

## **“The king wishes and commands”?**

### **Reassessing political assembly in Scotland, c.1286-1329**

Michael Penman

Any detailed study of the government of Scotland under Robert Bruce/King Robert I (r.1306-29) must reassess the development of the Scottish “estates” meeting in “council” or “parliament” and what this has to tell us about crown-subject relations. The late thirteenth and early fourteenth centuries have generally been recognized by scholars of “Europeanization” in this period as crucially formative in terms of the evolution of consultative and representative assemblies in many kingdoms and smaller regional and institutional polities. Challenges by imperialist neighbours, numerous dynastic succession crises, economic fluctuations, contested papal monarchy and the bureaucratization and codification of government and law were broadly universal experiences, all mixing with the upheaval of rulers’ and subjects’ changing and often competing political, social and economic expectations, often brutally shaped by the pressures of war, climatic deterioration, repeated harvest failures and animal murrain.<sup>1</sup> Scotland’s experience in this period certainly seems to contain many of these conflicting currents.

In this context it has been confirmed that, through the thirteenth century, assemblies of the Scottish king, his ministers and substantial subjects emerged as irregular but nonetheless important occasions, typically for consultation on matters of diplomacy or

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<sup>1</sup> Wim Blockmans, “Representation (since the Thirteenth Century)”, in *The New Cambridge Medieval History 7: c.1415-c.1500*, ed. Christopher Allmand (Cambridge, 1998), pp. 29-64; Albert Rigaudière, “The theory and practice of government in western Europe in the fourteenth century”, in *The New Cambridge Medieval History 6: c.1300-c.1415*, ed. Malcolm Jones (Cambridge, 2000), pp. 17-41; John Watts, *The Making of Polities: Europe, 1300-1500* (Cambridge, 2009), chs. 1-2.

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succession, or to hold a high judicial court. The extant record styles these assemblies as *nostrum colloquium* from c.1235 to c.1296, with royal summons for the feudal classes of “bishops [including abbots], earls and barons”.<sup>2</sup> However, during the Scottish succession crisis of 1286-92, the responsible “community of the realm” (*communitas regni*) chose, by an unrecorded process, six Guardians (*custodes*, or *gardiens* in diplomatic letters), with two each appointed from the bishops, earls and barons. This regime sought first alliance with and then arbitration from Edward I of England (r.1272-1307), requiring guarantees in a treaty of marriage and regnal union drawn up with Edward in 1290 that “no parliament shall be held outwith the kingdom and borders of Scotland on matters concerning that kingdom” which must retain its “rights, laws, liberties and customs”.<sup>3</sup> This undoubtedly reflected in large part the Scottish elite’s own familiarity with the English “parliament” (as many noble families and churches held lands in both realms). So, too, did the gradual adoption of “parliament” in preference to “colloquium” during the short reign of King John [Balliol] (r.1292-96), the essentially English lord chosen in preference to the Bruces as King of Scots in a joint Anglo-Scottish “parliament” and subsequent legal hearings overseen by Edward I c.1291-92.<sup>4</sup> King John’s inexperience and a backlog of community business surely contributed to the need for a rapid succession of Scottish assemblies c.1293-96.<sup>5</sup> Following his military occupations of Scotland from 1296, Edward I also called at least three sittings of “my parliament” in

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<sup>2</sup> *The Records of the Parliaments of Scotland to 1707* [hereafter *RPS*], ed. K.M. Brown et al (St Andrews, 2008), at [www.rps.ac.uk](http://www.rps.ac.uk), 1235/1; 1293/8/1; 1290/3/2; 1293/2/15. For what follows, see also A.A.M. Duncan, “The early parliaments of Scotland”, *Scottish Historical Review*, xlv (1966), pp. 36-58.

<sup>3</sup> *Documents Illustrative of the History of Scotland*, ed. Joseph Stevenson (2 vols., Edinburgh, 1870), i, no. cviii.

<sup>4</sup> *RPS*, 1292/6/1; A1294/2/1.

<sup>5</sup> Two in 1293, three(?) in 1294, one each in 1295 and 1296.

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Scotland (1296, 1304 and 1305), all attended by Robert Bruce as earl of Carrick (who had also served as a Scottish guardian in revolt c.1298-1300).<sup>6</sup>

Thus the prolonged absence of an effective adult monarch and the pressures of the struggle for independence saw these Scottish political assemblies grow into far more frequent events c.1286-c.1305. However, it was during the successive reigns of Robert I (especially after his victory in battle over the English at Bannockburn in 1314), and of his son, David II (r.1329-71), that these were confirmed as annual or even biannual gatherings, styled as “full council” or “full parliament” (*plenum parliamentum*) and with widening participation by communities of subjects.<sup>7</sup> Indeed, it was during the reign of Robert (1326) that the “estates” present in parliament first featured representation from Scotland’s burgh class alongside nobles and prelates,<sup>8</sup> although actual references to the “three communities” (*tres communitates*, 1364) or “three estates” (*tribus statibus*, 1373) would only appear in the parliamentary record in the later fourteenth century.<sup>9</sup> Nonetheless, building on these findings, it is possible to further refine understanding of these Scottish assemblies in regard to their representative nature and significance: that is, both in terms of petition or appeal in advance by subjects, as well as of actual participation and attendance (whether by summons, procurator or election).

A key starting point for any reassessment must be a summative comment offered in Roland Tanner’s vital survey of Bruce’s “coercion” and manipulation of parliament, together with the “falsification” of its decisions and records. These were actions apparently overseen

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<sup>6</sup> *RPS*, 1296/1; A1304/1.

