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Neither inside nor outside the corridors of power: prosaic petitioning and the royal burghs in early modern Scotland

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SUMMARY

This article explores early modern petitioning in the context of urban Scotland. It focuses on prosaic rather than political petitioning, on the basis that the former was more truly characteristic of what the purpose of petitioning was understood to be by most of those who engaged in it. The burghs of Scotland provide an added dimension to the history of petitioning because of the role of their national assembly (the Convention of Royal Burghs), which was simultaneously a recipient of petitions, a conduit for its members' petitions to the crown, and a petitioner of the crown in its own right. This article also reveals how changing practices of petitioning shed light on the development of the early modern Scottish state, as the Convention of Royal Burghs found its members increasingly bypassing it and instead they resorted directly to central government institutions.

The historiography of petitioning in early modern Scotland is dominated by accounts of large-scale petitioning campaigns organized in response to significant government policy initiatives. Historians have concentrated their attention on two nationally-coordinated petitioning campaigns in particular, one seeking the

withdrawal of a prayer book imposed upon Scotland by King Charles I in 1637, and the other opposing incorporating union between Scotland and England at the beginning of the eighteenth century.¹ Yet these high-profile episodes relied on adapting ordinary practices of private petitioning. In this context, ‘private’ should be understood as distinct from ‘public’: private petitions did not seek to drum up support for a cause or pursue significant changes in government policy, but rather involved individuals and groups submitting requests to others who had the power to satisfy their desires, or were perceived as having such power. They did not operate within the public sphere, so were not circulated and were rarely printed. One of their defining characteristics is that they never openly sought to challenge existing power structures.² Closer study of everyday petitioning provides an important foundation from which interactions between governors and the

¹ For discussions of these petitioning campaigns, see L.A.M. Stewart, *Rethinking the Scottish Revolution: Covenanted Scotland, 1637–1651* (Oxford, 2016), pp. 62–70; A.I. Macinnes, *The British Revolution, 1629–1660* (Basingstoke, 2005), pp. 112–14; K. Bowie, ‘Public opinion, popular politics and the Union of 1707’, *Scottish Historical Review* 82, (2003), pp. 226–60, esp. pp. 241–55; K. Bowie, *Scottish Public Opinion and the Anglo-Scottish Union, 1699–1707* (Woodbridge, 2007), pp. 115–37.

² Bowie, *Scottish Public Opinion*, pp. 1–7; P. Jones and S. King, ‘From petition to pauper letter: the development of an epistolary form’, in P. Jones and S. King (eds), *Obligation, Entitlement and Dispute under the English Poor Laws* (Newcastle, 2015), p. 63. I am very grateful to Ted Vallance for this reference.

governed can be understood. Questions of the location and legitimacy of power, if they occur, may gain prominence because they are extraordinary, yet they distract from the norm. Most of the time, petitioning concerned ordinary things, but these things were important to those making the requests.

The royal burghs of Scotland, collectively and individually, were active participants in the coordinated petitioning campaigns of 1637 and the early 1700s, but these were far from the most common sort of petitioning experienced by Scotland's towns.³ Prosaic petitioning can enhance our understanding of the shifting dynamics of power in a small, early modern state forming part of a composite monarchy.

Much of what is written on cultures of communication in general and petitioning in particular concerns the language and rhetoric of written and printed texts.⁴ Printed petitions were vanishingly rare in Scotland before the later

³ C.A. Whatley with D. Patrick, *The Scots and the Union* (Edinburgh, 2006), pp. 285–6; A.R. MacDonald, 'The Third Estate: Parliament and the Burghs', in K.M. Brown and A.R. MacDonald (eds), *The History of the Scottish Parliament Vol. 3: Parliament in Context, 1235–1707* (Edinburgh, 2010), pp. 119–20.

⁴ R. Chartier (ed.), *The Culture of Print: Power and the Uses of Print in Early Modern Europe* (Cambridge, 1989); B. Harris, *Politics and the Rise of the Press: Britain and France, 1620–1800* (London, 1996); J. Peacey, *Print and Public Politics in the English Revolution* (Cambridge, 2013); D. Zaret, *Origins of Democratic Culture: Printing, Petitions and the Public Sphere in Early Modern England* (Princeton, 2000).

seventeenth century: none of the 1637 petitions against the prayer book were printed and even when it came to the 1706–07 campaign against incorporating union, most addresses were submitted in manuscript. As far as prosaic petitioning is concerned, the question of print versus manuscript is simple and straightforward: virtually none of these petitions were printed. Scotland had few printing presses, networks of communication were small, and the political nation was tightly-knit.⁵ In parliamentary terms, for example, electorates were tiny, consisting of small, fairly homogeneous groups of under 50 people: the untitled nobles in the shires and merchant-dominated councils in the towns. Communication among these groups to garner support for a cause or initiative was direct and informal and, when it was written down, was not reproduced in print. Indeed, there are good grounds for rejecting the notion that petitions were even necessarily material things. While there is no doubt that, by the early modern period, the written word was long-established as having superior legal status to the spoken word, much formal communication continued to be conducted orally, and this was even more marked in Scotland than in England.⁶ For example, royal

⁵ For printers, see A.J. Mann, *The Scottish Book Trade, 1500–1720: Print Commerce and Print Control in Early Modern Scotland* (East Linton, 2000), esp. Appendix 3.

