis autem aliis ut recedant.

to the rest to go away. There are no lists of members of either committee, nor is there any record that the "special business" was ever submitted to a parliament. The statutes promulgated by the committee bear that they have been made by the consent of the three Estates, or by persons elected in the same parliament to transact business.[1] An oath to observe the statutes was taken after they were passed, and it is remarkable that only the barons are mentioned as taking it. This is suggestive of the absence of burgesses from the General Committee, in accordance with the precedent of 1369, and the very first clause[2] in the recital of the actions of the General Committee gives some indication that it was desired to exclude certain persons from it. It was ordained that no one who had been elected a member of the committee should bring to its meetings anyone not so elected, except a member of the Privy Council. The business included an act which is summarized by an assertion that the commands of the king are not to be obeyed in preference to the law of the land ("Mandata Regis non exequenda contra statuta vel formam

[1] De consensu et assensu trium communitatum per presidentes sive per personas electas ad determinationem negociorum in parliamento eodem.

[2] Primo et principaliter, iuxta predictos modum et ordinem, est ordinatum quod nullus electus ad consilium cuiuscunque conditionis gradus pre-eminentiae sive status alium non electum ad consilium seu in consilio Regis sibi consiliarium vel assessorem aut alia de causa adducat.

iuris"). The weakness of Robert II, already an old man, and the general political history of the time, render it impossible to accept this as a constitutional claim, and the overwhelming probability is that Parliament was, as so often afterwards, in the hands of a small clique of nobles, who used it for their own purposes. Possibly, the barons who were really responsible for the misgovernment of the country, wished to avoid meeting, in the committee, anyone who might be bold enough to draw attention to the real facts of the case. At all events there must have been some reason for following the precedent of 1369 instead of that of 1367, and thus excluding the burgess element.

Between the year 1371 and the return of James I from exile we have no information regarding Parliament. There are references to the three Estates in 1384, and again in 1398; but we are without any hint of the method of conducting business, and almost the only records that have come down to us are charters. In 1424 the old phraseology reappears: Certain persons were elected to decide upon the articles submitted by the king ("Electi fuerunt certi personae ad articulos datos per dominum regem determinandos"). This is the first recorded instance of the term "Articles", by which the committee was to be known. In March 1425–26, there is no record of any such committee. In March 1425–26, in May 1426, and in September 1426, we find committees

which are said to be elected by the whole counsel of the three Estates. In July 1427, in March 1427–28, in July 1428, in April 1429, in March 1429–30, and in April 1432, we have again no record of their existence. At a parliament held at Perth in October 1431, a committee was appointed for special police and judicial purposes, and it met in May 1432 and passed certain acts. In March 1433, we read of no committee; in October 1434, only of a committee for justice, which included burgess members; and in 1436, of no committee. From the second year of the active reign of James I to his death we have, then, no trace of the General Committee of the Articles.

Between the murder of James I, in February 1436–37, and the fall of the house of Douglas, in February 1451–52, there are records of several meetings of Parliament, but there is rarely any evidence of the presence of burgesses at all. In connection with the coronation of James II, there is a formal document, of uncertain date, which revokes grants of land made by James I without consent of the three Estates, and commissioners of burghs are mentioned as being present at this "general council". The revocation is of political importance, and has no real constitutional significance. When Parliament met, in March 1437–38, the three Estates are mentioned, but only nobles and barons and freeholders went to Holyrood to crown the young

king.[1] These are just the formal occasions on which it was desirable to have the unquestionable legal authority of the "three Estates", and burgesses may have been really there, though it is strange that they were not present at the ceremony in the Abbey. There is no trace of their presence till 1449, and, in their absence (if absent they were), we find no hint of the existence of committees. They were present at the Parliament which met in January 1449–50,[2] when the young James II first asserted himself by procuring the forfeiture of the Livingstones. It is equally significant that committees were not elected on this occasion; it is becoming evident that the device of the Articles was employed, not in every case when burgesses were present, but only when their aid was not desired by the predominant party in Parliament. During the final struggle with Douglas there is again no reference to burgesses, but in August 1452, when the king had defeated the great house, we find burgesses re-

[1] "Comparentibus tribus Regni statibus apud Edinburgh, omnes comites nobiles et barones ac libere tenentes dicti regni . . ." The omission of the burgesses seems to have attracted the attention of Sir John Skene, who in his edited volume of the *Acts* (temp. Jac. VI) includes the formal revocation in the proceedings of the Parliament of 1437–38, and prints, instead of the somewhat less emphatic words of the original, a statement that the revocation was sanctioned by "the haill three Estates of the Realme, sittand in plane Parliament, that is to say, the Clergie, Barrones, and Commissioners of Burrowes".

[2] In 1445, three burgesses, along with fifteen of the clergy and barons, attest the erection of the lordship of Hamilton; but there is no further evidence of their being present or taking any part in the parliament of that year.

presented in Parliament, and there is again no mention of the Articles. In August 1455 the dress of burgess members is regulated by statute, and there attendance is regarded as normal. During the personal rule of James II, which continued till his death in 1460, burgesses are constantly represented, and the only committees of which we read are for justice alone, to which burgess members were elected.

During the first few years of the minority of James III the policy of the late king was continued under the strong hand of Bishop Kennedy, and it is not till after his death, in 1465, that the Lords of the Articles reappear. In 1467, Lords of the Articles were appointed, and thenceforth their power and importance greatly increased. In 1469, they were empowered to report, not to the whole Parliament, but to a committee constituted on the analogy of the Lords of the Articles themselves, "with power committed by the whol Estates . . . to advise, commune, and conclude". Two years later the membership of this plenipotentiary committee became almost identical with that of the Lords of the Articles, who thus, practically, received power to report to themselves and to ratify their own conclusions "upon all matters concerning the welfare of our Sovereign lord . . . and the common good of the realm". "Our Sovereign lord" was, at the time, a captive in the hands, at first of the Boyds, and afterwards of the Hamiltons, and

the rapid development of the powers of the Lords of the Articles is explained by the desire to exclude any adherents of the opposite faction from voice or vote in Parliament, and, as such, it continued to be employed.[1]

On a general review of the evidence several points are clear. The device of superseding Parliament by a committee was employed for the first time under a weak king, and precisely at the moment when burgesses were first appearing as an integral part of Parliament. After it was elaborated in 1369, the method continued to be employed on every occasion on which burgesses were present, and, so far as we know, only when burgesses were present, till the return of James I from England; and its usual result was to exclude the burgess element from the effective work of Parliament. From the date when James I had established his power to the time of his murder, in 1436–37,

[1] From 1467 to 1482 the numbers of the Lords of the Articles were from three to five representatives of each Estate. During the struggles which marked the end of the reign of James III, and before his son had succeeded in asserting the royal power, we find burgesses forming a very small proportion of the Committee of the Articles. The numbers are instructive:

| Year | Clergy | Barons | Burgesses | |
|---|---|---|---|---|
| 1483 | 6 | 6 | 4 | (*Acts*, ii. 145.) |
| 1485 | 6 | 6 | 3 | (*Acts*, ii. 169.) |
| 1488 | 9 | 14 | 5 | (*Acts*, ii. 200.) |
| 1489 | 8 | 10 | 4 | (*Acts*, ii. 217.) |
| 1491 | 10 | 10 | 3 | (*Acts*, ii. 229.) |

On the other hand in 1503, under the strong rule of James IV, six clergy, six barons, and seven burgesses were chosen (*Acts*, ii. 239).

burgesses were regularly present, and there were no committees, except for judicial purposes, and on these burgesses were represented. The ordinary business of Parliament was transacted by the three Estates meeting in their full numbers. Between the death of James I and the fall of the house of Douglas, in 1451–52, we are again uncertain as to the presence of burgesses in Parliament, and there were no Lords of the Articles, so far as can be ascertained. The one occasion on which we know that burgesses took a share in the work of Parliament was in January 1449–50, when the young James II first asserted himself by procuring the forfeiture of the Livingstones, and here, as under the strong rule of James I, the presence of burgesses is no longer accompanied by the existence of the committees which occupy so prominent a place when burgesses are present and the barons are in power. So, again, after the king had defeated the great House, and had begun to rule in person, we find burgesses regularly present in Parliament, and the only committee was the judicial one, on which they find a place. During the first few years of the minority of James III the policy of the late king was continued by Bishop Kennedy, and it is not till after his death that the Lords of the Articles reappear. During the years of intrigue and faction which followed the death of Kennedy in 1465, the Committee of the

Articles was developed and established as a normal part of parliamentary procedure.

The invariable correspondence between the presence of burgesses in Parliament and the use or disuse of the system of committees, according as the king was weak or powerful, suggests as a possible explanation that the origin of the Committee of the Articles may be traced to an attempt of the barons to exclude the burgesses from Parliament. This view is confirmed to some extent by the fact that in 1371–72, within two years of the first employment of the device, the committee for the general business of Parliament seems to have been used for the purpose of excluding certain persons, while, both in 1369 and in 1371–72, burgesses were present in Parliament and were not elected to the General Committee. It was, further, only in this indirect way that Parliament could control the number of burgess members, for there is no evidence of the passing of any act dealing with burgess representation, and, as late as 1619, the Convention of Royal Burghs[1] ordered that every burgh, except Edinburgh, should send only one, instead of two, members to Parliament, and the resolution was carried into effect without even the formality of consulting the Estates. It cannot, however, be said that the evidence excludes the alternative

[1] The final form assumed by the Courts of the Four Burghs and the Hanse Burghs.

explanation that these committees originated simply in the unwillingness of the burgesses to attend Parliament, and were afterwards employed by the barons for purposes of faction. But it is difficult to reconcile this view with the fact of the appearance of burgesses, in 1367, in such numbers that a choice of two members from each town could be made from among them, and with the instances of their retention for judicial purposes only, as well as with the concomitance, just pointed out, of the presence of burgesses and the election of Lords of the Articles.

The next development in the history of the General Committee belongs to the year 1535, when King James V dispensed with the cumbrous device of two committees, and the Lords of the Articles entirely superseded the three Estates. As the Crown chanced to be strong, the committee was not allowed to deal with "all matters" as in the days when the king was weak, but only with such matters as it might "please his grace to lay before them", and King James reserved to himself the power of summoning all his prelates and barons if he should so wish. The new scheme was only for occasional use,[1] but it familiarized people with the all-sufficiency of the Lords of the Articles, and during the next reign Parliament ratified, without comment and as a matter of form, what they had done.

[1] It was next employed in 1581.

Randolph, the English ambassador, has preserved for us a record of the proceedings in 1563.[1]

> Their Parliament here has begun. On the 26th ulto. the Queen, accompanied with all her nobles and above thirty picked ladies, came to the Parliament House, her robes upon her back, and a rich crown upon her head. The Duke [Chatelhérault] next before her with the regal crown, the Earl of Carlyle the sceptre, and the Lord of Murray the sword. She made an oration to her people. . . . The Lords of the Articles are chosen, and sit daily at the Court, where ordinarily the Queen is present, in debating all matters. Upon Friday next, she comes again to the Parliament House to confirm such Acts as are concluded upon, and to prorogue the Parliament.