<sup>7</sup> *RPS*, 1309/1; 1314/1; 1315/1; 1318/1. Under Robert, “council” or “full council”, smaller assemblies of nobles and prelates, probably called at shorter notice and with fewer powers, often met in the midst of a campaigning season or political crisis [1308/1; A1320/3/1; 1324/1; 1327/4/1]: prior to this, c.1255-96, “council” had been a term rather applied to the king’s close counsel or ministers within a “colloquium”.

<sup>8</sup> *RPS*, 1318/30 (*statum*); 1326/2.

<sup>9</sup> *RPS*, 1364/1; 1373/3.

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by Robert I and his ministers from 1309 as a means to present a cohesive and wide geographical front of “community” support for his kingship. This legitimization was something Robert needed desperately as an excommunicate who had committed murder in a church and treason en route to seizing the throne in 1306. In the years that followed, despite his growing military success, Robert still faced widespread Scottish opposition and was highly vulnerable politically, dynastically and physically.<sup>10</sup> Nonetheless, these were strategies in assembly which helped Robert I to weather the challenges of 1309-18, wearing down opposition and building a platform for future consensual rule. Indeed, of Robert’s parliament at Scone Abbey in December 1318, from which a substantial body of almost 30 legislative statutes has survived, Tanner felt that (my italics):

the overall tone of the meeting suggests a king at the height of his powers, finally in a position to set about the detailed reform of the kingdom. Bruce was, in other words, finally able to govern *like a normal king*, rather than simply a war leader engaged in a desperate fight for survival.<sup>11</sup>

In essence, much of what is being argued here remains persuasive. Tanner’s work provided a vital corrective to the earlier views of Bruce’s modern biographer, the late Geoffrey Barrow (and some of his students, such as Norman Reid), who arguably over-emphasized the consensual, and downplayed the factional, nature of politics under Robert I, instead highlighting the continuity of the guiding and unifying power of the actions of the responsible men of the “community of the realm” during Scotland’s crisis of kingship from

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<sup>10</sup> For this background, see Michael Penman, *Robert the Bruce, King of the Scots* (London and New Haven, 2014), chs. 5-6.

<sup>11</sup> Roland Tanner, “Cowing the Community? Coercion and Falsification in Robert Bruce’s Parliaments, 1309-1318”, in *The History of the Scottish Parliament, Volume 1: Parliament and Politics in Scotland, 1235-1560*, ed. Keith M. Brown and Roland J. Tanner (Edinburgh, 2004), pp. 50-73, at p. 69.

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1286.<sup>12</sup> Tanner showed in detail how Robert and his close supporters in fact acted to carefully control the timing, location, attendance, agenda and recorded/publicized decisions of key parliaments and smaller wartime councils, coercing important individuals, and falsely attaching the seals of prelates and great magnates who were absent or under duress to important internal acts and diplomatic statements: the most famous examples of the latter practice were the declarations of the nobility and clergy of 1309-10, the acts of succession of 1315 and 1318, and the “Declaration of Arbroath” of 1320.<sup>13</sup> At face value, such treatment of the Scottish political community — a group of perhaps 150 nobles and prelates at most but with, realistically, only c.50 to 80 men attending each parliament — seems to link Robert I’s views on assembly with some of those of a remarkable English treatise of c.1320, the *Modus Tenendi Parliamentum*. That work had opened by asserting that “the king is the head, the beginning and the end of parliament”, clearly taking Edward I’s strong, authoritarian rule as its model.<sup>14</sup>

However, we should not paint too overpowering a picture of the top-down control of assembled councils and parliaments wielded by king and royal government, or overplay the dominance of:

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<sup>12</sup> Geoffrey W.S. Barrow, *Robert the Bruce and the Community of the Realm of Scotland* (Edinburgh, five editions 1965 to 2014) [hereafter Barrow, *Robert Bruce*]; Norman H. Reid, “The Kingless Kingdom: the Scottish Guardianship of 1286-1306”, *Scottish Historical Review*, **lxi** (1982), pp. 105-29; Reid, “Crown and Community under Robert I”, in *Medieval Scotland: Crown, Lordship and Community — Essays presented to G.W.S. Barrow*, ed. Alexander Grant and Keith J. Stringer (Edinburgh, 1993), pp. 203-22.

<sup>13</sup> A.A.M. Duncan, “The Making of the Declaration of Arbroath”, in *The Study of Medieval Records: Essays in Honour of Kathleen Major*, ed. Donald A. Bullough and Robin L. Storey (Oxford, 1971), pp. 174-88; A.A.M. Duncan, “The Declarations of the Clergy, 1309-10”, in *The Declaration of Arbroath: History, Significance, Setting*, ed. Geoffrey Barrow (Edinburgh, 2003), pp. 32-49.

<sup>14</sup> *Parliamentary Texts of the Later Middle Ages*, ed. N. Promay and J. Taylor (Oxford, 1980), p. 91.

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a legitimising rhetoric used by Robert in order to justify and create a veneer of common support for his actions when his position was being seriously challenged and opposed both within and outwith the kingdom.<sup>15</sup>

To do so would arguably be to stray back, inadvertently, into accepting Sir Robert Rait's earlier dismissal of assemblies of the Scottish estates in the later Middle Ages as merely an unsophisticated, overawed "rubber stamp" of the royal will.<sup>16</sup> It would also be to read far too black-and-white a contrast into the legislative language of Robert's reign and recorded assembly acts — "the lord king's statute[s]" ordained as "the lord king decreed and forbad" or as "the king wishes and commands" or "proposed by the said lord king" — especially when they are followed by those of his more troubled, too-long absent son, David II, whose acts were recorded variously as: "agreed and assented by the three communities there present"; "by the king acting upon the counsel and consent of the communities"; or "expressly granted and also publicly proclaimed by the king in the said parliament at the instance of the three communities".<sup>17</sup>

Rather, what the opposed benches of thought outlined above have so far overlooked is their common ground: the degree to which — no matter how much close control Robert I and his ministers sought to exercise over such assemblies — he was, as a "normal king", still to be open to the barrage of subjects' shifting expectations of representation, individual or communal petitions, criticisms or protests of opposition and appeals for justice and redress which we certainly find emerging in contemporary (and better recorded) England: i.e.