⁶ M.T. Clanchy, *From Memory to Written Record: England 1066–1307* (Cambridge, MA, 1979), p. 2. While Clanchy was writing about England in the high middle ages, he made a compelling case for the continued prominence and significance of oral communication in formal contexts well into the early modern period.

proclamations, increasingly issued solely in printed form in England, continued well into the seventeenth century to be disseminated in Scotland by means of handwritten copies distributed to local officers to be read aloud at the head burgh of each shire. In Scotland, the printed proclamation, like the printed petition, was almost unknown before the Restoration of the monarchy in 1660.⁷ Thus one significant drawback in discussing prosaic petitioning in early modern urban Scotland is the nature of the evidence. Full texts rarely survive even when they were submitted in writing and supplicants commonly made their representations orally, with the petition transformed into writing only if the clerk recorded it, either verbatim or in summary. It is therefore difficult to subject any of these petitions to meaningful textual analysis. Nevertheless, it remains possible to learn from the subjects of these petitions and the processes by which they were handled.

A final introductory point concerns the nature of the political structures within which these prosaic petitions were created. The Scottish royal burghs occupied an ambivalent constitutional position. First of all, while it is a truism that petitioning consists of those without the power to make something happen submitting a request to those with the power to make it happen, the royal burghs occupied both roles simultaneously, depending on the circumstances. That in

⁷ D. MacCannell, 'Cultures of proclamation: the decline and fall of the Anglophone news process, 1460–1642' (University of Aberdeen, PhD thesis, 2009), Introduction, pp. 64, 167–9.

itself is fairly unremarkable, since in any hierarchical society many individuals or corporations might sometimes receive petitions and at other times be the petitioner. However, the royal burghs were simultaneously both inside and outside the corridors of state power. Comprising around 60 incorporated towns by the middle of the seventeenth century, they had no subject superior other than the king. They were therefore on a par with the nobility, in terms of their tenurial relationship with the crown: they called themselves the ‘free’ burghs, in contrast with the ‘unfree’ towns dependent on noblemen.⁸ Their councils and courts of law were subject only to the central organs of the state, their merchants had exclusive rights to engage in international trade, and their elected representatives comprised one of the parliamentary estates, in return for which they collectively paid a share of all national taxes voted by parliament. Perhaps most significantly of all, and uniquely in Europe, they possessed their own national representative assembly, the Convention of Royal Burghs. Made up of representatives from every royal burgh, this met every summer to discuss a whole range of business, while *ad hoc* ‘particular’ conventions, consisting of selected burgh

⁸ The royal burghs repeatedly referred to themselves as free and to the other burghs and their merchants as ‘unfree’. For examples see J.D. Marwick *et al.* (eds), *Records of the Convention of the Royal Burghs of Scotland [RCRBS]*, 7 vols (Edinburgh, 1866-1918), vol. 3 (1878), p. 314 (free), p. 615 (unfree).

representatives appointed by the previous general Convention of Royal Burghs, met to deal with specific issues delegated to them and with matters arising.⁹

Their legal status, national Convention, and presence in parliament meant that the royal burghs were an integral part of the power structure of the early modern Scottish state.¹⁰ Yet because they consisted of incorporations of commoners, they sat outside that power structure: burgesses virtually never held any high office and were almost completely absent from the executive branches of government (privy council and exchequer). During the whole of the sixteenth and seventeenth centuries, only Thomas Menzies of Pitfodels, provost of Aberdeen, was briefly comptroller during the 1540s, and James Stewart of Coltness, provost of Edinburgh, was commissary general and treasurer of the excise in the 1640s. Nor were many ever to be found at court, even before the departure of the monarch to London in 1603, with the rare exception of George Heriot, an Edinburgh goldsmith turned money-lender to King James VI and I.¹¹

⁹ T. Pagan, *The Convention of the Royal Burghs of Scotland* (Glasgow, 1926); A.R. MacDonald, *The Burghs and Parliament in Scotland, c.1550–1651* (Aldershot, 2007), pp. 5–8, 57–8.

¹⁰ J. Goodare, *The Government of Scotland 1560–1625* (Oxford, 2004), pp. 43–4, 50–5.

¹¹ S. Handley, 'Heriot, George (1563–1624)', *Oxford Dictionary of National Biography*, <http://www.oxforddnb.com/view/article/13078>, Oxford University Press, 2004; online edn, January 2008 [accessed 19 September 2017].

The Convention of Royal Burghs was powerful enough to receive petitions from corporations and individuals but it was also compelled to petition more powerful bodies and individuals for redress of grievances and advancement of its own causes. Similarly, while its constituents did not need to petition parliament from the outside, being able to work through their Convention, there were things that parliament could not deliver for them – and for these, brought before the noble-dominated privy council, a burgh might find that its privileged status counted for little. Using the records of the Convention of Royal Burghs and the privy council, this study explores what sorts of requests were submitted by the royal burghs, both from their Convention and from the crown and its organs of central government, and how the burghs went about making these. It also looks at changes in the pattern of requests over the seventeenth century.

