

Parliamentary representation in early modern Scotland: concepts and practices

Representação parlamentar no início da Escócia moderna: conceitos e práticas

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DOI: <https://doi.org/10.34628/zgdz-tj13>

This communication considers how representation was understood and articulated within the context of the two elected estates of the Scottish parliament (the representatives of the towns and of the counties who sat alongside the estates of peers and bishops who sat by individual right). I will discuss the general principles by which representation was conceptualised and examine in more detail two manifestations of representation. The first consists of the written and verbal interactions between the elected representatives (‘commissioners’) and their electors before, during and after parliamentary sessions. The second comprises the texts of their ‘commissions’, the official documents that the elected representatives carried with them to parliament. These documents recorded their election, acted as their mandate and included language indicative of the electors’ understanding of their relationship with their representatives. So this paper will consider three separate aspects of this topic: the theory of representation in the early modern Scottish parliament; how that theory operated in practice; and political rhetoric expressed in the mandates of elected representatives.

I: The theory of representation in early modern Scotland

Representation in the medieval and early modern Scottish parliament was thoroughly ‘feudal’ in the narrow sense that the king held the kingdom under God, and all of the monarch’s immediate vassals (both clerical and lay) were bound to attend to give counsel to the monarch, to make law, and to give their consent to grants of taxation. The membership of parliament represented the kingdom because everyone below the king’s tenants-in-chief had a direct or indirect relationship with all those entitled to sit in parliament. The clerical estate consisted of thirteen bishops (two of whom were elevated to archiepiscopal status at the end of the fifteenth century) and around forty heads of religious houses.¹ During the fifteenth century, a system evolved where only titled nobles (parliamentary peers) received a personal summons, while untitled nobles (who comprised the majority of the nobility and were known as lairds) generally ceased to attend.² Urban representation was also based on a town’s tenurial relationship with the crown: only the royal burghs, which paid a share of taxes and enjoyed exclusive legal and economic privileges, including the right to engage in overseas trade, were represented in parliament. Each burgh was governed by magistrates (a provost and bailies) and a council of between ten and twenty merchants and craftsmen, with the merchants usually dominant. As the burgh’s corporate body, these men chose the burgh’s representatives to parliament, who were known as ‘commissioners’.³ Until the later sixteenth century, they comprised the only elected members of parliament.

An anomaly had, however, developed by the sixteenth century. While the untitled nobility (the lairds) had largely disappeared from parliament

1 For the bishops, see WATT, Donald and MURRAY, Athol, (2003), *Fasti Ecclesiae Scoticanæ Medii Aevi Ad Annum 1638*, Edinburgh, Scottish Record Society; and for the other prelates, see WATT, Donald and SHEAD, Norman (2001), *The Heads of Religious Houses in Scotland from Twelfth to Sixteenth Centuries*, Edinburgh, Scottish Record Society.

2 For details on this development, see GRANT, Alexander (1997), «The development of the Scottish peerage», in *Scottish Historical Review*, 57 (1997), pp. 1-27.

3 For details of the history of the parliamentary representation of the towns, see MACDONALD, Alan (2007), *The Burghs and Parliament in Scotland, c.1550-1651*, Aldershot, Ashgate; MACDONALD, Alan (2010), «The Third Estate: Parliament and the Burghs», in BROWN, Keith and MACDONALD, Alan (eds) (2010), *The History of the Scottish Parliament Volume 3: Parliament in Context, 1237-1707*, Edinburgh, Edinburgh University Press, pp. 95-121.

during the fourteenth and fifteenth centuries, as tenants-in-chief of the crown, they remained liable to contribute to taxation. Indeed, in strict legal theory they retained the right to attend parliament, although since there were over one thousand of them, this was clearly not practicable. In the early fifteenth century, an attempt to create a system by which the lairds of each county would elect representatives was enacted by parliament but it came to nothing. However, during the sixteenth century, the lairds began to press for a return to parliament as increasing lay literacy led to their encroachment into significant roles in central and local administration. In 1587, after nearly three decades of lobbying, parliament revived the early fifteenth-century scheme, which stated that all lairds with lands above a certain value should elect two of their number to parliament from each of Scotland's thirty counties (also known as shires).⁴ Thus from 1587 until its demise in 1707, the Scottish parliament included two elected estates: the commissioners of burghs and the commissioners of shires.