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<sup>15</sup> Alice Taylor, "The Assizes of David I, king of Scots, 1124-53", *Scottish Historical Review*, **xcii** (2012), pp. 197-238, at p. 229.

<sup>16</sup> Robert S. Rait, *The Parliaments of Scotland* (Glasgow, 1924), p. 32.

<sup>17</sup> *RPS*, 1315/1, 1318/3-4, 1318/15, 1318/23, 1318/26, 1318/29, 1323/7/4, 1328/1, 1357/11/1, 1364/1, 1366/7/6, 1367/9/12, 1369/3/1, 1369/3/1; Michael Penman, "Parliament Lost — Parliament Regained? The Three Estates in the Reign of David II, 1329-1371", in *The History of the Scottish Parliament, Volume 1*, ed. Brown and Tanner, pp. 74-101, at pp. 89-90.

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communal efforts, large and small, to manage royal power and protect subjects' interests.<sup>18</sup> As such, the Scottish consultative assembly dynamic of this period is more akin to that actually detailed by Tanner for the fifteenth century: a regular forum of increasingly complex mechanisms with widening participation and expectations from subjects, not at all an easy arena for kings and ministers to direct, manage or ignore.<sup>19</sup>

We can illustrate this early intensification of representations to, and at, Scotland's parliament by examining the aforementioned December 1318 legislation from Scone. This was a gathering for which, as with all assemblies before the 1360s, we have no full sederunt (list) of attendees but which represents really the only full record of decisions of a Robert I parliament.<sup>20</sup> There is plenty of evidence here of the kind of managerial control Tanner highlighted. Not least, oversight of a royal succession *tailzie* or entail obliged subjects to attach seals and swear oaths on the Gospels in recognizing Robert's infant grandson, Robert Stewart, as his heir presumptive, while naming two noble supporters who would succeed as Guardians for that child and the realm in a minority succession (Thomas Randolph, earl of Moray, and then Sir James Douglas). This act was decreed in the name of "the prelates, earls, barons and others of the community of his kingdom, by the common consent of all and singular of the aforesaid people".<sup>21</sup> Similarly, acts prohibiting rumour-mongering directed against the crown<sup>22</sup> and enabling royal sheriffs to intervene in the traditional baronial right to

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<sup>18</sup> Michael Prestwich, "Parliament and the Community of the Realm in Fourteenth-Century England", in *Parliament and Community*, ed. Alan Cosgrove and John I. McGuire (Historical Studies XIV, 1983), pp. 5-24; Gwilym Dodd, *Justice and Grace: Private Petitioning and the English Parliament in the Late Middle Ages* (Oxford, 2007); John R. Maddicott, *The Origins of the English Parliament, 924-1327* (Oxford, 2010).

<sup>19</sup> Roland Tanner, *The Late Medieval Scottish Parliament: Politics and the Three Estates, 1424-1488* (East Linton, 2001), pp. 1-6, 264-78.

<sup>20</sup> *RPS*, 1318/1 to 31; *Regesta Regum Scottorum V: the Acts of Robert I, King of Scots, 1306-1329*, ed. A.A.M. Duncan (Edinburgh, 1988) [hereafter *RRS*, v], nos. 139 [i to xxvii], 140-42; Penman, *Robert the Bruce*, pp. 190-202.

<sup>21</sup> *RPS*, 1318/30.

<sup>22</sup> *RPS*, 1318/23.

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raise the common army of the land (with the weaponry obligations of laymen worth £10 or more, as well as those of lesser freeholders, also here spelled out by statute) would seem to represent crown *dictat* to subjects.<sup>23</sup> Given the emergency context of this parliament, we can understand the need for such apparent tight royal control: Robert's brother and only adult heir, Edward Bruce, had been killed in battle in Ireland just a month before and the king clearly felt highly vulnerable to criticism and challenge.

Indeed, a closer reading of some of the 1318 parliament's acts points to direct criticisms of Robert's government and officers, encouraged no doubt by that recent military defeat in Ireland (just as occurred in Edward II's England after Bannockburn), but which may stretch back a number of years (to pre-1314) in their grievance. For example, as a result of the devastating climatic and famine conditions of c.1315-18, a number of statutes reflected subjects' protests and appeals: thus acts to defend the Church and protect its granges from burdensome hospitality,<sup>24</sup> to prevent the clergy and other travellers from exporting badly needed goods,<sup>25</sup> to ensure the royal army paid for its *prise* victuals and its mustering (and foraging) members were prosecuted should they commit a crime,<sup>26</sup> to manage fishing rights in tidal rivers (incidentally, the earliest known statutory regulation of fisheries in medieval Europe),<sup>27</sup> and to regulate the treatment of livestock and other chattels in cases of debt.<sup>28</sup> At the same time, as in other European realms, war and acute, overwhelming socio-economic conditions had also probably seen an increase in brigandage and seigniorial exploitation in

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<sup>23</sup> *RPS*, 1318/29.

<sup>24</sup> *RPS*, 1318/3.