Complaints, supplications and petitions

Reviewing the evidence for petitioning in early modern Scottish sources, one is immediately struck by the rarity of the word ‘petition’: for example, it appears only twice in the whole of the second volume of the published records of the Convention of Royal Burghs covering the period 1597 to 1614.¹² Not until the 1650s does it become commonly used to refer to the requests submitted to the

¹² *RCRBS*, vol. 2, pp. 410, 574.

Convention.¹³ Instead, written requests were almost always called ‘supplications’. There does not seem to be any substantial significance in the use of these different words, which appear to have been virtually synonymous. Both commonly appeared in the formal parts of the parliamentary record which listed the categories of business that parliament might handle, where they seem to have been deployed as part of a set of standard legal binomials/multinomials by which lawyers ensured that legal texts encompassed everything necessary through the use of groups or pairs of synonyms or near-synonyms.¹⁴

It is clear, however, that anything termed ‘supplication’ in the records of the Convention of Royal Burghs was a written submission, commonly described as having been ‘given in’ or ‘produced’, and sometimes even as ‘penned’.¹⁵

¹³ *RCRBS*, vols 2 and 3 passim.

¹⁴ K.M. Brown *et al* (eds), *The Records of the Parliaments of Scotland to 1707 [RPS]*, (St Andrews, 2007–18), 1621/6/2, a continuation of parliament that listed the business of parliament as encompassing ‘summondis, actiounes, causes, supplicatiounes, petitiounes and articles’, <http://www.rps.ac.uk> [accessed 18 October 2017]; J. Kopaczyk, *The Legal Language of Scottish Burghs: Standardization and Lexical Bundles 1380–1560* (Oxford, 2013), pp. 24–30, 188–207; see also A.R. MacDonald, ‘Uncovering the legislative process in the parliaments of James VI’, *Historical Research* 84, (2011), pp. 6–7; A.R. MacDonald, ‘Deliberative processes in parliament c.1567–1639: multicameralism and the Lords of the Articles’, *Scottish Historical Review* 81:211, (2002), pp. 41–3.

¹⁵ *RCRBS*, vol. 2, pp. 52 (‘productit’), 95 (‘gevin in’), 326 (‘pen the said supplicatioun’).

However, almost as many requests submitted to the Convention of Royal Burghs between 1597 and 1614 were described as ‘complaints’, a term which is also commonly found in the records of the privy council and which should be understood, along with ‘petition’ and ‘supplication’, as sitting under the umbrella of ‘petitioning’ in general. Unlike supplications, however, complaints were rarely ‘given in’. On a few occasions, the minutes refer to a complaint as being ‘produced’, or describe the details as ‘contained in’ or ‘mentioned in’ the complaint, in which case it was common for the written submission relating to the complaint to be referred to as a supplication.¹⁶ Complaints must therefore have been delivered orally and recorded by the clerks of the Convention of Royal Burghs on that basis, even if the petitioner had used a written text on which to base his oral request.

In contrast to the apparently synonymous use of ‘supplication’ and ‘petition’, there does seem to have been a difference between a complaint and a supplication.¹⁷ The former, normally and perhaps unsurprisingly, involved one party bringing a grievance against another and asking for the Convention of Royal Burghs or the privy council to take action, often without requesting a specific

¹⁶ *RCRBS*, vol. 2, pp. 129, 147, 150, 151, 240, 258, 267.

¹⁷ ‘Complaint *n.*’ [http://www.dsl.ac.uk/entry/dost/complaint_n] and ‘Supplicatio(u)n *n.*’ [<http://www.dsl.ac.uk/entry/dost/suppliation>], *Dictionary of the Scots Language*, Scottish Language Dictionaries Ltd, 2004 [accessed 21 December 2017].

outcome other than the end of the perceived misbehaviour of the party against which the complaint was made. In that sense, complaints had a quasi-legal aspect. In the context of the Convention of Royal burghs, these tended to involve disputes between or within burghs. Collectively, the burghs recognized the Convention's power to act in this way, much as members of a voluntary organization accept the right of its governing body to enforce the organization's rules. Courts of law might respect the Convention's decisions (they usually did), but they were not legally enforceable. For example, in 1602, Wigtown in Galloway complained that nearby Kirkcudbright was admitting inhabitants of the unincorporated village of Minnigaff as burgesses, thus allowing them to infringe the liberties of the royal burghs in general and of Wigtown in particular, only eight miles from Minnigaff.¹⁸ Such complaints were common, and in these circumstances the Convention would normally order the offending burgh to behave, but it could enforce such an order only through the moral force of its decisions. If a burgh persisted in ignoring the Convention's judgments, the aggrieved party had to resort to the central courts. Complaints might also be brought before the privy council, or even parliament, usually when the complainer had not obtained the desired outcome from the Convention of Royal Burghs. The most notorious example of this occurred as part of a dispute between Dundee and Perth that dragged on for five decades between the 1560s and 1600s: in April 1581, the

¹⁸ *RCRBS*, vol. 2, p. 150.