During the early part of the reign of Charles I, and between the Restoration and the Revolution of 1689, this was the normal procedure. The Parliament met in full only on the first and the last days of its meeting. It was of small value that every liege had free access to the Lords of the Articles, to lay his complaints before them, but even that privilege seems to have been occasionally doubtful.[2]

The importance of the Lords of the Articles clearly depended upon the method of their election. It has been supposed that, at first, each Estate elected its own representatives. But the non-appearance of burgesses on the General Committee in 1369 is, perhaps, an indication to the

[1] Randolph to Cecil, 3rd June, 1563, *Foreign Calendar, Elizabeth.*

[2] Proclamation of James VI, July 1578.

contrary. In 1524, the spiritual lords were chosen by the temporal lords. We know this only from certain protests which were made, and it is not easy to draw any inference from it.[1] Randolph,[2] to whom we owe so much of our information regarding Scottish affairs in the latter half of the sixteenth century, described to Cecil the method in vogue in 1560. His words imply that it was the ordinary custom. "The lords proceeded immediately hereupon to the chusing of the Lords of the Articles. The order is that the lords spiritual chuse the temporal, and the temporal the spiritual, and the burgesses their own." From 1592 to 1609 the selection is said to be made by "the whole Estates"—whether collectively or independently is not stated. In 1606, 1607, and 1609, King James nominated the members who were elected, and in 1612 he devised a very characteristic arrangement which, in part, reverted to the method described by Randolph. There were at this date very few prelates, and they were all his own creatures.[3] The lords temporal, therefore, could not but choose lords spiritual agreeable to the king, and they, in turn, could select from the nobles men as obsequious as themselves. The representatives of the prelates and nobles must select suitable men from the

[1] *Acts*, ii. 289.

[2] Robertson, app. iv. This is the only evidence that we possess to show that the burgesses chose their own representatives.

[3] In the speech quoted *supra*, pp. 38–39, King James ignores the Lords of the Articles altogether.

Third Estate. Such was the royal scheme. We hear of it first in 1612.[1] We are fortunate enough to possess an account of the "Ordour and Progres of the Parlement, October 1612", from a manuscript in the handwriting of Sir Thomas Hamilton, the secretary.[2] When the Estates had met, and had listened to a sermon by the archbishop of Glasgow and a speech from the king's commissioner, the prelates and noblemen were instructed to retire, to choose the Lords of the Articles. The secretary intimated privately to the lords temporal the names of the prelates whom the king wished to be chosen. They "debaited the mater verie preciselie", having first dismissed the secretary, "and after many discourses of the necessitie of the mentenance of thair privilegis and libertie, be pluralitie of votes, changed so many of the roll of the prelates as they had men to make chainge of". The bishops, on the other hand, received "the roll of the noblemen whom his Maiestie recommended to be upon the Articles, whilk thay presentlie obeyed be thair electioun". When the prelates and noblemen met to choose the commissioners of barons and burgesses, both maintained their attitude, "and maid sum chainge, so far as the noblemen could". This method did not become fixed till 1633, but it represents more or less accurately the condition of matters between 1612 and 1638.

[1] *Miscellany of the Maitland Club*, iii. 112–18.

[2] Afterwards the first earl of Haddington.

The usurpation of all parliamentary power was, of course, bitterly resented. As early as 1524 we have evidence of opposition; but the dispute of that year was rather personal than political, and not in any sense constitutional. The first constitutional protest dates from the year 1633.[1] But even this is rather a remonstrance against the decisions of the Lords of the Articles than against their election and procedure, although there are references to these. Burton guardedly describes the incident as containing "distinct vestiges of a constitutional parliamentary opposition".[2] In 1640, Parliament, no longer under royal control, ordained that the Lords of the Articles should be "ane equall number of all Estates, and . . . chosen by the haill bodie of the Estates promiscououslie and togidder, and not separatlie, by ilk ane of the thrie Estatis apairt". In 1663, by command of the king the older method was restored, and it continued in force till the Revolution. The parliament of 1690 abolished the Lords of the Articles, and declared that "the estates may appoint such Committees as they choose, there being an equal number of each estate". Such is the history of that important body.[3]

[1] "Humble Supplication of a great number of the Nobility and other Commissioners in the late Parliament", *State Trials*, iii. 604. Cf. also Row, *History of the Church of Scotland*, pp. 365–66 (Wodrow Soc.).

[2] *History*, vi. 87.

[3] The numbers of the Lords of the Articles varied considerably. In 1587

The history of the Judicial Committee has been often told, and need not detain us long. We have already seen the first appointment of a commission to undertake the judicial work of Parliament. From 1368 to 1532 this cumbrous method was maintained, although the membership of the committee of the "Lords Auditors" was frequently altered, and the acts of parliament contain many references to their sitting. James I introduced a modification into the system. In 1425 the lord chancellor and "sundry discreet persons" of the Estates received power to "examine, conclude, and finally determine" all complaints. In the next reign the judgment of these "lords of session" was declared to be as decisive as that of the Lords Auditors themselves. In 1503 the judicial work of the King's Secret Council was organized and a co-ordinate court was instituted, chosen by the king, and endowed with full powers, so that there were three courts of justice to deal with the numberless grievances of the lieges. The judicial system took its final shape from France. In 1532 King James V proposed "to institute ane college of cunning and wise men baith of spiritual and temporale estate . . . to sitt and decyde upon all actiounis civile". The Estates thought this "wele consavit"; and accordingly

it was fixed at any number varying from six to ten from each Estate, and this may be taken as fairly representative of their number throughout, though in early times it is somewhat smaller. Cf. *supra*, p. 48, n.

the cunning and wise men were created into a College of Justice, with a president at its head. It was sanctioned by the Pope, and confirmed by Parliament in 1540, when the Estates granted "to the President, Vice-President, and the Senators power to make such acts, statutes, and ordinances, as they shall think expedient for ordering of process and hasty expedition of Justice". It then consisted of a president, with seven spiritual and seven temporal lords of session,[1] and, with slight modifications, the Court of Session continues to decide all civil cases in Scotland. It represents the Lords Auditors or the original committee of the Estates to which judicial powers were entrusted, and not the judicial work of the Secret Council. So strongly was it felt that the College of Justice was a committee of Estates, that, at first, it did not sit during the meeting of Parliament, which the Lords of Session were expected to attend. Exceptions to the rule occur frequently, and as early as 1538. The High Court of Justiciary was instituted by James VI in 1587, to supersede the old jurisdiction of the justiciar, and was remodelled in the reign of Charles II.

[1] The title of "Lord" was early assumed by the president and senators of the College of Justice. The title was prefixed to the surname of the judge, if he did not take a territorial designation. An attempt was made by the wives of the early senators to adopt the corresponding title "Lady", but, according to tradition, their ambition received a check from King James, who remarked: "I made the carls lords, but wha made the carlines ladies?"

6. We know, from various sources, something of the pomp and circumstance which accompanied a meeting of Parliament. The dress of the members was strictly prescribed,[1] and formed often the most expensive item[2] in a member's account-book. The Stewart sovereigns, with scarcely an exception, loved display, and the meeting of the three Estates afforded an unusually good opportunity. Queen Mary's personal beauty gave an additional splendour to the meeting of Parliament in 1563, and as she rode in procession the populace of the capital could not restrain their enthusiasm, and hailed her with shouts of applause, "God save that sweet face!"[3] Her son took strong measures to prevent what he termed the decay of the majesty of his parliament. In 1600 he enjoined that all members "rydand on horseback, clad with fut mantellis, and utheris abuilzementis and clething requisit for the honour of the present actioun, repair, attend, and accompany his Majesty" to and from Holyrood and the Tolbooth, "and that nane schaw themselves unhorsit or vantand fut mantellis under the pane of tinsell of thair vot

[1] The befurred and bedecked gowns and hoods of every Estate are minutely described in an act of 1455.

[2] Innes, *op. cit.*, pp. 152–53.

[3] One spectator of the scene remained cold and indifferent. John Knox protested against "such stinking pride of women", and feared that the "targetting of their taillies" (bordering of their robes with tassels) would "provock Goddis vengeance, not onlie against those foolish women, but against the haill Realme (Laing, *Knox*, ii. 381).

and place".[1] The procession was marshalled in reverse order of precedence. First came the commissioners of burghs in their black gowns. They were followed by the commissioners of barons, members of the privy council, and officers of state not being lords. The clergy came next, priors, bishops, and abbots, being alike attired in silk gowns, and immediately after them, lords and earls with their mantles of velvet. Trumpeters preceded pursuivants and heralds, and the Lord-Lyon-King-at-Arms in his gorgeous apparel, walking "him alane", immediately in front of the honours of Scotland. Behind his sword, sceptre, and crown, rode the king himself, between the captain of his guard and the constable of the kingdom. The chancellor and the great chamberlain were in immediate attendance upon their master. Last of all came the marquesses and the royal household. After the Reformation the work of Parliament was invariably preceded by a sermon. When the full Parliament met again to ratify the proceedings of the Lords of the Articles, the "Lyon Herauld" solemnly presented the sceptre to the king, who touched the articles. Prayers followed, and the House was dissolved. It was small wonder that the citizens of Edinburgh felt some regret when the glory of the Parliament House departed.[2]

[1] *Register of the Privy Council*, 1600.

[2] Parliament sat, almost invariably, in Edinburgh, from the beginning of the seventeenth century.

## II.—The Influence of Parliament

When the Great Council developed into what we understand by the word "parliament", it took its place as one of a series of competitors for the chief power in the kingdom. The king's prerogative was sufficient to cover everything that he was able to do, and an undefined law of treason[1] gave him a valuable weapon, which he did not fail to use. The most notable danger to the prerogative was the supersession of the royal power by the rise of certain noble families from time to time. The strength of these nobles lay in the number of their retainers, over whom they had absolute power. Most of them were hereditary sheriffs of their own districts, and it was rarely that either king or parliament ventured seriously to interfere with their judicial powers.

The Parliament found an additional rival in the Secret—afterwards called the Privy—Council, which formed the Executive of the realm. Little is known of the early history of this important body. Its origin has generally been ascribed to the Parliament of 1369, which, as we have seen (cf. pp. 40, 41), appointed a Committee to discuss certain matters before they came before

[1] The law of treason is stated in book iv of the transcript of Glanvill's *De Legibus Angliae*, entitled "Regiam Maiestatem", and it should be compared with the acts against "Leasing-making" which were published from time to time.

Parliament.[1] This, however, refers to the Lords of the Articles, and when the Committee of the Articles was appointed two years later, the precedent of 1369 was avowedly followed. It is not, therefore, possible to identify this body with the king's secret council, mentioned two years later, when urgent private business, relating to the succession, was discussed "in the king's secret chamber in his secret council",[2] as contrasted with the king's chamber of public Parliament.[3] This allusion to a secret council probably indicates not the origin, but the existence, of such a secret council of royal advisers as must have come into being centuries before. The small place held by the Parliament in the government of the country left the Executive or Secret Council a still more valuable instrument for those in power, and it is impossible that the kings of Scotland did not possess a private council before 1369. The next definite reference is in 1389; when the Duke of Rothesay was appointed regent for Robert III (cf. p. 75), his power was limited by a council, of which eighteen members were appointed by the Estates—probably an

[1] There are two accounts, in the *Acts*, of the appointment of this Committee. In one place, they are elected to treat of certain special business (super certis specialibus Regis et Regni negociis—*Acts*, i. 173), and, in another, of secret business (super certis et specialibus et secretis . . . negociis—*Acts*, i. pp. 507, 508). The lists of members are identical, and only one Committee is intended.

[2] "In secreta camera domini Regis—in suo secreto concilio."—*Acts*, i. p. 546.