Every commissioner elected to parliament was furnished with a written mandate called a commission, subscribed by a selection of the electors and sealed with the common seal of the burgh or shire. These commissions were issued in the name of the electors (the magistrates and council of the burgh, or the freeholders of the shire). While relatively formulaic, these fascinating documents reveal the tension between the concept of the commissioner as a delegate of the electors, and their mandated freedom to act independently. All commissioners were explicitly granted *plena potestas*: most commissions explicitly declared that the commissioners had 'full, free and plaine power' to act as they saw fit.⁵ Moreover, the electors usually also promised 'to hold firm and stable whatever things our commissioner shall do', that is to uphold all of the actions the commissioner carried out on behalf of the electors.⁶ Nevertheless, commissions might often remind their bearers that, while they possessed this freedom to act, they should always hold the interests of their entire estate and of their

4 GOODARE, Julian (2001), «The admission of lairds to the Scottish parliament», in *English Historical Review*, 116, 1103-33.

5 See, for example, National Records of Scotland [NRS], Commission for the Burgh of Renfrew, 1639, PA7/25/90/1.

6 NRS, Commission for the Shire of Fife, 1612, PA7/25/14/1.

constituency prominently in their minds.⁷ This was often emphasised with a reminder that, when in parliament, the commissioners should remember to do whatever they believed their electors would have done, had they been ‘personally present’ themselves.⁸

2: The Practice of Representation

Having set out the basic principles and accepted norms relating to the elected representatives in the early modern Scottish parliament, we will now move to considering the operation of those principles. An exploration of the behaviour and interactions of the elected with their electors enables us to obtain a clearer understanding of the true nature of the relationship between the two. In this context, the tensions between the principles of delegation and freedom to act can be revealed.

One thing that reveals the fact that parliamentary commissioners were seen by electors as their delegates was the almost universal adherence throughout the sixteenth and seventeenth centuries to the requirement for commissioners to have a stake in their constituencies. Burgh commissioners were required to be active, resident merchants. On the rare occasions when an unqualified commissioner was elected by a burgh, the rest of the estate would take action to exclude that person from participation in parliament.⁹ Similarly, shire commissioners had to be qualified to vote in the shire they represented, a fact that occasionally led to disputes at election time over whether a particular individual was entitled to be elected.¹⁰ ‘Carpet-bagging’ (the common practice in England of an outsider representing a constituency for their own political advancement) was virtually unknown in Scotland.

Another indicator of that close relationship is that commissioners’ expenses were routinely paid by their constituencies, again in contrast with the practice in England where the payment of MPs’ wages had died out

7 NRS, Commission for the Shire of Aberdeen, 1639, PA7/25/2/2.

8 NRS, Commission for the Burgh of Linlithgow, 1607, PA7/25/80/1.

9 MACDONALD, *The Burghs and Parliament in Scotland*, pp. 43-7.

10 NRS, Sheriff Court of Linlithgow, SC41/1/11, fo.149r.

during the sixteenth century.¹¹ Burgh commissioners set out with a purse of money from the town's treasurer and when they came home they returned any unspent money left or were reimbursed for 'superexpenses'.¹² While shire commissioners appear to have been more reluctant to accept expenses, perhaps due to aristocratic pride in relation to their duty of service to the crown and the kingdom, there were mechanisms by which their expenses could be paid, and parliament set standard rates for this.¹³

Commissioners might also receive written instructions and, after their return, they were expected to give an account of their conduct. At the election of Linlithgowshire's commissioners in 1646, the outgoing commissioners left the room to allow the electors to discuss how well they had performed. Happily for them, their conduct was approved and they were thanked for their diligence, then formally discharged from the obligations.¹⁴ By contrast, in the same year, the commissioner for the burgh of Inverness was admonished for failing to carry out his parliamentary duties properly. He was fined and ordered to 'confess his error and crave pardon' from the burgh council.¹⁵

The delegate nature of the system is also shown in the practice of electing substitutes. It was normal for electors to appoint someone to replace their commissioners if they were taken ill or were otherwise unable to attend. Such a person might be appointed in advance as an 'assessor' to the commissioners to accompany them to parliament to provide advice and, if need be, to stand in for them.¹⁶ The goal, indeed the underlying concept embodied in this practice, was the representation of the constituency in parliament, rather than the appointment of a particular individual to represent it. Sometimes a whole committee of 'assessors' might be appointed to assist a burgh's representatives, both before and during sittings of parliament, an approach most commonly seen in and around Edinburgh,

11 DEAN, David and JONES, N.L. (eds) (1990), *The Parliaments of Elizabethan England*, Oxford, Oxford University Press, pp. 139-63.