Convention ruled in favour of Perth, so Dundee took the case to parliament in the following November; Perth took it back to the Convention in 1582, only for Dundee to take it back to parliament again later that year.¹⁹ It was remarkably rare for royal burghs to wash their dirty linen in public in this way, but in this particular case the reputational and commercial stakes were high.²⁰

Whether by complaint or supplication, the overwhelming majority of petitioning to the Convention of Royal Burghs came from its own members. Most common was a complaint by one burgh concerning the conduct of one of its neighbours, often involving an accusation that customs were being levied on its burgesses illegally.²¹ Sometimes burghs had special permission to levy such charges, as we shall see, but some took the risk of trying to raise some extra revenue by alleging the right to impose a levy on merchants from other royal burghs when no such right existed. In 1605, Forfar submitted a supplication complaining that Dundee levied a toll on every horse carrying goods into the burgh. So that Dundee could ‘answer to the said complaint’, the issue was deferred to the following year, when the Convention ruled in Forfar’s favour and

¹⁹ MacDonald, *The Burghs and Parliament*, pp. 170–1.

²⁰ See, for example, J.H. Burton *et al.* (eds), *Register of the Privy council of Scotland [RPC]*, 37 vols (Edinburgh, 1877-1970), 1st series, vol. 6 (1884), which does not contain a single instance of a complaint by one royal burgh against another.

²¹ *RCRBS*, vol. 1, p. 349, vol. 2, pp. 33, 147, 150–1.

pre-empted further trouble by requiring Forfar's commissioner to promise that his burgh would not levy any similar retaliatory duty on the burgesses of Dundee.²² The Convention was at pains to ensure that every burgh treated the burgesses of other royal burghs with the respect they deserved. After all, had this sort of thing been allowed to continue unchecked, it could have undermined the whole single-market system of 'freedom' by which the merchants of royal burghs were able to trade across the kingdom, a system that the Convention existed, above all, to maintain and regulate. In any other country, these disputes could only have been resolved through the king's courts and, while burghs did sometimes resort to the judicial system, the Convention was usually accepted by its members as being capable of judging in such cases and therefore provided an effective means for redress of grievances. As noted above, a burgh that failed in such a complaint might then take its case to the privy council or the court of session but that would be costly and they would get no support, financial or in the form of legal advice, from the Convention if it had already heard the case and come to its own verdict.

In spite of the capacity of the Convention to receive urban petitions, the privy council received numerous urban supplications. Some of these had passed through the Convention on their way; these tended to be complaints by an aggrieved royal burgh against an outsider violating its rights or properties, such

²² *RCRBS*, vol. 2, pp. 267, 278–9.

as a neighbouring laird encroaching on a burgh's common land, or the inhabitants of a non-royal burgh engaging in trade that was legally restricted to the royal burghs.²³ The Convention had no jurisdiction over such people, underlining the fact that its judgments applied only to its own members and relied upon their consent. In such cases, the petitioning burgh was seeking the blessing of the Convention, or even its financial support, and the legal expertise that the Convention had at its disposal. In 1601, Stirling asked for financial help from the rest of the burghs for the expenses of a case against Airth and Falkirk, unfree burghs dependent on John Bruce, laird of Airth, Alexander Livingston, Lord Livingston respectively. The Convention's response was to urge Stirling to continue with the case and, if it was successful, to bring a copy of the court's judgment to the next Convention, at which it would then consider whether to reimburse any of its expenses. When Irvine, a considerably less wealthy burgh, made a similar request a few years later, the Convention asked it to borrow the necessary funds but assured Irvine's commissioner that the money would be reimbursed by the rest of the burghs, whatever the outcome.²⁴ In some cases, the Convention might even insist that one of its members initiate an action against violations of its privileges in the central courts, requiring the burgh to report due

²³ *RCRBS*, vol. 2, pp. 35, 52.

²⁴ *RCRBS*, vol. 2, pp. 102–3, 147–8; G.S. Pryde, *The Burghs of Scotland: A Critical List* (Oxford, 1965), pp. 62–3.

diligence in its supplication of the privy council or the court of session to the next Convention.²⁵ In this way, the Convention can be seen both to have facilitated petitioning when it led to action in defence of the individual and collective privileges of its members, and to have sought to ensure that its members defended those privileges even when they were reluctant to do so – presumably because there was something to be gained by them in allowing unfree traders to continue to operate locally (as in the case of the dispute between Wigtown and Kirkcudbright above), or out of fear of a more powerful local figure such as an aristocratic patron of an unfree burgh. Collectively, the membership of the Convention tended to take the view that any violation of an individual burgh's trading privileges or legal jurisdiction was an indirect threat to the privileges of all of them. Most burghs were diligent in seeking redress and the privy council register contains numerous instances of burghs bringing such complaints.²⁶

Less privileged urban groups might also avoid petitioning the Convention of burghs and resort directly to the privy council. This was a common tactic of craft guilds. With the exception of one of the two representatives that Edinburgh sent, every member of the Convention of Royal Burghs was a merchant and almost every burgh council in the land was merchant-dominated. As a result, complaints from craft incorporations about their treatment by burgh councils

²⁵ *RCRBS*, vol. 2, p. 111.