<sup>25</sup> *RPS*, 1318/26.

<sup>26</sup> *RPS*, 1318/6-7.

<sup>27</sup> *RPS*, 1318/13. My thanks to Professor Richard Hoffman (McGill) and Dr Alasdair Ross (Stirling) for this point.

<sup>28</sup> *RPS*, 1318/14.

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Scotland. Petitions to the crown may thus have contributed to the 1318 statute whereby (and here the language of the parliamentary record is telling):

[It] was ordained and assented by way of statute by the lord king, that, if anyone in the past, from this hour on, of whatever status they shall be, shall have been convicted or attainted of homicide, rape, theft or other offences touching life and limbs, that common justice be done on this account without redemption, saving royal power and saving the liberties specially granted by the kings of Scotland, ancestors of the lord king who now is, and by him, to the church and ecclesiastical persons and to other lords.<sup>29</sup>

Allied to this, we find acts which prohibited interference with the pursuit of thieves by tracking dogs and men of the law across otherwise privileged territorial jurisdictions.<sup>30</sup>

However, further acts suggest that in 1318 subjects' representations — possibly presented to the crown's ministers by barons or prelates of particular districts or forwarded in written form from unrecorded regional, urban or institutional courts and assemblies — had extended to include direct criticism of the partiality and performance of Robert I's officers and supporters within the wider context of exploitation of prolonged wartime power vacuums in numerous localities. Thus there were also acts ordaining that: brieves of dissassine and mortancestry (legal forms which enabled claimants to use the courts to recover disputed heritable lands and offices back through three generations) should include clear written statement of dates, names and property bounds for defendants to answer (thus blocking speculative or vague blanket claims) with compensation to crown and defendant now levied if

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<sup>29</sup> *RPS*, 1318/5.

<sup>30</sup> *RPS*, 1318/9.

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a charge proved false;<sup>31</sup> crown officers were also not to support legal claims to property in return for a share (so called ‘*champetry*’),<sup>32</sup> nor allow claimants to manipulate attendance at court days or seize lands and goods without official authority.<sup>33</sup> At the same time, there were also sweeping statutory guarantees issued which promised justice for both rich and poor, access to justice for complaints about property disputes (which it was stated might date back to 1286) and that a freeholder of any rank could only be deprived through the due process of royal briefs and courts.<sup>34</sup> Overall, this surely speaks to tension between the crown, anxious to increase the reach and revenues of its briefs and enforcing officers, and the traditional rights of tenants-in-chief to control these positions and processes within their own fiefs and courts.

The complexity of this legislation in 1318 and its root in petition surely means that it was not all drawn up in a rush in the little over 40 days since Edward Bruce’s death (14 October) and the subsequent emergency summons of subjects to Scone.<sup>35</sup> Indeed, along with two collated treatises of law, the *Regiam Majestatem* and the so-called *Assizes of King David I*, both now believed to have been completed about this time, c.1318-20, much of the December 1318 legislation must in fact have been the result of appeal and consultation between royal government and subjects initiated since at least late 1314. Moreover, the completion of these legal treatises overall brought to fruition a project of codification begun by king and community leaders in the thirteenth century.<sup>36</sup> Thus the role of Robert and his ministers in drawing together usable legal precedents and principle, as well as standardized

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<sup>31</sup> *RPS*, 1318/4-5, 8, 12.

<sup>32</sup> *RPS*, 1318/25.

<sup>33</sup> *RPS*, 1318/10-11.

<sup>34</sup> *RPS*, 1318/22, 27.

<sup>35</sup> Letters of David II would first affirm 40 days’ notice as the custom for summons to parliament [*RPS*, 1364/1].

<sup>36</sup> Taylor, “The Assizes of David I”. And see now Alice Taylor, *The Shape of the State in Medieval Scotland, 1124-1290* (Oxford, 2016).

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legal formularies, speaks to a commitment of royal government to listen to and respond to subjects' changing needs, as well to shape matters to suit immediate royal ends.

That this was so is at least strongly suggested by some of Robert I's extant great seal grants and privy seal letters, about 50 of which are extant before the forfeiture of his Scottish enemies in a parliament at Cambuskenneth Abbey on 6 November 1314.<sup>37</sup> As with a good many of the royal acts dated between 1314 and 1329, we find in this earlier period grants and orders issued only after the results of local inquests into disputed holdings had been held, overseen by justiciars, sheriffs or ecclesiastical, baronial or burgh courts, with evidence drawn from the extant records and witness testimony of the "good men" (*probis hominibus*) of a shire, diocese, lordship, parish or burgh.<sup>38</sup> Such inquests often resulted in a fresh retour or perambulation of territorial bounds and resources, with the recording of new or replacement charters.<sup>39</sup> At the same time, this dynamic is also reflected in a discernible increase in the number of extant legal formularies, again noticeable from c.1318-20. Many of these formularies facilitated either those legal inquests based on the testimony of memory of "good men of the country", redress of specific grievances or petition for royal permission to undertake institutional or infrastructural development (e.g establishing a burgh merchant guild as at Ayr in 1324), often by deploying template legal briefes or crown letters of commission, remission, exemption, summons or protection (including safe-conducts for travel).<sup>40</sup>

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<sup>37</sup> *RPS*, 1314/1; *RRS*, v, nos. 41-44.

<sup>38</sup> E.g. *RPS*, 1323/7/1.

<sup>39</sup> *RRS*, v, nos. 13, 47-49, 60, 73, 116, 144, 156, 172, 219, 234, 278, 280, 355, 405, 435, 424, 476.

