

**THE SCOTTISH
PARLIAMENT BEFORE THE
UNION OF THE CROWNS**

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The Scottish Parliament Before the Union of the Crowns by Robert S. Rait

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BY

Sanger
ROBERT S. RAIT
FELLOW OF NEW COLLEGE, OXFORD

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PREFATORY NOTE

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

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

R. S. R.

NEW COLLEGE, OXFORD,
January, 1901.

THE SCOTTISH PARLIAMENT

BEFORE

THE UNION OF THE CROWNS

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

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

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

indeed was the country governed or guided by the Estates.

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

¹ *Journal of Occurrents in Scotland*, p. 76 (Bannatyne Club).

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

This is not the view that has appealed to

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

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

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

² Innes, *Critical Essay*, i. 361-95.