²⁶ *RPC*, 1st series, vol. 6, pp. 23, 108, 125–6, 237–8, 272–3, 289–90, 609, 625–38, 679.

would rarely receive a favourable hearing there. In 1602, for example, the baxter craft [bakers] of Brechin brought a complaint against their magistrates and council to the privy council. They alleged that the council was failing to uphold their exclusive rights to supply the burgesses of Brechin with bread by allowing others who were not members of the craft incorporation to engage in baking commercially within the burgh. Both parties were summoned before the privy council, which found in favour of the bakers.²⁷ Private individuals might even complain to the privy council about their treatment by their own burgh council, such as an instance in 1600 when a burgess of Dundee claimed that the provost, bailies and council had imprisoned him without just cause. His petition was granted and the burgh authorities were ordered to set him at liberty.²⁸

Individual burgh supplications to the Convention were dominated by requests for financial assistance to allow the burgh to pursue a legal case in defence of its privileges, carry out public works, or provide aid in the aftermath of a catastrophe such as a major fire or flood. Through the regular payment of annual dues from each burgh and the levying of fines on those that were absent or failed to carry out its decisions, the Convention had money at its disposal for these purposes. If the sums required were greater than the funds of the Convention could support, the Convention might sanction a voluntary contribution from every

²⁷ *RPC*, 1st series, vol. 6, pp. 391–2, 394, 398.

²⁸ *RPC*, 1st series, vol. 6, p. 89.

burgh, such as in the case of Irvine's request in 1599 for help after a fire had devastated part of the burgh.²⁹ When the cause was deemed more worthy, such as the building of Burntisland's innovative new parish church in the late 1590s, aid might be guaranteed by agreeing a sum and apportioning a compulsory contribution from every burgh based on their respective share of national taxation.³⁰

As well as being capable of resolving the diversity of problems brought to it by petitioners, the Convention of royal burghs played an important role in processing and channelling petitions from its own members upwards to the crown. While it lasted, this provided petitioners with a smoother path to success than they would otherwise have had, reducing as it did the need for individual burghs to cultivate the favour of prominent courtiers and officers of state. Most commonly this involved a burgh approaching the Convention with a request for permission to apply to the crown for the right to levy an 'impost'.³¹ This consisted of a time-limited and hypothecated toll or custom on specified goods for sale, entering the burgh through its harbour or gates, to fund a particular project such as building a new tolbooth, paving streets, or undertaking major repairs to bridges

²⁹ *RCRBS*, vol. 2, p. 53.

³⁰ *RCRBS*, vol. 2, p. 16. Burntisland's was probably regarded as particularly deserving for it was the first new urban church to be built in Scotland after the Reformation.

³¹ *RCRBS*, vols 2 and 3 passim.

and harbours. These requests differed from the direct pleas for aid discussed above, which tended to be made in response to short-term crises involving the destruction of people's houses or public buildings due to fire, flood or storms. In such cases, the burgh in question was effectively asking for charitable aid. Imposts, on the other hand, were always intended to pay for works on essential infrastructure or public buildings. They were crucial to the functioning of the burgh in question and, by extension, important for national commerce. While the need for these works might have been occasioned by a single, catastrophic event, it was just as likely to arise from the normal processes of decay. Harbours and bridges were particularly prone to this problem, given the vulnerability of mortar to water and the impacts of storms and spates: in 1604, Burntisland, Culross and Tain all submitted supplications for help with their harbours which were 'ruynous and habill [likely] to decay without tymeous reparatioun', while in 1606 Dumfries had similar problems with its bridge over the River Nith.³² The ordinary revenue of a burgh could usually cover running repairs and maintenance but was not capable of supporting a major building project.

Taking a request for an impost to the Convention of Royal Burghs is an example of what appears to have been the rather unusual practice of petitioning for permission to petition. The individual burgh was asking the Convention to authorize its request to the crown for permission to levy the impost. In England,

³² *RCRBS*, vol. 2, pp. 180, 221.

an impost required a statute, an expensive and time-consuming business, but in Scotland the crown chose to devolve responsibility for vetting these requests to the Convention, providing a quicker, cheaper and more efficient route to the desired outcome. In the early seventeenth century, an average of three such requests were approved by the Convention of burghs every year. In the entire reign of Queen Elizabeth I (1558–1603), the much more numerous English boroughs obtained only 38 statutes granting permission for similar levies, an annual average of less than one.³³ The wording of the privy seal letters that granted a burgh the right to raise an impost makes this clear: the substantive text of the letters was drawn verbatim from the Convention’s act giving the burgh permission to make the request to the crown, right down to the detailed list of the goods upon which the impost would be levied, the different sums to be uplifted on those goods, the place at which this should happen, and whether the charges were to be applied to imports, exports, or internal trade.³⁴ The Convention’s act

³³ R. Tittler, ‘Elizabethan towns and the “points of contact”: Parliament’, *Parliamentary History* 8, (1989), pp. 275–88, at p. 279; D.M. Dean, ‘Parliament and locality’, in D.M. Dean and N.L. Jones (eds), *The Parliaments of Elizabethan England* (Oxford, 1990), pp. 139–63, at pp. 147–8.

³⁴ See for example the convention’s permission to Wigtown to seek permission for an impost, *RCRBS*, vol. 2, p. 149, and the privy seal letter confirming the permission, National Records of Scotland, Register of the Privy Seal, PS1/80.

was the result of the burgh's petition and its wording in turn will almost certainly have come from the original petition.

Other complaints and supplications came from such diverse sources as a parish minister trying to stop people burying their dead within his church, the agent of the Dutch estates general in Scotland hoping to secure the release of his compatriots who had been captured by pirates, and disgruntled burgesses complaining about their council's conduct.³⁵ The last is more typical of the modern petition, in that it consisted of an organized complaint by a subordinate group, seeking redress. While their supplications were not recorded, so we cannot know how they expressed their grievances, it is clear that the Convention was seen as able to provide useful outcomes not only for its members but also for many others who might thereby avoid expensive legal action before the courts.