[3] "In camera sui parliamenti in publico."—*Ibid.*

enlarged form of the Secret Council.[1] But this was only a temporary arrangement, and it is very doubtful if Mr. Hill Burton is right in treating the King's Secret Council as one of "the three great Committees of Parliament".[2] It is more natural to regard it as analogous to the English Curia Regis, and not ultimately connected with parliamentary institutions. Like the English Curia Regis, it exercised judicial powers from an early period, probably in connection with its general work of administrative order. It is not easy to distinguish between the jurisdiction of the Council, and that of the Lords Auditors, or Committee of Parliament, elected from 1369 onwards,[3] to decide legal cases, and a further complication arises from the additional Committee of the Estates, appointed by James I in 1425.[3] The jurisdiction of the Council in matters of litigation was further defined by James IV, who, in an act of 1503, provided that "there be a council chosen by the King's Highness, which shall sit continually in Edinburgh or where the king makes residence or where he pleases, and decide all manner of summons and civil matters, complaints, and causes, daily, when they shall occur, so that there shall not be so

[1] There seem, indeed, to have frequently been two royal councils apart from Parliament, and to the smaller and more carefully selected of these the title of "Secret Council" is applied. At other times, there is evidence of only one advisory council apart from the Estates.

[2] Privy Council Register, vol. i, introd. p. xi.

[3] Cf. p. 56.

great confusion of summons to call at the session"[1] of the Lords Auditors, or Judicial Committee of the Estates. We are probably right in connecting this council, chosen by the king, with the judicial powers of the Lords of Secret Council, and it may be an imitation of the English Courts of King's Bench and Common Pleas. The special powers of this body came to an end with the establishment of the Court of Session.

The constitution of the Secret Council, as an executive body, was the subject of legislation during the temporary rise of the importance of Parliament in the beginning of the reign of James IV.[2] In 1489 the King's Council was chosen in Parliament. Its numbers were increased, and an act was passed that this council should act as the advisers of the king till the next meeting of Parliament, and should be "responsable and accusable to the king and his Estates". They were appointed to deal, not only with justice, but also with all matters concerning the sovereign or the realm. A quorum consisted of six members, of whom the Chancellor must be one. But there is no second instance of a parliamentary choice of the members of the Secret Council, nor any indication of any control over them, and, as we have just seen, the members of the Secret Council sitting for judicial purpose were, on the creation of the committee

[1] *Acts*, ii. p. 241.

[2] *Ibid.*, ii. pp. 215, 220.

in 1503, selected by the king alone. Thus matters continued till the minority of James V, when Council and Parliament alike became the object of the intrigues of the factions who were struggling for power, and the Estates were, as usual, powerless. In 1524 the Lords of the Articles chose the Lords of the Secret Council, and in 1528, when the Earl of Arran was in power, he obtained the election, in Parliament, of a Council to advise the king, and of a smaller Secret Council, from both of which the leader of the opposite party, Archbishop Beaton, was excluded. When the records of the Privy Council begin, in 1545, the council was a small body of advisers of the queen-mother and the regent, and there is no evidence that the Act of 1489 was ever really in operation. The Register shows that the council possessed very full executive powers, and it continued to carry on the real government of the country. Its numbers increased during the minority of James VI, the circumstances of which differed widely from those of any previous minority, and, in 1598, the king succeeded in reducing the number of its members to thirty-one, and in rendering it completely dependent on the Crown, while, at the same time, he made it, as far as he could, the paramount authority in the land, not only in matters pertaining to the Executive, but also in connection with justice. It was in no sense a Court of Appeal; but it not infrequently re-

versed judgments of the Court of Session, and sometimes dictated their course of action to the judges. Any such interference arose, however, from the plenary powers of the council as an executive body. After James's accession to the English throne, the Privy Council became the mere instrument of the king's will, and dared in no way to oppose him, while he, on his part, treated it with scant respect or courtesy. At the outbreak of the troubles in the reign of Charles I, it was prominent in opposing the king; but it was afterwards eclipsed by the Parliamentary Committees and by the Assembly. After the Restoration it became again an instrument of absolute monarchy, but from the Revolution to the Union of the Parliaments it possessed very important powers.

With this preface, we may proceed to our main issue: what was the influence exerted by the Scottish Parliament, thus constituted, governed by such rules of procedure as we have described, and surrounded by so many powerful rivals? The early laws which have come down to us as illustrating the powers of the Great Council are mainly concerned — like so many later enactments — with matters of administrative detail. The assizes of William the Lion deal largely with merchandise and the rights and obligations of merchants, and scarcely fall within our province. The work of the Great Council, up to the War of Independence, was to deal with

police and judicial administration, to settle feudal claims and obligations, and to make grants to the king. We find the council consulted on marriage treaties (*e.g.* in 1153 and in 1295); but marriage treaties involved expenditure. The task of advising the king and of carrying on the government must have belonged to a select council of which our constitutional documents bear no trace.

In the reign of Robert the Bruce, as we find the first advance in membership we meet also the first indications of a growth of power. His parliaments took measures for the security and defence of the kingdom; they passed laws regulating the succession; they established the English principle involved in the writs of Novel Disseisin and Mort d'ancestor; they addressed the Pope on the subject of the English claims, and told him of their great deliverance at the hands of King Robert. The great parliament of 1326 made a bargain with the king. In consideration of the "many hardships he had sustained both in person and goods", during his ten years' conflict with the invaders, they granted him "the tenth penny of all their fermes and rents, as well of demesne lands and wards as of their other lands". The collection was to be made by the king's officers; and all who claimed liberties promised faithfully to pay the proper sum to the royal servants. The grant was made only for the king's life, and two con-

ditions were attached to it. Any remission made by the king would invalidate the whole grant. The king must not impose any further taxes (except, of course, the ordinary feudal dues), nor must he take prisage or carriage, except on a journey, and, even then, not without payment. In the last parliament of the reign, the treaty of Northampton, by which England acknowledged the independence of Scotland, was discussed.

The first reign in which the term parliament is really applicable is that of King Robert. At the very beginning of parliamentary history in Scotland, we have, then, distinct precedents for three important constitutional rights—the regulation of the succession, participation in the settlement of foreign affairs, and powers of taxation. If we could regard these as having been claimed by Parliament with consciousness of their full significance, and admitted by the Crown, we might fairly join with the older historians in urging that Scotland can be said to have anticipated the parliamentary institutions of England. The explanation lies in the circumstances of the reign. The king's title consisted in his leadership in his glorious war. The succession was uncertain; the Crown was poor; the nation was loyal. A writer on the English constitution could take these three points of which we have spoken, and trace their history through the centuries. Such a method would be futile here. These rights, and all other rights, stand or fall

together. We can scarcely draw the wonted distinction between political and constitutional history. At times, we have neither, in any strict national sense; only family and personal history.

The leprosy-stricken age of King Robert was cheered by two important events—the birth of an heir, and the acknowledgment of the national independence. When he sank into the grave, he left the heritage of the nation's freedom, and the guardianship of his son, to the loyalty of the nobles. It was an opportunity for Parliament to make good its position. But, as we have already seen, the precedent of 1326 was assumed to be valid only for the raising of money, and the "Parliament" was, at first, only the old council. The political events of the beginning of the reign relate chiefly to the attempt made by England to place Edward Balliol on the Scottish throne, as a vassal-king. When that design had been, not without some difficulty, defeated, we find the Parliament, without the burgesses, conducting all the affairs of the kingdom, and acting, for almost the only time in Scottish history, as the executive. It granted lands and charters; passed ordinances regarding the Staple; arranged (with the co-operation of the burghs) the treaty of peace with England and the ransom of the king; settled the privileges of the church and of the burghs, with which the king had been tampering; made provisions for the Highlands and Islands; and decided the

mode of succession. This, however, is not parliamentary government, though it is more like it than anything else in Scottish history before the revolution of 1640. The king was at the first an infant, and afterwards a prisoner, and his character was at all times weak and contemptible. The nobles were divided by feuds. Nobody was strong enough to make himself supreme. The country was governed by a committee of the nobles. Still, the reign of David II made two contributions to such constitutional theory as Scotland possessed. One of these is an emphatic reiteration of what had been done in the preceding reign. After his return from England, David, in pursuance of a private agreement with Edward III, attempted to persuade the Estates to acknowledge Prince Lionel of England as his heir. The account given of the affair by Wyntoun[1] is notable as the first report of a debate in the Parliament of Scotland:

"That ilke yere quhen that wes don,
A Parliament gart he hald at Scone.
Thare til the Statis of his land,
That in counsal ware sittand,
He movit and said, He wald that ane
Off the Kyng Edwardis sonnys were tane
To be king in to his sted
Off Scotland, eftyr that he ware dede.
Til that said all his lieges, nay;
Na thair consent wald be na way,

[1] *Original Cronykil of Scotland*, book viii, c. 46.

That ony Ynglis mannys sone
In [to] that honour suld be done,
Or succede to bere the Crown,
Off Scotland in successione,
Sine of age and off wertew there
The lauchfull airis apperand ware.
Quhen this denyit was utraly,
The King wes rycht wa and angry;
Bot his yarnyng nevyrtheles
Denyit off al his liegis wes."

The words of the original Act are quite as emphatic.

The Parliament of 1326 had declared that any personal remission of taxation by the king would render the whole grant null and void. The Parliament of 1369 went much further. It enacted that no remission granted by the king to a convicted offender should have any force, and it asserted that any writ of the king was invalid which contradicted any statute or was not in accordance with the common law of the realm. This constitutional statement marks the "highest" doctrine propounded by the Scottish Parliament till the seventeenth century. While it is necessary to guard against laying too much stress on the history of the reign of David II as illustrating the growth of strictly constitutional and parliamentary principles, it would be erring on the other side to deny that here we have a distinct assertion of principle. We have been forced to discount much of the recorded action of Parliament, on the ground that it is merely an instance

of a number of nobles uniting to do what none of them was powerful enough to do alone. But the Parliament of 1369 contained burgesses (at least on the roll of its members); and the wording of its resolution is distinctly suggestive of the existence of some constitutional feeling.[1] The weakness and unpopularity of the king must be allowed due weight on the other hand; and the tone of the record suggests a jealous interference with the personal schemes of the king rather than any broader view of rights.

With the ignominious reign of David II the direct line of King Robert the Bruce came to an end. The question of the succession had already been settled by the Parliament in favour of King Robert's grandson, Robert, the High Steward of Scotland, son of Marjory Bruce and Walter the Steward. We know that Robert had been a prominent figure during the reign of his uncle, and that David II regarded him with no good will. The reign of Robert II is one of the periods of Scottish history which stand in need of more thorough investigation. We possess no account

[1] The control of taxation was maintained by Parliament, and the king was informed that the grants were to be used for special purposes. No general statement was made which could be construed into a definite claim of the right of appropriation of supplies. The "Parliament" merely used for a particular purpose the power which at that moment it chanced to possess. It is the absence of any assertion of or struggle for constitutional principle that is ultimately decisive against the "constitutional" theory. When, as here, the nobles had the power, they said they would do certain things, and they did them. But there is no conscious effort, traceable from generation to generation, such as we find in English history.

of it that is in any way satisfactory. There are wars and rumours of wars; vague traditions of conspiracies; dim hints of a constitutional conflict between the Estates and the King. No figure stands out pre-eminently from the crowd; no man of the time left any impression on succeeding generations. The one event that has given significance to the name of Robert II is the "hontynge of the Cheviot", the battle where the dead Douglas won the field. Two points demand notice from a constitutional stand-point. The family difficulties of the king led to the establishment of the succession by the Estates.[1] But the crown was entailed in accordance with the king's wish, and the fact affords no indication of the power of Parliament. In the second place the early years of the reign mark the renewal of a definite alliance with France, of the circumstances of which we know but little. The instructions to the ambassadors contain a mention of the consent of the *prelati proceres et tota communitas regni* to the proposal for a Franco-Scottish league; and one of the conditions of its acceptance was that the Scottish Parliament alone should decide a disputed succession without French interference —clearly a reminiscence of the pretext of which Edward I of England had availed himself. The French negotiations led to an *imbroglio* with England, to which undue weight has been attached. Robert had, in 1383, agreed to a truce

[1] Cf. John Riddell, *Stewartiana*, Edinburgh, 1843.

with England. A number of his nobles, mainly to amuse a band of French knights, made a raid into the northern counties, in revenge for a recent English incursion. There is no reference to the affair in the Scots Acts. Froissart gives the most detailed account; and there seems to be no reason to attach to it any constitutional value whatsoever. Tytler, whose *History* is still in many ways our best authority, merely remarks that "These were not the days when Scottish barons, having resolved upon war, stood upon much ceremony, either as to the existence of a truce, or the commands of a sovereign".[1] Hill Burton, following Buchanan, regards the incident as the first of a series of instances showing that the power of peace and war was throughout Scottish history "jealously retained by the Estates".[2] We shall have occasion to refer to the other statements on which this bold generalization is grounded. Meanwhile, it is sufficient to say that three years previously, an agreement for a truce had been made at a private meeting between John of Gaunt and the Earl of Carrick, King Robert's eldest son; and we have no evidence that anyone thought of consulting the Estates at all.