<sup>40</sup> *Scottish Formularies*, ed. A.A.M. Duncan (Stair Society, Edinburgh, 2011), pp. 5, 41-42 and nos. A[Ayr Manuscript, NRS PA5/2] 20-4, 78 and E[Edinburgh University Library MS 207] 18, 35-37, 43, 46-47, 50, 54-55, 60-64, 69-70, 77, 92-93, 98. Nos. 1-99 of the Edinburgh manuscript, compiled during the reign of James I (r.1406-37), also recycle a number of formularies of the Guardians and King John c.1286-96.

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All this should really not surprise us as a record of behaviour feeding into expectations of, and representations to, the crown through council or parliament. Under the Scottish interim guardianships of 1286-92, the brief reign of King John Balliol (r.1292-6) and the wartime guardianships of 1298-1304 (including Bruce c.1298-1300), the Scottish political community had indeed shown a commitment to defend and restore established institutions, lordship and customs (essentially acting to maintain the *status quo* of limited Scottish central government intervention and exactions).<sup>41</sup> Robert Bruce had himself experienced this process during this period and later: for example, in 1293 in parliament King John appointed noble James Steward (a former Guardian) to undertake an inquest on Bruce's inheritance of the earldom of Carrick; and in 1304-5 Robert submitted his own petition to English occupation officials — if outwith parliament — for a similar inquest to be swiftly concluded on his inheritance of the lordship of Annandale.<sup>42</sup>

This reflected an expectation of consultative and responsive good government which the prelates behind Robert's own rushed inauguration as king of Scots in March 1306 (at Scone), headed by Bishop Robert Wishart of Glasgow, must have further impressed upon him. We do not have the text of any mutual royal and/or subjects' oaths sworn on that improvised occasion of enthronement, but it is logical to argue that as well as Robert's promises to defend the Church and laws of Scotland, he was expected to seek the counsel and consent of his estates in key areas of policy, not least dealings with England, and to guarantee justice. Thus any contractual oath of kingship imposed upon Robert I by his estates may be said to have anticipated both the obligations imposed upon Edward II at his troubled

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<sup>41</sup> Wendy Stevenson, "The Treaty of Northampton (1290): A Scottish Charter of Liberties", *Scottish Historical Review*, lxxxvi (2007), pp. 1-15; Alison A.B. McQueen, "Parliament, the Guardians and John Balliol, 1284-1296", in *The History of the Scottish Parliament, Volume I*, ed. Brown and Tanner, pp. 29-49.

<sup>42</sup> *RPS*, 1293/8/8; *Calendar of Documents Relating to Scotland*, ed. Joseph Bain (5 vols., Edinburgh, 1881-88), ii, nos. 1588, 1604.

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coronation ceremony of 1308, and the likely ceremonial oath given by proxy on behalf of the infant David II, the first Scottish king to be formally crowned and anointed, in November 1331.<sup>43</sup>

Yet this evolving political dynamic — and the pressure from the estates outlined by 1318 — should not be taken as evidence of a loss of power for Robert I. Rather, it may have been a dialogue which legitimated and strengthened his rule, one which he recognized, welcomed and worked with. Here, the experiences of Robert and his ministers drawn from English politics may have been just as important as their Scottish parliamentary inheritance from pre-1286 or their troubled years of guardianship and resistance c.1286-c.1304. For example, in Lent 1305, Robert, then still earl of Carrick, was selected — by a Scottish parliament summoned by Edward I after his reassertion of English conquest in 1304 — to represent the Scottish community at an English parliament in Westminster (significantly serving in this role alongside Bishop Wishart and Sir John Mowbray, thus an earl, a prelate and a baron, one from each Scottish “estate”). This Westminster assembly marked a return by the wily English king to the type of apparently consultative, inclusive assemblies which had led to consensus rule in England c.1274-94.<sup>44</sup> In particular, the English king and his ministers invited petitions for redress of grievance from individuals and communities (with over 540 processed); in much the same way, when Robert Bruce rebelled in March 1306, Edward would step up the attendance of knights of the shire, burgesses and lesser clergy as the “Commons” in his parliament so as to secure consent to further war subsidy. It is fair to speculate that at Westminster in 1305, Earl Robert cannot have failed to be impressed by the

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<sup>43</sup> Seymour Phillips, *Edward II* (London and New Haven, 2011), pp. 139-44; Michael Penman, *The Bruce Dynasty in Scotland: David II, 1329-71* (East Linton, 2004), pp. 45-46.

<sup>44</sup> Paul Brand, “Understanding Early Petitions: An Analysis of the Content of Petitions to Parliament in the Reign of Edward I”, in *Medieval Petitions: Grace and Grievance*, ed. W. Mark Ormrod, Gwilym Dodd and Anthony Musson (York, 2009), pp. 99-119.

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English king's response to over 200 petitions about injustice, disputes or hardship addressed to his government by Scottish lords, churches and burghs: this included over twenty Scottish cathedrals and monastic houses and over a dozen lay magnates.<sup>45</sup>

No records of the actual outcome of these 200 Scottish appeals of 1305 survive. It is likely, though, that Edward's responses in parliament were characteristically strict, anticipating the advice offered to Edward II by scholar Walter de Milemete in his treatise *On the Nobility, Wisdom, and Prudence of Kings* (1326): that the King "should always kindly acquiesce to the petitions of great men and nobles [note, no mention of burgesses] whenever such petitions yield no damage or prejudice to you."<sup>46</sup> Yet in 1305 this was a lobby which also included petitions from such notable and apparently organized interest groups as the "king's husbandmen in Scotland" (probably laymen with landed holdings worth £10 or more a year) in search of English-style tenure security; the "poor of Roxburgh"; the "community of Galloway", a south-western lordship protesting royal judicial interference with their traditional customs; and all the royal burgesses of Scotland seeking confirmation of their original monopoly rights granted by King of Scots David I (r.1124-53) and thus possibly acting through an earlier assembly held in Scotland of the leading royal burghs' representatives.<sup>47</sup> Interestingly, in 1324 Robert I would respond favourably to another petition from the "men of Galloway" against summary royal justice.<sup>48</sup> The king was surely inclined to

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<sup>45</sup> *The Parliament Rolls of Medieval England*, ed. Chris Given-Wilson et al. (CD-ROM, London, 2005), Edward I, Roll 12, nos. 280-475.