Changes over time

A major challenge faced by the Convention of Royal burghs during the seventeenth century was the novel difficulty of interacting with a distant royal court after the 1603 union. Before this, annual general Conventions often sent delegations to the king and the privy council, usually seeking reduced financial burdens on commerce or complaining about new impositions. Indeed, their need to petition the crown in this context epitomizes their subordinate status in the

³⁵ *RCRBS*, vol. 2, pp. 42–3, 256.

national polity. In 1597, they pleaded with James VI not to implement a hike in customs duties approved by a recent convention of estates. In this instance, they combined oral and written petitioning, speaking to the king and the lords of exchequer and also submitting written supplications to them.³⁶ While the records of the Convention suggest that they usually made a point of retaining copies of these petitions ‘*ad futuram rei memoriam*’, these sadly do not survive in the Convention’s minutes. As with so many of the oral and written petitions that were presented, we are once again left guessing about their rhetorical techniques.

After 1603, while delegations to the privy council and written supplications continued to be sent, direct communication with the king waned. This bothered the burghs, given how accustomed they had been to making their complaints and requests to him in person. In 1604, so anxious were they at this, that it featured prominently in their ‘instructions’ to their representatives on a commission appointed to discuss the terms of the king’s plans for closer Anglo-Scottish union. The union talks presented a rare opportunity to have their grievances heard at the heart of government and their instructions consisted of a detailed list of requests, which have the distinct air of a petition: the 17 different items were peppered with words like ‘desire’, ‘intreat’, ‘regret’ and ‘insist’, by which they combined pleading with the sort of indignation that is most commonly indicative of

³⁶ MacDonald, *The Burghs and Parliament*, p. 72.

impotence.³⁷ As the ‘meanest of the estates’, they wanted to be heard, but simultaneously were aware that their voices carried considerably less weight than those of the rest of the political elite.³⁸ Unsurprisingly, their instructions are dominated by issues relating directly to trade but they were also exercised by fears of losing political influence in Scotland, with the previously accessible court now so far away. Their response was to call for parliamentary reform, asking that nothing would pass without the approval of a majority of each estate, not just a simple majority of the whole of parliament as currently happened. Most significantly, they desired that the king might spend three months in Scotland every year, aware as they were that face-to-face access to the monarch was the best way of petitioning him. Perhaps because the union commission ultimately achieved so little, none of these requests were granted, although it is unlikely that they would have been, whatever had come of the project.³⁹

After the union the royal burghs thus had to adapt to ‘absentee monarchy’ and devise ways in which to try to offset the direct access to court they had been able to exercise when the king was resident in Scotland. It took them ten years to come up with a permanent solution, and it was an expensive one. From 1613 onwards they paid a hefty retainer to a courtier to act as their agent at court. This

³⁷ *RCRBS*, vol. 2, p. 184.

³⁸ *RCRBS*, vol. 1, p. 497.

³⁹ B. Galloway, *The Union of England and Scotland 1603–1608* (Edinburgh, 1986).

met with some early success, for in 1615 their pleas that Scottish merchants should not be subject to English and Irish customs as if they were foreigners were granted, resulting in a royal command to English customs officers to that effect. The burghs' retained contact at court gave them a means of communicating with the king but it proved difficult to find a courtier who knew very much about the affairs of merchants. They therefore wrote detailed instructions to him and also felt the need to send a delegation to meet him in London to instruct him in person, with one single trip costing as much as £3,600 Scots (£300 sterling).⁴⁰ What is more, the apparent triumph of creating a British and Irish customs union was short-lived, as they quickly discovered that English and Irish customs officers continued to subject Scottish merchants to the same duties. The Convention continued to petition court about this and they were still complaining on the subject in the middle of the 1630s, but to no avail.⁴¹ During the civil wars and interregnum, instability reigned, but after the Restoration, they reinstated the system of retaining an agent at court, this time in the person of none other than John Maitland, first duke of Lauderdale, at a cost of 2,000 merks (£1,333 6s 8d Scots) per annum. He held the office from 1660 to 1680 but he too did not prove the most reliable advocate. In 1672, he was asked to take the burghs' ever-present

⁴⁰ *RCRBS*, vol. 2, p. 406, vol. 3, pp. 10–11.

⁴¹ A.R. MacDonald and M. Verschuur (eds), *Records of the Convention of Royal Burghs, 1555, 1631–47* (Woodbridge, 2013), pp. 19–21, 107–8, 110, 118–19, 159, 179, 193, 209.

grievances against the encroachments of unfree merchants upon their privileges to the king. The tragically ironic result of this petition was an act of parliament later that year ending the royal burghs' monopoly on overseas trade and effectively rendering the distinction between free and unfree burghs redundant. For Lauderdale, when it came to choosing between the interests of the aristocratic patrons of unfree burghs, of which he himself was one, and those of the royal burghs whose agent at court he was supposed to be, there was no contest. He conveyed the burghs' petition to court but evidently made no meaningful effort to press their case. Yet the burghs were stuck with their high-profile agent, who was 'too valuable an asset' to lose; to have dumped him would have done them considerably more harm given his grip on power and patronage.⁴²