During the latter half of his reign, the king was rendered quite incapable both in body and mind by some disease, the nature of which is uncertain. For a few years, therefore, there was

[1] Tytler, *History of Scotland*, iii. 26.
[2] Burton, *History of Scotland*, ii. 351.

considerable parliamentary activity. A laudable effort was made to restore order in the north, by sending Carrick to deal with the rebellious lords. We do not know how far he was successful. He was soon afterwards temporarily disabled by an accident, and his brother, the Earl of Fife, succeeded to his place. These years are marked by certain police measures, and by efforts to suppress private feuds and carry out the decisions of the law courts. It is scarcely possible to say whether Parliament gained or lost ground under Robert II. It is the transition period between the great council of the reign of David II and the rise of individual nobles which alternated with intervals of regal government from the reign of Robert III to that of James VI.

The change of Carrick's name from "John", hateful by reason of its association with Balliol, to that of the hero of Bannockburn, could not avail to alter the weak disposition and character of the new monarch. The first years of the reign were free from conflict with the troublesome neighbour in the south; but they were years of internal feud, almost of anarchy. The career of the Wolf of Badenoch is typical of the time. Possibly the mysterious combat at Perth, where Hal o' the Wynd carved for himself a path to fame, is connected with some attempt to introduce order. Parliament met during these years only to sanction charters and other formal documents. But the meeting of the

Estates in 1398 is a distinct epoch in the story. Burton[1] tells us that "At length the cry of the nation reached and was re-echoed by the Estates in Parliament"; that, although "in this assembly were those who had been the most flagrant and powerful transgressors, yet the Parliament collectively emphatically denounced the evils of the day and sought to find a remedy for them"; and that "no one who could have checked the mischief was spared". If we could accept this view of the situation, it would be an interesting exception to the common belief that an individual may have a conscience, but a body of councillors has none. But Burton's characterization of this parliament is, *pace tanti viri*, a psychological impossibility. He founds his interpretation upon the often quoted Act which attributed to the king all responsibility for the misgovernment of the realm, and called upon him, if he desired to exculpate himself, to show that the blame lay with his officers. The Duke of Rothesay was appointed regent, and he was instructed to consult a council of "wise and leal men". We are not informed under what auspices the parliament met. But it is certain that the king was not responsible for his actions, and that the anarchy was largely due to the rivalry of the Duke of Rothesay, the king's eldest son, and the Duke of Albany, a brother of King Robert, who, as Earl of Fife,

[1] Burton, *History of Scotland*, ii. 373.

had held the title of "Governor" in the end of the preceding reign. They and they alone could have "checked the mischief". The probability is that the meeting of Parliament was really an incident in their struggle for power; that Rothesay was powerful enough to secure the regency; and that Albany succeeded in circumscribing his power by a council and by a decision that Parliament was to be summoned once a year. But it is not necessary to allow even this importance to the appointment of a yearly parliament. The Act says that the king shall hold a parliament "swa that his subjects be servit of the law". It was to meet merely to overtake its judicial work—the decisions in feudal quarrels and on complaints of robbery and oppression. Our explanation of the *motif* of the meeting of the Estates of 1398 receives some confirmation from subsequent events—the misgovernment of Rothesay, his imprisonment by the Duke of Albany, his mysterious death, and the peaceful succession of Albany to the governorship without, so far as the records go, any appointment by the Estates whatsoever.[1] The view we have taken seems the most probable when we consider the circumstances, the composition of Parliament, and the whole tone of the reign. It is, however, not incompatible with an acknowledg-

[1] A declaration was made to Parliament regarding Rothesay's death, in answer to rumours against Albany. But this was merely a formal protest of innocence made to a semi-judicial body.

ment that there possibly existed in 1398 a neutral party which was able to wield a certain influence in the fierce division of parties. It is noteworthy that a resolution was passed that the names of Rothesay's councillors who agreed to an act of government should be recorded, so that he and they alike might be responsible to the Estates. It would be rash to speak dogmatically in the present condition of our knowledge. There is a strong temptation to accept this as a constitutional movement; but it must be remembered that it is at least equally probable that we have here a device by which Albany aimed at ridding himself on the first opportunity of his reckless and dissipated nephew and of that nephew's favourite counsellors.[1] The great pitfall of Scottish historians has been to read later or foreign ideas into the scanty records of the national history.

If they are right who argue that under David II and the two Roberts we have a discernible impulse towards parliamentary government, we certainly lose all trace of it after the death of the Duke of Rothesay. The Duke of Albany kept complete control of the country till his death in 1419, when he was succeeded by his son, without any trace of parliamentary sanction. The

[1] It may be remarked that the Act does not say that "in all time coming" a king or a regent is to be responsible, although it endows Rothesay with all the powers of a king. It was passed solely with reference to the immediate circumstances.

government of the first Albany was firm, but he ruled as absolute master. A parliament had met in 1402, before Rothesay's death, and had passed some useful acts for the maintenance of internal order, probably under Albany's guidance. The most important of these refer to justice, and illustrate the difficulty of dealing with hereditary sheriffs. While the country was divided between Rothesay and Albany, Parliament still had a place. After Rothesay's death it practically disappears till a great council was summoned in 1423 to discuss the propositions for the king's return, which involved the question of a ransom.

Under the personal rule of James I we have the best instance in Scottish history of government in accordance with what would now be called the theory of the Scottish constitution. But it was not "constitutional government" in our modern derived sense of the word. The Parliament was not intended to be the ruling body. King James was a masterful man, and he aimed at using the Parliament as the best means of creating a powerful monarchy, not at giving it a power to rival his own. His experience immediately on his return does not strengthen our belief in the "Parliamentarianism" of the preceding century. He found it impossible to persuade the smaller barons to attend, even by deputy, and he had to threaten with the penalties of treason his great lords who declined to be present. The burgesses alone seem to have

regarded with sympathy his meditated reorganization of the kingdom. The acts of his reign provided for the defence of the country on the analogy of the English Assize of Arms. They dealt with labour disputes; they instituted the system of licensed beggars to which we are indebted for Edie Ochiltree, and forbade anyone to beg between the ages of fourteen and seventy. The numerous Parliaments that met between 1424 and 1437 are full of police regulations, some of them petty enough, but all bearing the impress of the master-mind of the king. He vindicated his orthodoxy by enactments against Lollardry, while he emulated the English kings in their prohibitions of papal interference.[1] But, above all, the reign is memorable for the king's attempt to enforce justice.[2] His great difficulty lay in the independence of the sheriffs, who continued to impede all improvements for three centuries after his death. The history of Scotland is full of complaints on this subject. "The greatest hindrance to the execution of our lawes in this countrie," wrote a later king, "are these heritable Shiredomes and Regalities, which being in the

[1] Acts against "baratry"—*i.e.* the purchase of benefices at Rome.

[2] The king's interest in the maintenance of justice is illustrated by Fordun's well-known story that, on his return to Scotland, when he found the misery caused by the incompetence and negligence of the second Albany, he vowed to devote his life to the restoration of order: "Si Deus mihi vitam dederit, ipso auxiliante, et vitam saltem mihi caninam praestante, faciam per universum regnum clavem castrum, et dumetum vaccam, absque possessoris ambiguo ad modum custodire" (*Scotichronicon*, xv. 34).

hands of the great men, do wracke the whole countrie."[1] It was more easy to ordain frequent sessions of "the Chancellor and discreet persons", to forbid riding to the court "with multitudes of folkis na with armys", and to threaten the punishment of negligent sheriffs, than to carry out these schemes. The only guarantee for their receiving any obedience lay in the personal strength of the king. With the tragedy at Perth, which rendered the Christmas of 1437 for ever memorable, the great plans of the first James lost all chance of fruition. Parliament had done good work during his reign. It had conferred a legality on his ordinances which rendered them less the creatures of the royal will and weakened the protests of the nobles against the king's tyranny.[2] But we cannot reasonably credit the Estates with any initiative. The acts are the king's acts. Even the judges—the lords of session—were no longer elected by Parliament; they were chosen by the king.

From the murder of King James I to the commencement of the personal rule of his son, Parliament rarely met, and there is no evidence of any activity. The minority was occupied with the miserable rivalry of Crichton and Livingston, and with schemes for preventing the undue growth of the power of the house of Douglas.

[1] King James VI, *Basilikon Doron*, Book ii.

[2] The picture of Graham, the king's murderer, as an outraged exponent of constitutionalism is a pious imagination.

It is an illustration of how far Scotland was from possessing a parliamentary theory, that Douglas was credited with an intention of setting up a Parliament of his own. His aim seems to have been to create for himself a sort of kingdom with some vague feudal dependence on the King of Scotland. Beyond some administrative acts of 1449, there is no parliamentary progress to record till after the second and final defeat of the great House in 1454. The Douglas influence was so strong in 1449 that they passed an act which rendered it lawful to seize by force, with the consent of the three Estates, the person of the young king, who was growing restive under the Douglas domination.[1] When James of the Fiery Face at last succeeded in throwing off the yoke, he set himself to carry out the work that his father had left unfinished. His legislation covers some pages on the statute book. But it is mainly a repetition of the work of James I, and many of the acts are really decisions in private cases. Pitscottie[2] describes to us the suitors that thronged when Parliament met—"widows, bairns, and infants, seeking redress for their husbands, kindred, and friends that were cruelly slain by wicked bloody murderers". The reign is not devoid of some progress in justice and police regulations. But it exemplifies the

[1] This has been viewed as a serious constitutional claim (*e.g.* Ridpath, *op. cit.*, p. 4), and it illustrates the type of error on which the "constitutional" theory has thriven.

[2] Edition of 1778, p. 24.

tendency of the Scots Parliament to exercise the functions merely of a court of justice. Under good influence, like that of James II and Bishop Kennedy, it decided causes in favour of the poor and the oppressed, and made general regulations to meet all such cases in the future. Under the influence of some ambitious nobleman, it passed partisan measures which rendered legal his treatment of his opponents. King James VI[1] did not speak purely out of prejudice against the power of parliaments when, years before the fateful journey that brought him into contact with the English Commons, he wrote:

> As a Parliament is honourablest and highest judgement in the land—if it be well used—so is it the injustest judgement seat that may be being abused to men's particulars; irrevocable decreets against particular parties being given therein, under colour of generall lawes, and oft-times the Estates not knowing themselves whom they hurt.