<sup>46</sup> *Political Thought in Early Fourteenth-Century England: Treatises by Walter of Milemete, William of Pagula, and William of Ockham*, ed. and trans. C. J. Nederman (Tempe, 2002), p. 36.

<sup>47</sup> Known in the thirteenth century as the "court of the four burghs" — usually Berwick, Edinburgh, Roxburgh and Stirling, but changing with the fortunes of war — this body evolved into a "parliament of the four burghs" by c.1450 and into a wider "Convention" of royal burgh representatives from 1487 [Elizabeth Ewan, *Townlife in Fourteenth-Century Scotland* (Edinburgh, 1990), p. 147].

<sup>48</sup> *Registrum Magni Sigilli Regum Scotorum: Register of the Great Seal of Scotland*, ed. J. Balfour Paul et al. (Edinburgh, 1882-1914), **i**, App. i, no. 59.

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do so not only by counsel from Scottish lords and prelates but because he had seen that in responding to such appeals, Edward I managed to link subjects' access to redress with the maintenance of royal prerogative (in a period in which Edward I moreover revoked many of the crisis-time concessions he had made from c.1297 to 1301 in the face of his estates' complaints about war finance and lost Magna Carta rights).<sup>49</sup> This was an authoritarian model of good governance Robert must have appreciated, a working relationship which transcended faction, and a sensitivity to subjects' petitions which Edward II forgot to his cost.

All this suggests that historians should be open to the reality of Robert I's regime consulting a widening political community, probably from the very beginning of his reign. This interaction thus emerged long before the apparently calmer waters of the mid-to-late 1320s, by which time Robert had survived a major plot against his rule (the so-called "Soules conspiracy" of 1320), at last fathered a son (1324) and secured a long truce with England (1323) en route to a final peace and recognition of Scottish independence (1328) and thus, as Tanner argues, had less need to coerce the assembled estates.

For example, it is possible that it was at a council or parliament in Dundee in October 1313 that Robert came under concerted (perhaps renewed) pressure to define his succession, given the daily physical danger faced by him and his only surviving brother, Edward. The latter makes his first appearance at this assembly as 'earl of Carrick' — thus as Bruce family heir — and probably shortly thereafter he was betrothed to Isabel de Strathbogie, sister of Earl David of Atholl, a recent defector from the English camp with a strong regional influence and lineage claim to be considered for future royal status.<sup>50</sup> Similar subject pressure seems to have been at work in a parliament at Ayr in April 1315 when, in anticipation of Edward Bruce's

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<sup>49</sup> *Documents Illustrating the Crisis of 1297-98 in England*, ed. Michael Prestwich (Camden Fourth Series, volume 24, London, 1980); Maddicott, *Origins of the English Parliament*, pp. 299-330.

<sup>50</sup> *RRS*, v, no. 35; Penman, *Robert the Bruce*, pp. 133-37.

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imminent invasion of Ireland, the community agreed to a formal act recognizing him, with conditions [my italics], as Robert's heir presumptive ahead of Robert's daughter, Marjorie Bruce, and any children she might have:

for treating, deciding and *finally concluding* upon the state, defence and perpetual security of the kingdom of Scotland ... *provided, nevertheless*, that the said Marjory is joined in marriage by the consent of the said lord king, failing whom, which God forbid, by the consent of *the greater part* of the community of the kingdom... If indeed the said Marjory dies leaving no heir of her body or no surviving heir of the body of King Robert, which God forbid, the said earl [Thomas Randolph of Moray, as Guardian] shall have the custody of the kingdom *until the prelates, earls, barons and others of the community of the kingdom are able to assemble conveniently for ordaining and discussing upon the legitimate succession and the governing of the kingdom.*<sup>51</sup>

It had likely been the same October 1313 assembly which responded to years of lobbying from both long-term Bruce supporters and other recent defectors by issuing a one-year ultimatum to the regime's enemies.<sup>52</sup> The sequel "parliament", gathering at Cambuskenneth Abbey in November 1314, in the wake of the nearby victory at Bannockburn, made good on this threat/promise by issuing the aforementioned blanket act of forfeiture of lands and goods on these opponents, sealed by nobles and prelates, but one which nevertheless reflected in its language behind-the-scenes tensions [my italics]:

[It] was *finally agreed*, adjudged and decreed by the counsel and assent of the bishops and other prelates, earls, barons and other nobles of the kingdom of Scotland, and also

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<sup>51</sup> RPS, 1315/1.

<sup>52</sup> A.A.M. Duncan, "The War of the Scots, 1306-23", *Transactions of the Royal Historical Society*, 6th series, **ii** (1992), pp. 125-51 at p. 149.