12 MACDONALD, *The Burghs and Parliament in Scotland*, pp. 83-88.

13 For discussion of this, see MACDONALD, Alan (2015), «Scottish Shire Elections: Preliminary Findings in Sheriff Court Books», in *Parliamentary History*, 34, pp. 279-94.

14 NRS, Sheriff Court Book of Linlithgow, SC41/1/14, fo.104r.

15 MACKAY, W and BOYD, H.C. (eds) (1911-24), *Records of Inverness*, 2 vols, Aberdeen, Spalding Club, vol. 2, 191-2.

16 Aberdeen City Archives, Aberdeen Council Records, CR1/52/1, 591-2.

where parliament normally met.¹⁷ Occasionally there were even instances of commissioners seeking their electors' advice during parliamentary sessions. This became more common from the 1640s onwards, as the duration of parliamentary sessions grew from under two weeks to several months at a time, and a number of burgh council minutes record letters to and from their commissioners and even some return visits by the commissioners of burghs situated close to the capital.¹⁸

3: The rhetoric of representation

Having outlined the principles upon which representation was based and some aspects of how it operated, the final section of this paper, looks in more detail at an interesting aspect of the representatives' commissions, the mandates they carried with them to parliament to prove their credentials. Few commissions survive from before the late 1630s and we do not have a complete set of commissions for every parliament until after 1660. It is, however, clear from those that do survive that they were systematically and deliberately preserved at the time. The loss of most of the pre-1639 commissions was probably the result of substantial quantities of the Scottish records that were taken to England after the Cromwellian conquest in 1651 being lost at sea during their return.¹⁹ Fortunately almost all of the commissions issued by electors for the parliament of 1639-41 survive (from 52 burghs and 29 shires), while a scattering of commissions survives from before that date which enable us to set these ones in a broader context.²⁰

The parliament of 1639-41 was particularly significant as it was the first to meet after the revolution of the Covenanters against Charles I, through which the political community had seized the initiative and sought to drive through fundamental constitutional change. Indeed, through a range of legislative measures, this parliament asserted its sovereignty as

17 See Edinburgh City Archives, Edinburgh Council Minutes, SL1/1/10, fo.90v, SL1/1/15, fo.96r; NRS, Linlithgow Sheriff Court Book, SC41/1/12, fo.65v.

18 Fife Council Archives, Dysart Council Minute Book, 1/10/01, 30 Oct. 1646.

19 STEVENSON, David (1971), «The English and the public records of Scotland, 1650–60», in *Stair Society Miscellany One*, Edinburgh, Stair Society, pp. 156-70.

20 NRS, Supplementary Parliamentary Papers, PA7/25.

superior to that of the king, even redefining treason as a crime against the state rather than the monarch.²¹ The commissions for the representatives were therefore drawn up in the context of constitutional upheaval and their language could be strikingly infused with political rhetoric.

Most of the surviving parliamentary commissions from before 1639 contain a statement of what might be termed the fundamental purpose of the commissioners. Generally, they required the commissioners to act in a way that promoted ‘the glory of God, our sovereign lord and the honour and weal of this his majesty’s kingdom’.²² In many commissions, this clause took on new significance in the context of the revolution against Charles I at the end of the 1630s. Many burghs and shires adapted it into a means to convey their political sentiments to a wider audience. About one third (seventeen) of the fifty-one burgh commissions retained what could be described as a neutral tone for this clause but the others chose explicitly to take a side, with twenty-four supporting the revolution and only eleven opposing it. More of the shire commissions were neutral (thirteen out of twenty-nine) but there was also a strong majority in favour of the revolution among the others, with eleven supporting it and five opposing.

There was no particular need for any of them to add a partisan statement to these documents, so those who drew up the commissions in 1639 were making a deliberate choice to embellish them documents with politically-charged language. Indeed, this makes it hard to avoid the conclusion that there was some sort of performative aspect to these documents at the point at which the arriving commissioners presented them for registration immediately before the parliamentary session. Why go to the effort of deviating from the standard phraseology if almost nobody is going to read it, or hear it read aloud?