The credit of the wise legislation which marked the last six years of the life of James II belongs to the king and the Bishop Kennedy of St. Andrews. Parliament was merely a good tool in wise hands. There is no proof that it ever really decided—or even had a voice in deciding—anything of importance. In March, 1457–58, all the leading acts of the reign were confirmed, and the Estates petitioned the sovereign "with all humilitie . . . to be inclynit with silk diligence to the execucione of these statutis, acts and

[1] *Basilikon Doron*, Book ii.

decretis above writtyn that God may be emplesit of him", and congratulated him on the peace of the realm. Two years later, in prosecuting a war[1] with "our enemy of England", James, "more curious than became him or the majesty of a king", was watching the firing of a cannon, before Roxburgh Castle, when it exploded, and Scotland was again plunged into the troubles of a minority.

The death of the king made at first but little difference to the conduct of affairs. Bishop Kennedy continued to rule till his death, in 1465. No sooner did the statesman and patriot disappear from the scene than a coalition headed by Lord Boyd seized the young monarch, and carried him in triumph from Linlithgow to Edinburgh. A parliament was at once summoned to sanction their proceedings. The king was made to declare that he had gone willingly, and the Estates created Boyd James's governor, and somewhat illogically granted him a full pardon. Under the sway of the Boyds, Parliament met every year; but it was merely a tool in the hands of Lord Boyd, who combined in his own person the offices of governor of the royal family, justiciar, and lord chamberlain. In 1469 the Boyds fell. A strong rival party had formed an opposition of which we find traces all through the brief term of power enjoyed by Boyd. It is significant that this opposition is found every-

[1] There is no evidence that the Estates knew anything about this war.

where except in Parliament, which unanimously agreed to measures against the malcontents. The parliamentary tactics of the Boyds were used against themselves. A meeting of the Estates was at once called by the king, now under the influence of Lord Hamilton, and the whole of the late ruling faction were condemned to the penalties of treason, on the ground of the king's seizure, for which the same body had, three years before, solemnly pardoned them. Their vast possessions were confiscated. The Hamiltons, who had gained the confidence of the young queen, continued to rule. So far the political history of the reign is clear, and the position of Parliament falls at once into line with it. But we dare not attempt to unravel the tale of intrigue which convulsed the country during the next twenty years. The reign of James III is an unsolved problem. But the constitutional feeling may be illustrated by a representative incident. The Parliament of 1482 was completely under the control of the Duke of Albany. The Estates passed acts which gave to him control of the property of the Crown, and power over the life and liberty of the lieges. One year later it rescinded all these acts and proscribed the duke. They may be right who have found great constitutional activity in the mysterious records of the reign. It may be that amid all the disorder and confusion the burgesses and some neutral prelates were able

to exercise some influence. It is certain that there was as usual no lack of attention to judicial and police requirements. But until some intelligible and consistent account of the reign has been offered, the sceptic may be pardoned for refusing to believe that out of these unruly struggles of selfish and grasping lords came calm constitutional progress.[1]

The rebellion in which James III lost his life was, as usual, discussed in Parliament: that is to say, the first Parliament of the new reign declared that it was not a rebellion at all, and that, whatever it was, the new monarch and his advisers were not responsible for it. At first, James IV was in the hands of the nobles who had persuaded him to enter the field against his father. His second Parliament is memorable for a claim raised by the Lords of the Articles "that Compts and Rekyning be takin of all the king's officiaris, his thesaurars and comptrollers, auld and new of our soverane lord's tyme that now is and that auditors be chosen and named by the avise and autorite of this Parliament". This is not the tone in which we

[1] The only incident that tells for the "constitutional" interpretation is the refusal of the Lords of the Articles to allow the king to aid Louis XI of France in 1473. But the action of the Estates was simply the action of the chancellor, Evandale, and his party, who ruled the king with a rod of iron. It is very likely that there was, especially among the clergy, a strong general feeling against going to war, and this feeling strengthened the king's jailers. But the opposition of a small ruling clique of nobles to the whim of a powerless monarch is scarcely to be regarded as a great constitutional fact. It must also be remembered that the few who constituted the Lords of the Articles were virtually the Estates.

have been accustomed to hear the Parliament speak. It is coincident with the appointment in Parliament of "our Sovereign Lord's Secret Council", and with a resolution that the king has "humilit his highness", so far as to promise to act by its advice. The council was composed solely of prelates and great lords representing mainly the party in power, although including the patriotic bishop of Aberdeen,[1] who had been a faithful servant of James III. We have here a distinct constitutional advance. The king owed his power, not to a small clique such as had been frequently formed in the late reign, but to a large confederation of the greater nobles, who took the opportunity of legally defining the position of the sovereign. But within a few years we find James ruling alone. He was an able man and he ruled well. The Parliament met frequently and did what the king wished. We find in its records references to embassies to Spain, France, and England, and to the king's marriage. But we know, from the foreign correspondence of England and Spain, that the policy of Scotland depended upon the king, and on him alone. Parliament regulated in certain cases the incidence of taxation: at all events it passed acts for this purpose. Contemporaries did not imagine that the Estates alone had powers of taxation. John Major,[2] writing a few

[1] William Elphinstone.

[2] *History of Greater Britain*, p. 352 (Scottish Hist. Soc. ed.).

years after the strong hand of James IV had been removed, made this remark:

> As to the levying of taxes, I will limit my opinion to this expression: that in no wise should the power be granted to kings save in cases of clear necessity. Further it belongs not to the king nor to his privy council to declare the emergence of any sudden necessity but only to the three estates. . . . I am aware that Aristotle in his second book of the *Politics* says wisely that laws are not to be changed; yet, in the judgment of the wise, they may be modified in accordance with the demands of equity.

Major remarks on the difficulty of collecting taxes in Scotland and on the folly of the kings in alienating confiscated estates, "since there is no regular taxation of the people". His remedy is, as we have seen, the regulation of taxation by Parliament. He was a scholar and a traveller, and it matters not how he came to think as he did; but it is clear that he advocated a change.

Nor did James regard the Estates as possessing "powers of peace and war". Pedro de Ayala[1] tells us of a conversation which he held with the king which gives us the royal views: "He said to me that his subjects serve him with their persons and goods, in just and unjust quarrels, exactly as he likes, and that therefore he does not think it right to begin any warlike undertaking without being himself the first in danger".

[1] Pedro de Ayala to Ferdinand and Isabella, 25 July 1498 (*Spanish Calendar*, i. no. 210). The context shows that the remark was incidental, and was induced by an allusion by the ambassador to the king's behaviour in battle.

Boece, in his biography of Elphinstone,[1] tells us of councils which preceded Flodden: but they are meetings of the king's private advisers. It is instructive to note that one parliament was held with reference to the English war. About a fortnight before the battle, what is termed "Parliament" was held at Twiselhaugh. It was composed of "all his lords being there for the time in his host", and it secured that the heirs of all who were slain should be exempted by the king from certain feudal dues. The exemption can only have been the king's own act. It is an additional testimony to the purpose for which the Scots Parliament normally existed—to ratify what somebody else had done. If there are vestiges of constitutional claims at the opening of the reign, there are none at the end of it. But though the Parliament had not been free, neither had it been idle. It was a time of unusual prosperity and of great expansion of trade. The pages of the statute-books are full of useful acts, especially for the encouragement of shipping, in which the king was greatly interested.

While the "lilt of dule and woe" which followed the disaster at Flodden was still filling the land, the country was again plunged into the misery of feudal quarrels. The ambition of the lords, and the caprices of the queen-mother—a true sister of Henry VIII—fill up the minority of the king. Parliament met only to ratify appointments which

[1] *Lives of the Bishops of Aberdeen*, pp. 102–5 (New Spalding Club ed.).

it had no power to question, and to deal with official business. It is possible that the Estates chose the Duke of Albany as regent. But it is almost certain that the impulse must have come from some of the leading nobles or prelates; and when we recollect that the "Estates" meant the Lords of the Articles, it is scarcely necessary to discuss the matter as presenting even the remotest possibility of a parliamentary choice. James V was nominally declared of full age in 1524. But he was then only thirteen years of age, and the "erection of the king" was merely a pretext for the transference of the power from Albany to Queen Margaret, the Parliament of course approving, when it was told to do so. Until the king became personally responsible for the government, there was little done in Parliament. If we except a slight activity in 1526 (mainly relating to such incidental matters as the capture of ships and the furnishing of the royal residences), there is scarcely anything to record till we reach the year 1535. Parliament met; but its business was purely of an official nature. All that we know of the Parliament of May, 1527, for example, is that it issued two continuations of summons, one "reduction" of a process of forfeiture, eleven ratifications of charters, and received four protestations. A single official, appointed for the purpose, could have done all the work.

James V is known in history as the "Com-

mons' King". We are therefore prepared to find during the five years of his personal government a considerable amount of social legislation of the ordinary type, dealing often with trivial details, which show that the burgesses were in co-operation with the king. But of parliamentary interference there is not a trace. The hostilities with the "auld enemy", a mischance in which broke the king's heart, seem not to have been referred to the Estates in any way. The reign of James V was contemporaneous with the English Reformation, and before the king died the new doctrines had gained considerable strength in Scotland. But James himself, after his alliance with the House of Guise, had become more rigidly orthodox, and his last Parliament passed acts enjoining obedience to the Pope, the worship of the Virgin Mary, and prohibiting any convention to discuss Scripture. The royal influence was supreme.

The stories of the minorities of James II, James III, and James V read almost like repetitions of each other. The names and dates vary; the essential facts are the same. The minority of Queen Mary is widely different. The difficulties no longer arise from petty squabbles and contemptible personal intrigues. There is a deeper significance in every movement. It is a conflict, not of men, but of principles. On the one hand was the ancient French alliance, associated with the ancient faith. On the other

hand stood the possibility of new relations with England and the acceptance of the Reformed doctrines. At first the revolutionary party held the power. The Scottish nobles had observed the English king's dealings with the lands of the Church. In Scotland there was no masterful Tudor to enrich himself. We find accordingly the acceptance of the marriage proposals of Henry VIII, and, significantly enough, among the domestic legislation of the time is an act making it lawful "to haif the haly write, baith the new testament and the auld in the vulgar toung in Englis or Scottis of ane gude and trew translation".[1] The "English wooing", which passed into a proverb in Scotland, did not merely put an end to the suggestion of a marriage between Queen Mary and Edward VI; it altered the situation in Scotland, and deprived the reforming section of their hopes of success, by forcing the nation into a French alliance. In 1545, Parliament, always obedient, inveighed against "heretiks and thair dampnable opinionis incontrar the fayth and lawis of halykirk". But it was not till the regency was transferred from the Earl of Arran (now Duke of Chatelhérault) to the queen-dowager (in 1554) that the success of the conservative section in the realm was complete. "Thus", wrote Knox, in reference to the event, "did light and darkness stryve

[1] The burgesses and "a parte of the nobilitie" had petitioned for the act (Laing, *Knox*, i. 100).

within the realm of Scotland; the darkness ever befoir the world suppressing the light." The reservation, "befoir the world", is significant. Knox knew that every year since the death of James V had added converts, ever increasing in number, to the new faith. But all the time Parliament became more and more rigidly orthodox.

The struggle between the two parties found an issue in open warfare. The Protestants formed themselves into "the Congregation of the Lord". But they did not look upon Parliament[1] as the proper field for their contest with "the Synagogue of Satan". The insurgents and their English allies gained no success on the field; but the death of Mary of Guise and the absence of her daughter in France procured for them the results of victory. Scotland was definitely in the hands of the Protestant nobles.