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all the community of the aforesaid kingdom, that all who died outside the faith and peace of the said lord king in the war or otherwise, or who had not come to his peace and faith on the said day, *although they had been often summoned and lawfully expected*, should be disinherited perpetually of lands and tenements and all other title within the kingdom of Scotland...<sup>53</sup>

In the wake of this act in turn, Robert and his ministers must have been subjected to yet more lobbying not only for the seizure and reward of lands, offices and resources to his supporters, but also for the exemption and preservation of similar hereditary possessions and positions for powerful and well-supported regional lords still outwith his peace: hence the further time extended to Duncan, earl of Fife (until August 1315), Murdoch of Menteith (c.1320) and Donald, earl of Mar (1326) in making their submissions to Robert.<sup>54</sup>

However, as in England, it was in the 1320s (when English burgesses also became a permanent presence in the Commons) that the Scottish crown's need for extraordinary subsidy provided a further boost to parliamentary participation.<sup>55</sup> In July-August 1326, the extant record shows that at a parliament, again at Cambuskenneth, Robert I, perhaps through an opening speech delivered by proxy, justified the *necessitas* of a tax of a tenth on all rents and fermes for the remainder of his lifetime, explaining that war against England and his programme of land restoration had seen him alienate a majority of royal demesne and thus sorely deplete the income which paid for royal government and household. That the "community" in parliament, in a "spirit of joy and good will", was recorded as agreeing to this tenth should not mask the fact that his subjects knew Robert I to be gravely ill and

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<sup>53</sup> *RPS*, 1314/1.

<sup>54</sup> Penman, *Robert the Bruce*, pp. 145-46, 149-56.

<sup>55</sup> Blockmans, "Representation", p. 49.

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received in return written promises about the conditions imposed upon the crown, specifying [my italics again]:

exceptions only for the destruction of war, in which case there shall be a decrease of the tenth penny granted before according to the size of the ferme which, by reason of the foregoing, cannot be raised from the aforesaid lands and rents, *as can be discovered by an inquest to be made faithfully by the sheriff of the place. With the proviso that all monies of this kind shall be converted entirely to the said lord king's use and utility without making any remission to anyone.* And if he shall make a gift or remission of the monies of this kind before they are delivered and fully paid to the king's chamber, *the present grant shall be void, and also be without strength of validity.* And because certain magnates of the kingdom claim liberties of such a kind that the king's servants were not able to function within their lands, by which the payment to the lord king may perhaps be caused to be delayed, all and singular who claimed liberties of this sort gave an undertaking to the lord king that they would cause their share, and the tenants contingent on that, to be paid in full by their servants to the king's servants. That if they do not do so, the king's sheriffs, each in his sherrifdom, shall distrain the tenements of such liberties by royal authority for making payment in this way. Indeed the lord king calmly weighing up and paying close attention to the gratitude and good will of his people to him graciously granted that from the feast of Martinmas next to come, namely the first term for making payment, *he will not impose any collects, nor seize any prises or carriages, unless travelling around or across the kingdom in the custom of his predecessor,* the abovesaid King Alexander, *for which prises and carriages there shall be full payment on the nail, and that all the great supplies of the king with their carriages shall be entirely without prises, and that the king's servants shall pay in the hand*

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*without delay for all property in the collecting of such great supplies, according to the common market price of the country. But it was granted and agreed between the lord king and the community of his kingdom that the grant of the abovesaid tenth of money shall cease immediately on the death of this king, with the proviso that there shall be full payment for the terms past before the death of this lord king.*<sup>56</sup>

This then was the Scottish parliament's first clear statement of a mantra which would become all too familiar throughout the later fourteenth and fifteenth centuries: ensuring that the king could "live of his own" or use any extraordinary subsidy granted by the estates *only* for designated purposes.<sup>57</sup> Moreover, it is of equal moment that this subsidy of 1326 came not from the traditional thirteenth-century "estates" of earls, barons and prelates, but from the "earls, barons, *burgesses* and all the freeholders of his kingdom assembled in the same place". Significantly, in 1326 burghal consent through parliament was again perhaps facilitated by the assembly of a simultaneous court of royal burgh representatives in nearby Stirling (less than a mile from Cambuskenneth Abbey), with royal ministers sent as procurators to negotiate the king's wishes. A similar mechanism can be shown to have been deployed to secure clerical consent — probably taking in lesser clergy's concerns alongside those of bishop or abbot tenants-in-chief — through a Council of the Scottish Church, also held about the same time in Stirling (as a sequel to Church Councils held in Perth in 1321 and 1325 in parallel with parliaments at the Abbey of Scone, similarly just a mile away).<sup>58</sup> The tenth-for-life grant's insistence on the revaluation of all lands after decades of war damage,

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<sup>56</sup> *RRS*, v, nos. 300, 335; *RPS*, 1328/1.

<sup>57</sup> Tanner, *Late Medieval Scottish Parliament*, pp. 264-65.

<sup>58</sup> *Registrum Episcopatus Glasguensis* (Bannatyne Club, 2 vols., Edinburgh, 1843), i, no. 270; *Charters of the Abbey of Coupar-Angus* (Scottish History Society, 2 vols., Edinburgh, 1947), i, nos. 105-6; Donald E.R. Watt, *Medieval Church Councils in Scotland* (Edinburgh, 2000), pp. 112-14; *RPS*, 1325/1-2; *RRS*, v, nos. 302-8.

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triggering a reduction in tax if necessary, also underlines the recognition by both king and his various subject communities that this was in the interests of the common good.