Broadly speaking, the commissions can be classed as ‘royalist’ and ‘covenanting’. The royalist commissions do not explicitly mention, let alone condemn, the revolution that was going on around them. Instead,

21 For a recent account of the revolution, see STEWART, Laura (2016), *Rethinking the Scottish Revolution: Covenanted Scotland 1637-51*, Oxford, Oxford University Press; for the parliament of 1639, see SCALLY, John (2005), «The Rise and Fall of the Covenanter Parliaments, 1639-51», in BROWN, Keith and MANN, Alastair (eds), *The History of the Scottish Parliament Volume 2: Parliament and Politics in Scotland, 1567-1707*, Edinburgh, Edinburgh University Press, pp. 138-62.

22 NRS, Commission for the Burgh of Brechin 1633, PA7/25/43/1.

their ideology is expressed in the ways in which they refer to King Charles I himself. A number cite ‘obedience to the king’ as something that commissioners should promote.²³ Others refer to Charles in especially reverential terms: the commission for the burgh of Lauder refers to ‘his majesty’s sacred will’, Nairnshire’s commission calls Charles ‘his sacred majestie our dread sovereign’, while Renfrewshire’s is the most elaborate, describing him as ‘our dread sovereign lord the king’s most excellent majesty Charles by the grace of God king’.²⁴

On the other hand, many of those favouring the revolution do not mention the king at all, or only mention him in passing because of his formal role in summoning parliament. Commissions from twenty-seven burghs and twelve shires do not mention the king at all in the key clause that sets out the principles that commissioners should uphold, while others place him much further down the list than was previously customary, and some even explicitly make their obedience to the king conditional on his proper conduct. The commissions that favour the revolution are, however, much more overt in their expressions of that support, through such things as emphasising the primacy of statute as the basis of their privileges, including statements of constitutional principle that challenge royal absolutism, or making special mention of the Reformed church.

The citation of statute is especially prominent in shire commissions, specifically the legislation of 1587 that created their estate in the first place.²⁵ This is significant because, in doing this they were asserting the legal right of the lairds of every shire to hold annual elections regardless of whether a parliament had been summoned by the king or not. Burghs could elect their commissioners at short notice because burgh councils met at least weekly, but the lairds did not form a corporate body like a burgh council so shire elections were to be held one of the few times that they did gather, the annual Michaelmas ‘head court’, to ensure that, whenever a parliament was summoned, there would be shire commissioners ready and waiting. The citation of this statute in the commissions from 1639 was

23 For example, NRS, Commission for Glasgow 1639, PA7/25/64/1.

24 NRS, Commission for Lauder, 1640, PA7/25/79/2; Commission for Nairnshire 1639, PA7/25/24/1; Commission for Renfrewshire 1638, PA7/25/28/1.

25 BROWN, Keith *et al.* (2007-2021) *The Records of the Parliaments of Scotland to 1707*, St Andrews. <https://www.rps.ac.uk/> (Date accessed: 30 January 2021).

thus a declaration, albeit an oblique one, that their right to elect commissioners did not depend on the whim of the monarch but was a legal right that could not be taken from them except by parliament.

As well as explicitly citing or just alluding to the statute of 1587, a number of commissions deliberately adopted what could be described as constitutionalist language. The commission for Kincardineshire references the need for its commissioners to uphold the ‘fundamental laws’ of Scotland, while others cite the ‘laws and liberties’ or the ‘laws, liberties and privileges’ of the kingdom. The commissions for Jedburgh and for Roxburghshire empower their commissioners to engage with any business ‘competent to a *free parliament*’.²⁶ This was a particularly striking phrase as it was a touchstone expression of the revolution, and an assertion of the idea that parliament should not be constrained by the king.

One of the most significant words in the foundational document of the revolution, the National Covenant of 1638, was the simple preposition ‘in’. The signatories to the document that kicked off the revolution and set in train the process that would lead to all three kingdoms of Scotland, England and Ireland being immersed in civil war, pledged themselves to ‘the defence of our dread sovereign ... his person and authority *in* the defence and preservation of true religion, liberties and laws of the kingdom’. Just as the phraseology of laws and liberties is common to the National Covenant and these parliamentary commissions, it is surely no coincidence that the commissions from Whithorn and Wigtownshire enjoined their bearers to act ‘In so far as may concerne the glorie of God, the gude of our religioun, the preservatioune of our soverane Lord *in the maintenance of the samyne* and the weill and standing of this kingdome’.²⁷