Parliament met in 1560, and abolished the Roman Catholic faith within the realm. But, as we know from Knox's *History*, Parliament merely ratified what was otherwise settled. Behind it were the nobles and the Protestant clergy. The ministers petitioned the Estates to establish the Protestant faith. They were told[2]

[1] In 1558, indeed, before the outbreak of hostilities, the Lords of the Congregation asked the queen-regent to abrogate the acts against heresy, and Mary made the pretext of her refusal the difficulty of obtaining the consent of the prelates (Spottiswood, *History of the Church of Scotland*, sub anno 1558).

[2] Laing, *Knox*, ii. 87.

"to draw in playne and severall heidis, the summe of that Doctrine, quhilk they wald menteyne, and wald desyre that present Parliament to establische, as hailsome, trew, and onlie necessarie to be beleivit and resaivit". Within four days Knox and his colleagues presented the very comprehensive Confession of Faith which continued for nearly a century to be one of the Standards of the Church. It

> was redd, everie article by itself . . . and the vottis of everie man war requyred accordinglie. Of the Temporall Estate onlie voted in the contrair, the Earl of Atholl, the Lordis Somervaill and Borthwik; and yit for thair disassenting thei produced ne better reassone, but "We will beleve as oure fatheris beleved".

Acts were passed against the mass, and against papal supremacy.[1] But the whole of the desire of the ministers was not accorded. The First Book of Discipline did not receive parliamentary sanction, because it contradicted the views of the nobles as to the disposal of Church property.

While, then, the Parliament of 1560 was in some sense the creature of the Assembly, and though its resolutions were conditioned by the wishes of the nobility, it occupies a very important position in Scottish constitutional history. We do not lay much stress on its opposition to the sovereigns. That, in itself, was neither novel nor remarkable in any way. It was obedient to the powers of the day. But it is the first Parlia-

[1] For other important points in connection with this Parliament, cf. *supra*, pp. 24–5.

ment where the burgesses and the smaller barons attended and voted in accordance with their own feeling. They were Protestants and they were in complete agreement with those who were guiding the meeting of Estates. It is also the first Parliament which had the consciousness of power. They and their leaders were making a great national change. The people were beginning to learn what possibilities they possessed. The Parliament of 1560 was the first step towards a constitutional theory for Scotland.

This meeting of the Estates has still another aspect. It was significant that an assembly of ecclesiastics drew up the acts by which the Parliament became famous, for we have here the first appearance in constitutional history of a greater than the Parliament. Into the General Assembly of the Church there soon drifted those principles and aspirations that might have given life to the Estates. We shall have occasion to notice the part taken by the Assembly in the coming struggles; but it may be well here to indicate its claims. These claims were not formulated in 1560. They were of gradual growth. We find them implicit in the writings of Knox; but they were first definitely advanced by a man of no less intellect than the rugged reformer—Andrew Melville, the antagonist of James VI. Melville, in his frequent interviews with the king, "talkit all his mynd in his awin manner, roundly, soundly, fully, freely, and fervently". But he

never stated his view in more explicit terms than on the memorable day when, after calling King James "God's sillie vassal", he addressed him thus:

> And thairfor, Sir, as divers tymes befor, sa now again, I mon tell yow, thair is twa Kings and twa Kingdomes in Scotland. Thair is Chryst Jesus the King, and his Kingdom the Kirk, whase subject King James the Saxt is: and of whase Kingdom nocht a King, nor a lord, nor a heid, bot a member.[1]

Knox, in his interviews with James's mother, had taken lower ground. But Melville was not using idle words. There was no power in the land that could cope with the Church. From 1567 the Assembly met some days before the opening of Parliament, and prepared Church business, which was generally the principal item on the parliamentary list of *agenda*.[2] As early as 1565 it sent Queen Mary an overture against "the papisticall and blasphemous masse . . . not only in the subjects, but also in the Queen's Majestie's awin person", and Mary's reply was couched in sufficiently humble terms.[3] Two years later it issued instructions to the Parliament about the ratification of the Acts of 1560, the question of the Darnley murder, and the treatment of the young prince.[4] It claimed the old ecclesiastical jurisdiction in all questions of morality, religion, edu-

[1] *Autobiography and Diary of Mr. James Melville*, p. 370 (Wodrow Society). The year is 1596.

[2] *The Book of the Universall Kirk of Scotland*, i. 329, 362, &c. (Maitland Club).

[3] *Ibid.* i. 59. [4] *Ibid.* i. 506.

cation, and marriage.[1] It imprisoned offenders, and it informed magistrates how they were to act and threatened them with the censure of the Kirk. Its sentence of the Greater Excommunication involved the cessation of human intercourse[2] and the forfeiture of legal rights. The presbyterian system of Church government, with its careful distribution of authority, was able to make such a sentence a terrible reality. Not only the General Assembly, but the Synod or the Presbytery or the Kirk Session, was a court of justice. The records which have been published show with what vigour their power was used. Men of position and influence quailed before those stern judges. The old Church had often been powerful, under a strong bishop. But the secular forces gained strength while a see was vacant, and sometimes secured the appointment of a lay figure. A Presbytery never died: its members might change, but it continued its work, calmly and relentlessly, "grinding exceeding small".

Nor was the power of the Church confined to criminal jurisdiction. Two instances will serve to show the extent of its influence. In 1594,

[1] *The Book of the Universall Kirk of Scotland*, passim.

[2] "We farther give over in the hands and power of the devill the said N., to the destruction of his flesh; straitlie charging all that professe the Lord Jesus, to whose knowledge this our sentence sall come, to repute and hold the said N. accursed, and unworthie of the familiar societie of Christians; declaring unto all men that suche as hereafter, before his repentance, sall haunt or familiarlie accompanie him, are partakers of his impietie and subject to the like condemnation."—Sentence of excommunication in the *First Book of Discipline*.

King James asked the presbytery of Edinburgh to "procure the leveing of six hundreth footmen, and four hundreth horsemen" to suppress a rebellion; and the presbytery complied with his request.[1] At the meeting of the General Assembly in March, 1596, King James was present. "He urged a contribution of the whole realme, not to be lifted presentlie, but when need sould require", and, to gain the sympathetic consideration of the Assembly, he promised that "his chamber doors sould be made patent to the meanest minister of Scotland, there sould not be anie meane gentleman in Scotland more subject to the good order and discipline of the Kirk than he would be."[2] It would be easy to multiply examples.

It was no case of ecclesiastical tyranny. The leaders of the Church might well apply to themselves the promise, "a willing people in the day of thy power". Modern democrats have denounced the Assembly as the oppressors of a priest-ridden populace. But the Assembly had made possible the existence of a public opinion in Scotland, and the public opinion of Scotland was with the Assembly. It is true that the documents to which assent was required appear to us crowded with metaphysical subtleties, to some of which no man who valued his freedom of thought could subscribe; but it must be remembered that these cast-iron theories regis-

[1] Calderwood, *Historie of the Kirk of Scotland*, v. 341–2 (Wodrow Society).

[2] *Ibid.* pp. 396–7.

tered the results to which that generation had attained. Moreover, it was in the Church courts, first of all, that Scotsmen learned the value and the power of debate. The Church did for Scotland what the Parliament accomplished for England. The Assembly was not a meeting of ecclesiastics alone. The strength of the Church lay in the presence of lay members in her courts,[1] to which there came earls, lords, and barons, and commissioners from provinces and universities. Each member, be he lord or peasant, the minister of St. Giles, or a Glasgow baillie, had equal right to speak, and no man's vote counted for more than that of his neighbour. The history of Scotland from the Reformation to the Revolution is the history of the General Assembly. The motto which it shared with other reformed churches is the story of the seventeenth century. *Nec tamen consumebatur.* Yet the flames burned fiercely enough.

From what we have said of the Assembly, the inference as to the Parliament is clear. It follows that its history between the year of Queen Mary's return and the day when Andrew Melville addressed King James in the words we have quoted is one rather of retrogression than of progress; nor did it, at any subsequent period, overawe the General Assembly. Further

[1] Cf. *Presbytery Examined: an Essay on the Ecclesiastical History of Scotland since the Reformation*, by the late Duke of Argyll; and the various books on Scottish Church history.

than this point we cannot go in any detail. The history of Scotland between 1567 and 1707 is so intricate, and has been so thoroughly expounded, that only a brief concluding sketch is necessary in a thesis of the present nature, however essential to a constitutional history of Scotland. In 1560 it was, to some extent, a free parliament, as Knox said, and it could claim to represent popular opinion. During the reign of Mary, as we have already seen, it relapsed into its old position of ratifying the acts of the privy council. Nor was the Parliament which met in December, 1567, while the hapless queen was spending at Lochleven her first year of captivity, in much better case. The country was divided between "king's men" and "queen's men". The Estates did what Murray and Morton wished to be done. There is one provision which, though in conformity with Murray's views, does not bear the impress of his hand. It reminds us that the author of the *First Blaste against the Monstrous Regiment of Women* was present as an assessor in the Parliament when we read: "Als it is thocht expedient that in na tymes cuming ony wemen sal be admittit to the publict autoritie of the realme or functioun in publict government within the same". It was not a deliberate attempt to alter the succession: it was merely an additional illustration of bad feeling towards the captive queen.[1] Until the

[1] The same Parliament asked the council to bring forward its evidence

"Black Acts" there is little in the proceedings of the Parliament which calls for remark. The meetings were largely occupied with the usual sentences of forfeiture. Sometimes the queen's party held rival parliaments, and on such occasions everybody in Scotland of any importance was declared a traitor by one side or the other. A considerable amount of valuable work was done. Murray, whatever his personal character, was a statesman, and he left the impression of "a still strong man" upon those who survived him. His policy and that of his successors was guided by their dependence upon Elizabeth and by their associations with the Assembly. Parliament was largely occupied with the settlement of the Church, but it found time to regulate matters of police and trade. The influence of the Assembly continued to be paramount till 1584, when, for the first time, King James was able to assert his personality. The "Black Acts" of that year included a declaration of the king's royal power over all subjects, the supremity of Parliament, the illegality of conventions or assemblies not sanctioned by the king, and the subjection of ministers of the Church to the

against Mary. If we knew all that lay behind this motion, we should probably possess a key to the problems on which so much ingenuity has been exercised. The statement, frequently quoted, that the Estates passed a solemn resolution affirming their power to depose the sovereign rests solely on the authority of Buchanan, and is directly antagonistic to the language both of the *Acts* and of the Scottish commissioners' protestations at York and Westminster, in which Mary is represented as abdicating of her own free will.

civil courts. No weight whatever can be given to the phrase "supremity of Parliament". It meant only that the king knew that he could use the Parliament as he liked, while the Assembly was as yet beyond his control. We do not intend to enter into the complicated story of the conflict between the king and the Church. But from 1584 the Parliament was generally at the disposal of the king. Still more is this the case after the year 1603. The Parliament became the mere shadow of the royal power. It declared in 1606—the year after the defiance of the king by the Aberdeen assembly—"our soverane monarche, absolute prince, Judge, and governor over all persones, Estaittis, and causis, baith spirituall and temporall, within his said realme". Only twelve years had elapsed since Andrew Melville's speech. The union with England meant that the king had power to coerce Scotland. The same obsequious Parliament outraged the national sentiment by the first establishment of episcopacy, although the assembly was still so strong that the bishops protested that there was no design to alter the discipline of the Kirk, "and submitted themselves in all time comeing to the judgement of the General Assemblie". Parliament was governed by the Lords of the Articles, and they were the creatures of the king. James did not exaggerate when he said:[1] "Here I sit and governe it

[1] Speech at Whitehall, 31st March, 1607.