While the role of the Convention as a gatekeeper for petitions on imposts suited both the crown and the burghs, it indicates the extent to which, at a practical level in the early seventeenth century and before, the exercise of sovereignty within Scotland was devolved. This is illustrated most strikingly in what appears to have been the power of the Convention to grant or refuse a new burgh's request

⁴² For Lauderdale's relationship with the 1672 legislation and with the royal burghs, see R. Campbell Paterson, *King Lauderdale: The Corruption of Power* (Edinburgh, 2006), pp. 199–200, 217; J. Toller, "'Now of little significance'? The Convention of the Royal Burghs of Scotland, 1651–1688' (University of Dundee, PhD thesis, 2009), pp. 197, 256–61, 269–75; *RPS*, 1672/6/13.

for admission to the estate. While royal burghs were ostensibly created through the grant of a crown charter, as their name would suggest, a newly-erected royal burgh still had to request 'enrolment' by the Convention, and this was no mere formality. Stranraer in Wigtownshire obtained its charter in 1617 but was not enrolled until 1683, while Earlsferry in Fife got its charter in 1589 but was refused enrolment and never operated as a royal burgh.⁴³ When the Convention's right to do this was challenged in the 1630s, it was confirmed by none other than the Lord Advocate, the crown's chief law officer.⁴⁴

Even though there appears to have been a decline in the frequency with which burghs sought the Convention's consent to ask for the crown's permission to levy an impost on trade, such requests continued into the later 1640s.⁴⁵ Perhaps it was the Cromwellian conquest that finally put paid to the Convention's authority in this area, for there are no references to the practice in the 1650s or beyond.⁴⁶ Such requests disappeared from the Convention's minutes as burghs instead petitioned central government directly, either by going straight to the

⁴³ For further details of these and other similar examples, see MacDonald, *The Burghs and Parliament*, pp. 20–8.

⁴⁴ Edinburgh City Archives, Queensferry Council Minutes 1634–61, SL59/1/1, fos 12v, 13r.

⁴⁵ MacDonald and Verschuur, *Records of the Convention of Royal Burghs*, pp. 297–8. The last recorded incidence of this was in 1647 but it is hard to discern any patterns in this decline because the convention's records between 1637 and 1646 are lost.

⁴⁶ *RCRBS*, vol. 3, pp. 358–490, vols 6 and 7 passim.

privy council, or by approaching a prominent individual, such as the duke of Lauderdale, secretary of state and royal commissioner to Scotland after 1660.⁴⁷ The Convention continued to receive petitions from burghs whose bridges and harbours required expensive repairs but these were all now dealt with in-house, with the burghs agreeing on a voluntary sum instead of a tax and apportioning it amongst themselves.⁴⁸ Even these faded from the record during the period after 1660, just as requests to approach central government for permission to raise an impost had apparently vanished by the end of the 1640s.⁴⁹ There appear to have been two reasons for this. As we have seen, voluntary contributions were nothing new but, after the Restoration, taking a direct route to the privy council appears to have enabled a petitioner to spread the net for raising revenue more widely. In the 1670s, receiving an endorsement from central government allowed a burgh to seek support from the countryside as well as from other burghs, and the petitioning burgh gained the added bonus of its request for funds being publicized from every pulpit in the land, by order of the privy council.⁵⁰ It is not clear how

⁴⁷ *RPC*, 3rd series, vol. 4, pp. 582 (a petition by Glasgow to the Privy council via the duke of Lauderdale), 583–4 (a petition by Kirkcaldy directly to the privy council seeking permission to raise an impost).

⁴⁸ *RCRBS*, vol. 3, p. 516.

⁴⁹ Toller, ‘The Convention of the Royal Burghs of Scotland, 1651–1688’, p. 27.

⁵⁰ *RPC*, 3rd series, vol. 7, pp. 483–4 (Aberdeen’s request in 1682 for help in repairing its harbour was to be intimated in all parish churches).

this change came about, but it does epitomize the enhanced power of the state and the increased integration of Restoration Scotland's governing structures, urban, rural and ecclesiastical. Granting the right to a burgh to raise an impost, which was after all a form of temporary, local taxation, had come to be considered a matter exclusively for the crown.

This was also the case when it came to the enrolment of a new burgh and its admission to parliament. Before the 1640s, it was normal for a burgh to petition the Convention for enrolment before it took up its privileges and this was recognized by the crown, as noted above, albeit that there were signs of attempts by Charles I to end the practice.⁵¹ After the Restoration, however, this de facto jurisdiction vanished, although the context in which this happened is a complex one. In 1672, parliament removed the royal burghs' monopoly on international trade and, even though it was partially reinstated in 1690, the royal burghs never regained their former status. As a result, the urban estate in parliament stagnated. Where entrepreneurial towns had once paid handsomely for royal charters and had petitioned for enrolment by the Convention, they ceased to do so, as membership of that club was no longer the essential gateway to economic development. Only a handful of burghs were admitted to parliament for the first time between 1660 and 1707 and most were swept up in a single act at the

⁵¹ MacDonald, *The Burghs and Parliament*, pp. 20–8.