This fledgling method of intercommuning, as it were (in the fashion of the English parliamentary houses), surely facilitated by an overlap of personnel between royal burgh court/Church Council and the royal household, was deployed again in February-March 1328 as part of peace with England. A parliament gathered at Holyrood Abbey outside Edinburgh to conclude the peace. A Church Council does seem to have coincided but may simply have sent procurators with their estate's consent to parliament; so, too, did the burgesses with the crown having commanded the community of royal burghs to send six procurators (*procuratores communitatum burgorum*) — “six sufficient persons from each of the communities of the burghs in your bailiary having power especially for this” — with their seals and thus “special authority” (*vestram specialiter auctoritatem*) to ratify the peace and with it a second tax of a tenth on rents/fermes per annum to pay off an agreed £20,000 war indemnity to England.<sup>59</sup> Here there is evidence that Robert I and his ministers tried to retain a similar level of control over wider, and especially burghal, participation in parliament for the purposes of consent to this subsidy, just as had Edwards I and II, and Philip IV of France, during their reigns. Indeed, the choice in 1328 of *six* burghal representatives summoned to Robert's parliament is reminiscent of the numbers summoned per shire to Edwardian assemblies, as well as to the defiant French regional assemblies of 1315-16 which sought to extract charters of subjects' liberties in return for conceding royal subsidy (a face-off which

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<sup>59</sup> *RPS*, 1328/3; *RRS*, v, nos. 343, 345. Ratification of the Franco-Scottish alliance on 23 February 1296, in an “unidentified assembly” at Dunfermline Abbey, had recorded that “in addition the [seals of the] communities of the towns of Aberdeen, Perth, Stirling, Edinburgh, Roxburgh and Berwick, are appended to the present [letters] in proof of their consent and approval” [*RPS*, A1296/2/1]. But this does not necessarily indicate the attendance of burgesses in formal assembly at that earlier date.

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provoked violence).<sup>60</sup> However, one reason why Robert's reign remained free of such kinds of sweeping political challenges as the Ordinances levelled against Edward II, or the communal protests which sought to guard against royal taxes in France, lay in the king's willingness to engage with his subjects' concerns through the existing estates and presumably oral as well as written petitions. For example, in the wake of both the 1326 and 1328 parliamentary subsidies, Robert's grants and letters were peppered with concessions of exemption from this levy permitted to individuals, churches and urban centres still suffering economic privation and war damage.<sup>61</sup> The evidence of Robert's exchequer rolls suggests, too, that in order to secure subjects' payment of the second "war indemnity" tenth, the king and his household simply stopped enforcing continued collection of the personal tenth he had been granted by parliament in 1326.<sup>62</sup> Finally, in the last year of his life, when Robert was too ill to hold either council or parliament, he remained nonetheless accessible to such individual petitions right up until his death on 7 June 1329.<sup>63</sup>

That only three of Robert's 30 or more assemblies sought such financial consent, in contrast to 13 English parliaments between 1294 and 1327, surely explains much of the Scottish polity's comparatively limited development in regard to such representation(s).<sup>64</sup> Until the controversial ransom finances and Anglophile diplomacy c.1350-71 of Robert I's

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<sup>60</sup> Edmund B. Fryde, "The Financial Policies of the Royal Governments and Popular resistance to Them in France and England, c.1270-c.1420", in Fryde, *Studies in Medieval Trade and Finance, I* (London, 1983), pp. 824-60, at pp. 831-43; Elizabeth A.R. Brown, "Reform and Resistance to Royal Authority in Fourteenth-Century France: the Leagues of 1314-1315", in Brown, *Politics and Institutions in Capetian France* (Great Yarmouth, 1991), pp. 109-37.

<sup>61</sup> *RRS*, v, nos. 302, 303, 304, 305, 306, 307, 308, 310, 311, 312-4(A), 315-8, 481 and 452.

<sup>62</sup> Penman, *Robert the Bruce*, pp. 292-93.

<sup>63</sup> *RRS*, v, nos. 382-3.

<sup>64</sup> Robert held an estimated 15 parliaments, 11 councils and seven unidentified assemblies [Penman, *Robert the Bruce*, pp. 332-33]. A royal act, issued shortly after a Council at Newbattle in March 1320, authorized a national levy to help pay for the costs of restoring the stone town walls of Berwick-upon-Tweed, a tallage previously imposed only on that burgh itself by Edward I [*Scottish Formularies*, ed. Duncan, nos. E60, E98; *RPS*, 1320/3/1]

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troubled son and successor, David II, the burghs remained an occasional addition to estates' consultation. As late as 1390 we find lesser clergy, burgesses and rural freeholders reduced, or preferring, to seek the redress of their king by disturbing his sleep at Scone Abbey with "rough music", a theatrical appeal which bypassed the noble and prelatical household officials who had otherwise excluded them from the royal presence during what was the first parliament (and coronation) of Robert III (r.1390-1406).<sup>65</sup> Such lesser subjects might thus be perceived as being very much aware of and attendant upon, yet not physically *in*, parliament by right.

Clearly, there remains considerable scope for further comparative work, not least in examining how lesser Scottish subjects forwarded appeals to the estates and king. Nonetheless, there is sufficient evidence to see that much of the development of political consultation and participation that we have previously ascribed to the later fourteenth and fifteenth centuries in the Scottish kingdom actually originates in the late thirteenth and early fourteenth. Thus, far from being an "impalpable, inarticulate" presence in that earlier period, the "community of the realm" in parliament in Scotland can be detected — it was a force which Robert I and his government had at turns to forge, drive and dictate to, but which was increasingly representative of the estates and must also be heard, negotiated with and often satisfied.<sup>66</sup>

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<sup>65</sup> *Scotichronicon* — Walter Bower, ed. Donald E.R. Watt et al. (9 vols., Aberdeen 1989-97), **viii**, pp. 3-5.

<sup>66</sup> Thus contra Barrow, *Robert Bruce*, p. 342.