[Scotland] with my pen, I write and it is done, and by a Clearke of the Councell I governe Scotland now, which others could not do by the sword". The satirist who accompanied King James on his visit to Scotland in 1617 gave vent to a merited sneer at the three Estates. "Their parliaments", he wrote, "hold but three days; their statutes are but three lines."[1] The anonymous apologist who replied made no effort to meet the accusation. It might have been King James himself that wrote: "For the brevitie of your parliaments ye are beholden to your wisdom, for the brevitie of your statutes to your justice".[2]

The conduct of affairs in Scotland remained, at first, unchanged by the death of James VI. The few parliaments of the reign are occupied with taxation, ratification, and other formal business. James had been statesman enough to fear the influence of Laud in Scotland.[3] Charles allowed a meddling ecclesiastic to stretch too far the allegiance of his people to their ancient House. The Parliament of 1628–30 is of no importance in the history of Scotland. It was poorly attended, and its deliberations were a foregone conclusion. The Parliament of 1639 was crowded, and it began its work with a protest against the method of electing the Lords

[1] "A Perfect Description of the People and Country of Scotland", printed in the *Abbotsford Miscellany*.

[2] "Answer to the 'Perfect Description'", *Ibid.*

[3] Hacket, *Scrinia Reserata*.

of the Articles. The protest was feeble enough to be the first faint symptom of a revolution; but the revolution had already taken place. The people were led as before, not by the Parliament, but by the Assembly. The Glasgow Assembly of 1638, which continued to meet in spite of its "dissolution" by the king's commissioner, was the means by which a fatal blow was given to the first *régime* of episcopacy and absolute monarchy. It rendered possible the revolutionary Parliament of 1640. We have already noticed the more important of its proceedings. It continued to look for support to the Assembly. It grounded its resolution against the presence of prelates in Parliament on the Act of Assembly abolishing episcopacy. In 1641 it beseeched the assembly to sit in Edinburgh instead of in St. Andrews, sending "some of everie estait to represent" its sense of "the great necessitie at this tyme of the concurring advyse of both the Assemblie and Parliament", and promising "to sett down ane solid course for the beiring of the chairges of the Commissioners to your yeirlie Generall Assemblies".[1] From 1641 to 1650 Scotland was ruled by the Scottish Parliament, in conjunction with the Assembly. The Estates undertook the management of the war, carried out the negotiations with the English Parliament, and with the king, and were at the same time able to give due attention to the

[1] Letter of the Estates to the Assembly, 17th July, 1641 (*Acts*, v. 625).

minutest local details. Like the Reformation Parliament of 1560, the Covenant Parliament of 1640 marks a distinct stage in Scottish constitutional history. After we make all allowance for the revolutionary nature of the time, and for its dependence on the Assembly, it remains true that it grew to occupy a position different from that of any of its predecessors. It had learned much from England. Not for the first time, but more emphatically than ever before, do we find the Estates adopting the language of the English parliamentary opposition. On the other hand, the Scottish Parliament was in some ways in advance of its English sister. When Charles I paid his second visit to Scotland, in 1641, he found himself a puppet in the hands of his erstwhile obedient Estates. As we have seen, the Lords of the Articles became open committees of Parliament, and they were jealously watched by their colleagues. Parliament claimed the appointment of the privy council, and all the officers of state.[1] The reader will note with surprise the large amount of space occupied by the proceedings of Parliament during these years. Much is merely the record of judicial acts, and much was done by Parliament that we should regard as pertaining to the executive. For our present purpose it is unnecessary to descend to particulars. Our main contention is that the

[1] Some Brieffe Memorialls and Passages of Church and State from 1641–49 (*Historical Works of Sir James Balfour*, vol. iii.).

supersession of the royal power was rendered the more easy and the less significant because of the official character of the normal parliamentary procedure. The Estates, having the power to defy the king, could point to their own history as good warrant for their use of it. The sovereign had never dared to prorogue them against their will, they argued. Charles knew that they spoke the truth, and he could but accept the position. If the record of the Estates was one long submission, it did not contain a defeat, and it was capable of two interpretations. So, after the death of the king, the men who had just executed Huntly sent to offer terms to Charles II. It is significant that there were four representatives of the Estates, and three of the Assembly. The power was still conjoint, although Parliament during these years of struggle had learned to act. When the young king came to Scotland he found himself little more than a prisoner in the hands of the grim, staunch fearless men who surrounded him. He was forced to sign the most humiliating confessions of the sins of his family, and he abjured "Prelacy and all errors, schism, and profaneness". Cromwell's victory changed the aspect of affairs,[1] and ended, for the time, the history of the Parliament of Scotland. The short-lived "union" did not take effect till 1654, but from the date of the battle of Dunbar both Assembly and Estates

[1] Cf. *Scotland and the Commonwealth*, ed. Firth (Scottish Hist. Soc.).

had to acknowledge their master. In 1653 the General Assembly was reduced to plead "that we were ane Ecclesticall synod, ane spirituall court of Jesus Christ, which medled not with anything civile".[1] But the Assembly ceased to meet: and the Government of Scotland was neither ecclesiastical nor civil, but martial. The Parliament agreed to the union: once again because it was ordered so to do.

The story of the Cromwellian parliaments is no part of our subject. Scottish counties and burghs were represented, and an elaborate scheme was prepared to adjust the proper proportions—a scheme which afterwards was the model for further developments.[2] Two acts were passed by the united Parliament which affected the current of Scottish history—the establishment of free trade with England and the abolition of feudality.

The Commonwealth passed away, and Scotland had once more its Covenanted King. The irony of fate used the Committee of Estates, the body which Charles I had known as an enemy, to deliver the country to an absolute monarchy. The Committee of Estates was followed, when the king's commissioner arrived, by the meeting of the Restoration Parliament. The main difficulty was the religious one. Parliament was

[1] *Principal Baillie's Letters and Journals*, iii. 225–26, ed. Laing.

[2] *The Government of Scotland during the Commonwealth* (*Acts*, vol. vi, pt. 2). See also Mr. Firth's volumes *Scotland under the Commonwealth* and *Scotland and the Protectorate* (Scottish History Society).

reduced to the position it had occupied before 1638. In 1661 it passed an act which rescinded all its own statutes since 1640. It humbly confessed the king's right to choose all officers of state, and members of the privy council; it acknowledged his right to call and prorogue Parliament; it re-established the tyranny of the Lords of the Articles. It recalled bishops to Parliament, and proscribed the national religion. Even when the English Parliament had recovered from its emotional loyalty, and begun to resume its old attitude to the king, the Scottish Estates remained absolutely at his disposal. When, later still, the succession was disputed in England, an act was passed in Scotland to declare that it could not be altered "without involving the subjects in perjury and rebellion". When Charles II died, Parliament addressed James VII in terms ludicrously obsequious. "The death of that our excellent monarch is lamented by us to all the degrees of grief that are consistent with our great joy for the succession of your sacred majesty." Between 1660 and 1689 the Scottish Parliament was once more the merest instrument for official sanction. A contemporary has left us his impressions of the time. He tells us that the methods of the Lords of the Articles were not quite so secret as they used to be.

Of late times matters have been at full length and freely debated in Parliament. They sit all in one House, and every one answers distinctly to his name and gives his vote, which is in these terms, *I approve* or *not*; only those who are not

satisfied one way or another, say *Non liquet*, which is a great ease to those who are conscientious, and a common refuge to the cunning Politicians; the major vote carries it. No dissents or protests are allowed in public acts, but are accounted treasonable.[1]

The arm of the Government was all-powerful, and they had not even to guard against opposition. A caricature of the General Assembly was maintained to give a further ecclesiastical ratification to the king's acts, "But", adds our informant,

as the calling of this synod is wholly in the Crown, so there is little need of it, since the King's Supremacy is so large, that He needs not there concurrence, to adde their Authority to anything that He shall think fit to doe about Church affairs.

It may be at first matter of surprise that Scotland should so completely have succumbed. All that the popular party could do was to suffer. Only on rare occasions could they take the field. Suffering or fighting, they never yielded. But the dearth of constitutional life is not inexplicable. Had the Restoration occurred ten years earlier, it would have been otherwise. The Commonwealth had blotted out the recollection of the years which preceded it, and prepared the way for the years that followed it. Bishop Burnet's remark, that the root of the trouble lay in the king's "entering in without condition", was true, at all events, for the historian's own country. Moreover, we must not forget the condition of the country. The long-continued struggle had

[1] Middleton, Appendix, &c., *ut supra.*

brought desolation where before the union of the crowns we can trace prosperity. In Glasgow, in 1692, "near fyve hundredth houses [were] standing waste". The harbour of Ayr was ruinous. The High Street of Dumfries contained scarcely a habitable house.[1] Trade and commerce had declined. The short interval of freedom of trade had but served to intensify the pressure of the Navigation Act. Scotsmen boasted of their "conquest" of England in 1603. England had but given their kings the power to oppress them.

A free Parliament met again in 1689. The absence of any strict constitutional feeling led, as so often before, to the assumption of a much more advanced position than that of the English Parliament. Nothing is more characteristic of the slowly broadening growth of English parliamentary claims than the delicate adjustment of conflicting theories by the Convention. In Scotland no such nice adjustment was possible. The proceedings are marked rather by a rude logic. The Estates enumerated the misdeeds of the unfortunate monarch in language distinguished from that of the Claim of Rights only by its strength.[2] The details are not important for our purpose. There is no appeal to precedent, nor any nicety of phrasing. James, having been

[1] *Report on the State and Condition of the Burghs of Scotland*, 1692 (Miscellany of the Scottish Burgh Record Soc.).

[2] The main heads of James's delinquencies were: (1) erecting schools and societies of Jesuits, &c; (2) making papists great officers of state; (3) enforcing oaths contrary to law; (4) taxation and the maintenance of

guilty of this catalogue of crimes, had "forfaulted the right to the Crown, and the throne is become vacant". The underlying theory is sufficiently clear, but it was based on the logic of events. It was probably an effect of the English connections that the Estates went further than usual, and laid down two general principles. All the acts that they had enumerated were illegal. No papist might be king or queen of Scotland. With these conditions, and one other limitation, they proceeded to offer the crown to William and Mary and to entail it, in default of their heirs, upon the Princess Anne. That other clause expressed a claim which, for the people of Scotland, included civil liberties, and had been throughout the troubles synonymous with freedom. The Estates declared that "Prelacy is a great and insupportable grievance to the nation". A "Covenanted King" it was impossible to hope for, nor is there evidence that they desired to repeat the experiment. But the new sovereigns must understand the situation. When the acceptance of William and Mary converted, without any further change, the Convention into a Parliament, the Estates set themselves to solving the religious problem. They rescinded the act of Charles II asserting "his majestie's supremacy over all persons and in all causes ecclesiastical" as "incon-

a standing army without consent of Parliament; (5) the employment of military officers as judges; (6) exorbitant fines; (7) illegal imprisonment; (8) forfeitures by obsolete laws; (9) subversion of rights of royal burghs; (10) interference with justice.

sistent with the establishment of Church government now desired". They restored the presbyterian clergy to their churches and manses. They approved the Westminster Confession of Faith—the sole product of those efforts towards a covenanted uniformity which had led the Church into somewhat devious paths—and they established Church government "by Kirk Sessions, Presbyteries, Provincial Synods, and General Assemblies". The more rigid presbyterians were disappointed. It was not so emphatic a settlement as they desired. Independent as the Establishment was, it seemed Erastian to men whose only associations with the functions of government had been connected with Grierson of Lagg and Bloody Mackenzie. King William insisted upon the extension of a toleration to Episcopalian Dissenters in Scotland which, as the Church more than once complained, was lacking in the treatment of Presbyterian Dissenters in England. The Revolution Settlement, therefore, was not accepted by the whole of the popular party, and the Jacobites were reinforced by ousted episcopalians on the one hand, and presbyterian malcontents on the other. But the compromise of 1690 satisfied the majority of the nation. The credit of the arrangement belongs neither to the Parliament nor to the king, but to the wise statesman who presided over the University of Edinburgh. The English Revolution of 1689 was in its origin religious, but it early assumed the aspect of a purely civil move-

ment. The Revolution in Scotland suggests to-day only the Church Settlement, and the course it took was decided by William Carstares.