beginning of 1661.⁵² Almost all of these had received their charters before 1639 and duly requested enrolment by the Convention before they took up their places in parliament. The exception was Campbeltown, the only new royal burgh erected after 1660 to be represented in parliament. It received its charter in June 1700, was enrolled in July and sent its first commissioner to parliament in October, suggesting that enrolment was now merely a formality.⁵³

The decline in its own members' respect for the authority of the Convention of Royal Burghs in the later seventeenth century speaks to the fragile nature of its power and its vulnerability to the increasing scope of state authority. As a quasi-autonomous representative assembly of parliamentary towns, it was unique in Europe, a remarkable peculiarity. Yet its existence and endurance can, to a large extent, be attributed to the very fact that its power rested on custom alone, so it was unlikely to present a meaningful or effective challenge to the authority of the crown. After 1603, as Scotland's other representative assemblies foundered in the face of a monarchy with absolutist pretensions, reluctant to allow general assemblies, parliaments and conventions of the estates to meet, the

⁵² *RCRBS*, vol. 3, p. 534.

⁵³ Pryde, *The Burghs of Scotland*, no. 80.

Convention of Royal Burghs sailed on unhindered.⁵⁴ Whenever there was any suspicion that it was attempting to challenge royal authority, it was quickly whipped back into line.⁵⁵ Uniquely among Scotland's national institutions it even survived the Cromwellian conquest and the short-lived Anglo-Scottish union of the 1650s. It performed a useful lesser function, so it endured uninterrupted throughout the seventeenth century and beyond, finally meeting its end in local government reorganization in the 1970s. While it has recently been argued that the decline of the Convention in the later seventeenth century has been overstated, it is hard to escape the conclusion that its influence and power by the end of that century were considerably less than they had been at the start.⁵⁶

Although admission to the Convention (and a place in parliament) ceased to be the goal of up-and-coming Scottish towns after 1660, the Convention continued to receive supplications from its constituent burghs on a range of internal and inter-burgh matters and, in that regard, it continued to be utilized as heavily as it had been at the beginning of the seventeenth century, alongside the

⁵⁴ A.R. MacDonald, 'Consultation, counsel and the "early Stuart period" in Scotland', in J. Rose (ed.), *The Politics of Counsel in England and Scotland 1286–1707*, Proceedings of the British Academy 204, (Oxford, 2016).

⁵⁵ J. Goodare, 'The Scottish Parliament and its early modern "rivals"', *Parliaments, Estates and Representation* 24, (2004), pp. 147–72, at pp. 158–9.

⁵⁶ Toller, 'The Convention of the Royal Burghs of Scotland, 1651–1688', Conclusion.

privy council and the court of session.⁵⁷ If a dispute within an individual burgh or between two royal burghs could be resolved satisfactorily without resorting to the central courts, that was still preferred, given the expense of formal litigation. Yet, during the 1660s and 1670s there was a drift of urban petitioning towards the privy council and away from the Convention. By the 1680s, this had begun to irritate the Convention to such an extent that they asked the king to intervene, and in 1686 King James VII wrote to the privy council instructing it to direct any burgh's supplications to the Convention of burghs in the first instance.⁵⁸ The problem for the Convention, and it is a paradoxical one, was that its own membership (the individual burghs) had lost faith in its ability to provide redress of their grievances in the way that it had once been able to, as the real power of central government grew. While they as a collective were frustrated by being bypassed in this way, individual burghs found the bypassing fruitful and it proved impossible to reverse that trend.

Conclusion

Although the burghs were the only parliamentary estate in Scotland with a corporate existence outside parliament, that speaks to their relative weakness rather than their strength. In terms of their relationship with the crown and their

⁵⁷ Toller, 'The Convention of the Royal Burghs of Scotland, 1651–1688', pp. 15–20.

⁵⁸ Toller, 'The Convention of the Royal Burghs of Scotland, 1651–1688', p. 25.

ability to have their petitions heard, it did not compensate for the fact that they were the only estate without a significant presence at the heart of executive government. While before the 1640s they had nevertheless been able to exercise a considerable degree of de facto power, when the political landscape shifted between 1640 and 1660, the Convention of Royal Burghs lost much of its previous influence. This was particularly evident in the erosion of its capacity to monitor, control and support petitions from its members to the crown. In spite of that, the Convention did continue to act as a key nexus for petitioning by its members throughout the seventeenth century. This reveals something important about how petitioning functioned and was understood in early modern Scotland. The Convention could be petitioned by its constituent burghs, by disgruntled burgesses and even by individuals who lived outside the burghs. It could act as a gatekeeper for and promoter of burghs' petitions to the crown, and it could petition the crown in its own right in matters that it deemed were in the interests of the burgh estate as a whole. In the Convention of Royal Burghs the people of Scotland, especially those living in towns, had an additional body that they could approach with their petitions, a body the like of which was not available to people anywhere else. They might have approached the privy council, the central courts or the king directly; indeed, they often did just that, but they also often chose not to, because even though it was not really an organ of the state and its decisions had no statutory authority, it could provide the remedies they sought. Nearly all of the petitions produced or processed by the Convention were prosaic, local and

personal matters relating to property and privilege. Yet that does not detract from their importance: for most of the time, to most people who engaged in petitioning, that was what petitioning was – a routine, conventional and uncontroversial process by which everyday things were achieved, grievances redressed and disputes resolved.

Notes on Contributor

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