Just as the more royalist commissions added reverential emphasis to the way in which they referred to the king, many of those which favoured the revolution augmented the customary references to God and the church. The burgh of Dumbarton’s commission enjoined its commissioner to work for ‘the glorie of God, the advancement of the kingdome of Chryst [and] the good of religioun’, while that from St Andrews listed its priorities as

26 NRS, Commission for Jedburgh 1639, PA7/25/71/1, Commission for Roxburghshire 1639, PA7/25/30/2.

27 NRS, Commission for Wigtownshire 1641, PA7/25/34/2, Commission for Whithorn 1641, PA7/25/99/1.

‘the glorie of God, the propagating of the trew religioun and the weill of the said kingdome and republict therof’.²⁸

While most acknowledged the constitutional role of the king in so far as the parliament to which commissioners were being elected had been formally summoned in the king’s name, many of them omit any mention of him from the clause that outlines the fundamental purpose to which the commissioners should dedicate themselves. The burgh of Dundee’s instruction to its commissioner to work for ‘the glorie of God and weill of this kingdome according to the lawes liberteis and privilegis thairof’ is typical.²⁹ Just under half of all the surviving commissions omit any reference to the king from this clause. Even those that pay lip service to him in that part of the document often emphasise other things either through more elaborate phraseology or by pushing the king down their list of priorities.

I will end by having a closer look at the commissions produced by just one constituency, the Highland shire of Argyll on Scotland’s west coast. Its commissions for the parliament of 1639-41 are without question the most radical of all the commissions from this time. Unusually two commissions survive because one of the commissioners was replaced, probably because of his royalist sympathies.³⁰ The fact that we there are two provides an opportunity to see how sentiment could become more entrenched over time. The commission from 1639 empowered the county’s commissioners to meet in the forthcoming parliament and also in all other ‘parliaments, generall conventions and lawfull meetings with his majesty or his highness’ commissioner’. While that particular phraseology was not a radical departure from tradition, the document then went further by empowering the commissioners to meet ‘in all other lawful meetings and conventions of the estates of this realm to be held amongst themselves’. During the winter of 1637-8, controversy had raged over the legitimacy of informal meetings between leading members of the nobility and people styling themselves ‘commissioners’ of shires and burghs because these meetings had not been sanctioned by the crown. The response of the electors of Argyll was to empower their commissioners to participate in such

28 NRS, Commission for Dumbarton, 1639, PA7/25/53/1, Commission for St Andrews, PA7/25/93/1.

29 NRS, Commission for Dundee 1639, PA7/25/56/1.

30 NRS, Commission for Argyll, 1639, PA7/25/3/1, Commission for Argyll, 1641, PA7/25/3/2. The following quotes are all drawn from these two documents.

meetings, even including those that had not been authorised by the crown.

The lairds of Argyll took things even further in 1641 when they empowered their commissioners, as before, to meet in all parliaments called by the king or his commissioner, but also in any parliaments held ‘by the estates among themselves in absence of his majesty or his highness’ commissioner’. This is a striking departure which is a clear indication of the shifting constitutional position. All previous parliaments had been summoned by the king and had met with the king or his appointed representative (his commissioner) in attendance. A key context for this is the fact that, in the summer of 1640, in an attempt to prevent parliament from meeting, Charles I had ordered his commissioner, the earl of Traquair, not to attend, and had sent the Lord Advocate, Sir Thomas Hope of Craighall, to prorogue the session. The assembled estates responded by electing their own president and carrying on with the session regardless.³¹ By empowering its commissioners to participate in a parliament at which neither the king nor his commissioner was present, the commission issued by Argyll in 1641 was confidently underlining the legitimacy of that position.

Conclusion

Given the modifications made to some of their key clauses in the context of revolution, we can see that Scottish parliamentary commissions were more than mere formalities. They were self-consciously fashioned to convey ideological messages, which were probably read aloud to the assembled commissioners as they gathered ahead of the parliamentary session. While there was undoubtedly national coordination of the revolution by the leadership in Edinburgh, the diversity of the ways in which political ideas were expressed in these documents suggests something much more organic was going on across Scotland as the political nation confronted the consequences of rising up in defiance of their monarch. The commissions show that ideas about the nature of sovereignty and political legitimacy were circulating freely and seeping into the thinking of grass-roots political actors in the localities.

31 STEVENSON, David (1973), *The Scottish Revolution 1637-44: The Triumph of the Covenanters*, Newton Abbot, David and Charles, pp. 192-3.

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