The Parliament of 1690 proceeded to assert its own freedom of action. Henceforward till the Treaty of Union took effect, we have parliamentary independence in Scotland,[1] as far as purely internal affairs were concerned. After William's death we find still wider claims. The events of William's reign had not been such as to draw the nations nearer each other, or to reconcile the Parliament to the limitation of its sphere of influence to internal administration. King William had been responsible for the Massacre of Glencoe; he had forced Scotland to expend large sums upon a war in which, after the battle of Killiecrankie, she took no interest. The Parliament of England had urged the king to an interference with the Darien Scheme, which could not be regarded in Scotland as other than a betrayal. The Scottish Estates had not responded to the Act of Settlement in 1700, and when Queen Anne succeeded, the attitude of the two countries was becoming increasingly threatening. England regarded any advance of Scottish prosperity as a success gained at her own cost. Scotland feared that the country was to be permanently under foreign influence. The

[1] In spite of the irritating interferences which provoked the indignant rhetoric of Fletcher of Saltoun, and these had reference mainly to peace and war, the maintenance of an army, and places and pensions.

rapid growth of a constitutional feeling since 1690 aided the circumstances of the time in the production of parliamentary parties, a unique event in Scottish history. The meeting of Estates in 1703 contained Williamites, Patriots, and Cavaliers.[1] The first of these supported the government of King William and his successor as, at all events, the least of the many possible evils. The Cavaliers clamoured for the return of the exiled House. The Patriot or "Country" party, headed by Hamilton, Tweeddale, and Fletcher of Saltoun, argued that, if foreign domination were to continue, it made but little difference whether it emanated from St. Germains or from the Court of St. James's. A combination of Cavaliers and Patriots passed the Act of Security. This famous act named no successor to Queen Anne. It invested the Parliament with the power of the Crown, in case of the queen's dying without heirs, and entrusted to it the choice of a Protestant sovereign "from the Royal line". It refused to such king or queen, if also sovereign of England, the power of peace and war, without consent of Parliament. It enacted, further, that the union of the crowns should determine, unless Scotland was admitted to equal trade and navigation privileges with England. Nor was there lacking the intention to make good the threat. The same act pro-

[1] Party names here for the first time in strictly parliamentary history. The Resolutioners and Protestors of 1649 were religious divisions.

vided for the compulsory training of every Scotsman to bear arms. The Scottish Parliament debated each clause with vigour. The Estates recognized that now, if scarcely ever before, momentous issues hung upon their decision, and the walls of the Parliament House re-echoed with the unwonted excitement of party cries. The royal commissioner declined to give the queen's assent. The Parliament refused to grant supplies, and the meeting broke up amid confused shouts of "Liberty before Subsidy". The bitterness of the struggle was accentuated by a silly dispute about the Jacobite Plot, and the temper of the two nations was strained to the utmost.

The union of the crowns had been rendered possible only by the self-restraint which permitted the people of England to accept a Scotsman as the king. A similar spirit of self-restraint now actuated Queen Anne's advisers. The queen assented to the Act of Security, and the Scots began to train for a war that was not to be fought by the sword. The English ministers proposed a union of the kingdoms. Fortunately, they recognized that Scotland was in earnest, and expressed their willingness to yield somewhat on the main point—freedom of trade. Into the long and dreary negotiations which preceded the union we need not enter. Amid jealousy, faction, and evils still more sordid, the treaty of union was concluded. The agreement

secured to Scotland the maintenance of her law, and the continued existence of her universities, and it guaranteed that there would be no interference with the Church as by law established. On the other hand, the kingdom surrendered her national existence, and was forced to be content with a miserably inadequate representation in the English Parliament. It is little wonder that the people in general, and especially the populace of Edinburgh, regarded the treaty with horror and looked upon its supporters as traitors. Amid riot and uproar, and with howls of execration sounding in their ears, the Estates of Scotland met for the last time on 25th March, 1707, under the presidency of the lord chancellor, the Earl of Seafield. Among some of the senators themselves there was an uneasy feeling that they had sold their country for trade privileges which the givers would strain every nerve to render worthless. Others were more callous. "There's the end o' an auld sang", laughed the Chancellor, as the Honours of Scotland were carried out of the Parliament House for the last time.

There is a touch of pathos in this final scene. To us, it can appear sad only with the sadness of changefulness. But the faces of contemporaries were turned backwards. The three Estates had survived many revolutions. It was true that their history did not represent the best of the nation's life; but with that best it had ever

been more or less closely associated. In recent years the Parliament had come to mean national existence. It had entered into a new sphere, and assumed new functions. A career of usefulness seemed to lie before it. In spite of its age, its end was, in this sense, premature. The conditions, too, were ignominious. The accumulated hatred of four hundred years had attached itself to the names of Darien and Glencoe. England had yielded much less than a free and independent nation had a right to ask, and Scotland could not demand more, because the men whom she trusted had failed her.

No doubt the Chancellor was right. It was "the end o' an auld sang". But, after all, the Estates had received "the wages of going on, and still to be". It did not appear so at the first. The Parliament of Great Britain broke more than one pledge solemnly made at the union. The highest boon that King James or Prince Charles could promise to Scotland was the repeal of the union. The Scottish representatives had little weight in the councils of the Empire. Even the faithful Argyll was thwarted, and his service lightly esteemed. The best blood of the country was spilt on foreign battlefields and in alien quarrels. The genius of a Keith served only to lead to victory the troops of Frederick the Great, and to guide the steps of Russia towards Constantinople. Among the exiles, there were others, less fortunate, who found no scope for

their talents, and no friends in the land of the stranger. But, as time passed, the tragic element faded out of the story, and, with the rapid growth of prosperity, the influence of Scotland on the destinies of the nation became more apparent. The land of Kennedy and Elphinstone, of Lethington and Carstares, could not fail to produce wise and prudent statesmen, who might find, on a wider stage, the renown that had been denied to those who went before them. The music of the "auld sang" resounded again, although the walls that re-echoed it were those of Westminster. The Imperial Parliament meets close to the ancient Abbey, the guardian of the Stone of Fate, which the first Edward carried in triumph from Scotland, and on which, for nigh three hundred years, descendant after descendant of his enemy has sat. As the old prophecy has not been rendered void by the transference of its subject from Scone to London, so the promise that gave meaning to the last years of the Scottish Parliament has not failed of fulfilment. *Nec tamen consumebatur.*

# APPENDIX

## REPRESENTATION IN THE SCOTTISH PARLIAMENT [1]

Although we know that burgesses were present at the Cambuskenneth Parliament, we possess no information as to what towns they represented. The first list of burghs in the Acts of Parliament refers to the Council held in 1357 to arrange about the ransom of King David II, and it includes the following towns:—Aberdeen, Crail, Cupar, Dumbarton, Dumfries, Dundee, Edinburgh, Haddington, Inverkeithing, Lanark, Linlithgow, Montrose, Perth, Peebles, Rutherglen, Stirling, and St. Andrews. From 1367, we have, occasionally, records of the election of burgesses to the Committee of the Articles, and these give us our only information regarding representation. (Cf. pp. 26–33.) We subjoin the first known date of the representation of any burgh at a regular meeting of the Estates in Parliament assembled. It must, of course, be understood that this list does not, in any way, pretend to completeness; the material is incomplete, and, in most cases when burghs are mentioned, up to the sixteenth century, it is only in connection with the Lords of the Articles.

Fourteenth Century:—Aberdeen, Dundee, Montrose, Linlithgow, Perth, Edinburgh, Haddington (1367).

Fifteenth Century:—Inverness (1439); Stirling (1449); St. Andrews, Cupar (1456); Lanark (1467); Peebles (1468); Elgin, Banff, Ayr, Irvine, Dumfries, Wigtown, Kirkcudbright, Selkirk, Jedburgh, Dunbar (1469); Forfar, Crail, Kinghorn, Inverkeithing, Dumbarton (1471); Brechin, Rutherglen, Renfrew, North Berwick (1478); Rothesay (1484); Forres (1488).

[1] Cf. the present writer's Map of the Parliamentary Representation of Scotland, in Mr. R. L. Poole's *Historical Atlas*. (No. XXVIII.)

Sixteenth Century:—Glasgow (1560); Tain, Nairn, Lauder (1567); Kintore, Pittenweem (1579); Kirkcaldy (1585); Burntisland (1586); Dingwall (1587); Cullen, Culross, E. and W. Anstruther (1593); Dysart (1594).

Seventeenth Century:—Inverurie, Bervie, Kilrenny, Lochmaben, Annan (1612); Sanquhar (1621); Dunfermline, New Galloway (1628); Dornoch, Arbroath, Queensferry, Whithorn (1639); Fortrose, Inverary (1660); Kirkwall (1667); Stranraer (1685); Campbeltown (1689); Wick (1690).

In addition to these, Berwick-on-Tweed was represented between 1469 and 1481, Cromarty from 1660–72, and Findhorn in 1648.

Representation of the shires does not begin till 1593; but between that date and 1617, we find nearly all the counties represented. Argyleshire, however, does not appear till 1628, Sutherland not till 1633, and Kinross not till 1681.

It gradually became usual for each burgh to send two members; but, in 1619, the Convention of Royal Burghs reduced the number to one, except in the case of Edinburgh. Under the Protectorate, Scotland was represented by twenty members for the shires and ten for the burghs, which, with the exception of Edinburgh, were divided into nine groups, each returning one member. Edinburgh, alone, returned two representatives. At the union of the Parliaments in 1707, Scotland received forty-five members. The burghs, except Edinburgh, were divided into fourteen groups, returning one member each, and one member was allotted to Edinburgh. It is to be remembered that only Royal Burghs had any representation in Scotland up to 1832, except in so far as burghs of barony were represented by the county members, along with the other freeholders of the country. When the town of Cromarty ceased to be a Royal Burgh, in 1672, it was excised from the parliamentary records. Of the remaining thirty members, each shire, except six, returned a member each. These six were divided into three groups,

Bute and Caithness, Clackmannan and Kinross, and Nairn and Cromarty. The two shires which each group contained were given the right to return a member to alternate parliaments, *e.g.* Bute, Clackmannan, and Nairn in 1708, and Caithness, Kinross, and Cromarty in 1710.

From these facts, various interesting conclusions can be drawn. The meagre nature of the evidence prevents our making any inferences of a constitutional nature; but the rise of the small burghs on the East coast in the end of the fifteenth century, throws considerable light upon the economic history of Scotland. It is also suggestive that the burgh of Inverary was not represented till 1660, and Argyleshire not till 1628. But such matters as these belong rather to the domain of political history, and do not fall within our province.

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