

## Petitioning in the Scottish Church Courts, *c.* 1638-1707

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This paper considers, in an exploratory fashion, some evidence of petitions written by, and considered in, Scottish church courts in the seventeenth century. Some evidence comes from the period of episcopalian Church government from 1662 to 1689, other examples from the periods preceding and following this, in which bishops were abolished and a full presbyterian system established. But it is important not to overstate the structural differences between the Church in its presbyterian and episcopalian phases. The episcopalian Church of 1662-89 retained the parish-level courts, the kirk sessions, on which lay elders sat with the minister, together with district-level presbyteries (consisting, under the bishops, of ministers only). The diocesan synods under episcopacy resembled the provincial synods held during periods of presbyterianism, albeit the former were presided over by bishops. The chief structural difference between the Church of the Restoration period and its predecessor and successor was the absence of a national-level general assembly (or general synod) under episcopacy. Related to this was the lack during the Restoration of a court resembling the commission of the general assembly, which before 1660 and after 1690 met between full sessions of the assembly to continue its work.

The petitions I'll consider fall into two categories. First, there were mundane supplications asking the church courts to take particular actions. These were typically petitions submitted by individuals to a court (or a bishop), or by a lower court to a higher one. They called for various everyday steps to be taken, such as the absolution of penitents under ecclesiastical discipline and the institution of ministers to vacant parishes.

The second type of petition was drawn up by one of the higher church courts. Most addresses in this category were for submission to parliament or other secular bodies, but a few were not formally submitted and were instead designed to have a wide audience beyond the church courts and civil authorities. This type of petition related to matters of national significance. Sometimes addresses in this category were made in the expectation of changing policies decided by secular politicians. But more often, the church courts petitioned to express their members' attitudes on points of grave concern, as a means of relieving their consciences and warning the laity of prevalent sins and expected punishments. Sometimes supplications in

this category were referred to as ‘remonstrances’, even if they were formally similar to other petitions.

Most of the petitions I’ve looked at, especially those asking a court or official to take some routine action, had the standard features of early modern petitions noted by Rab Houston and other scholars. The title or heading of the petitions indicated to whom the request was being made. Forms of deferential address were used, notably the phrases ‘humbly sheweth’ at the start and ‘your petitioners shall ever pray’ at the end. The petitioners’ case was introduced, narrated and amplified in a logical order.<sup>1</sup> There was perhaps less of this assumption of an unequal relationship between petitioner and the body petitioned in the case of my second category of petitions.

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Our first type of petition was a standard way of getting things done in the seventeenth-century Scottish Church. Though there was often a fairly high degree of formality in the written style of petitions, they were in essence no more than a means of requesting specific actions. Indeed, the most routine of supplications may not have been written down. In September 1676, the presbytery of Inverness heard a request from William McPherson, an adulterer and fornicator from Inverness, to be absolved, ‘haveing appeared severall yeares *in sacco*’. The minute shows that he appeared before the presbytery, and manifested tearful repentance. Though the minute recorded that McPherson ‘supplicated’ the court, it is unclear whether he needed to submit a written address.

We have evidence of the form commonly used in ecclesiastical petitions in a supplication made in 1676 by two ministers and four other men to the bishop and chancellor of Moray. The document was recorded in the presbytery book of Inverness. The petitioners asked for Robert Monro, a recently licensed preacher, to be ordained to serve the parishes of Abertarff and Glenmoriston. The petition was part of an initiative to increase clerical provision in the area around Loch Ness, which saw Abertarff disjoined from the parish of Boleskine and Glenmoriston severed from Urquhart. Robert Monro’s ordination to the new united parish of Abertarff and Glenmoriston would provide assistance to the ministers of Boleskine and

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<sup>1</sup> See R.A. Houston, *Peasant Petitions: Social Relations and Economic Life on Landed Estates, 1600-1850* (Basingstoke, 2014), esp. chs 9-11.

Urquhart, the two clergymen to sign the supplication. It may be significant that Thomas Houston, minister of Boleskine, had complained a few years previously of being threatened by armed Lochaber robbers.<sup>2</sup> It was necessary to address both the bishop, as patron of Abertarff, and James Stewart, minister of Inveraven and chancellor of Moray, who was patron of Glenmoriston. The petition recorded in the presbytery book includes signed statements of approval by the bishop and chancellor. The bishop evidently then instructed the presbytery to institute Monro to the united parish, which he served from March 1676 to at least October 1697.

Under episcopacy, then, it was sometimes necessary for ministers and lay people to petition bishops, as well as ecclesiastical and lay patrons, to get things done. After the re-establishment of presbyterian government in 1690, many addresses instead were made to the general assembly or its commission.

In 1690, the first general assembly of the re-established presbyterian Church received a petition from its beadles – doorkeepers and messengers. They had served the assembly's predecessor, the 'general meeting' of the presbyterians that had met regularly since James VII tolerated dissenting worship in June 1687, without pay. Now that the presbyterians had access to the resources of the establishment, the beadles hoped to receive a salary.

Another petition to the general assembly of 1690 came from the presbytery of Kirkcudbright, which requested that the assembly intervene to ensure that Michael Bruce, an Irish minister preaching at Anwoth, could stay in Scotland. The petition was considered in the assembly's committee of bills, which recommended that the assembly act as requested.

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When we turn to addresses on matters of national significance, we can begin to appreciate some of the functions that petitions could perform, aside from requesting specified courses of action. I'll discuss examples from the period 1648-1707.

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<sup>2</sup> *Fasti*, VI, 445-6, 482, IV, 126.

First, we'll look at the series of declarations and addresses produced by the commission of the general assembly and the lower courts protesting against the Engagement in 1648. In December 1647, the earls of Lauderdale, Lanark and Loudoun, acting as Scottish commissioners in England, concluded an agreement, known as the Engagement, with Charles I. This document promised the king, then a prisoner of the English parliament at Carisbrooke Castle on the Isle of Wight, Scottish military assistance against his English opponents. In return, he undertook to establish presbyterianism in England for three years. Though this was a step towards fulfilling the religious goals of the Solemn League and Covenant of 1643, which had brought the Scots into alliance with the English parliament, Charles refused either to swear that oath or to impose it on his English subjects.<sup>3</sup> When news of the Engagement reached Scotland, leading members of the commission of the general assembly, which managed the affairs of the Church between meetings of the full assembly, were dismayed at the terms. The king's concessions in religious matters were insufficient, the churchmen believed, and the Engagement tended to assist the enemies of reformation. There was no adequate justification for waging war against the English, with whom Scots remained in covenanted union, despite the ascendancy of the sectarian rivals of presbyterianism in the southern kingdom.

The commission's response to the Engagement was, on the one hand, to express its views to parliament, which would take the decisions about how to act on the agreement with the king. But the commission also made its objections known in the country at large, by publishing and distributing a *Declaration ... to the Whole Kirk and Kingdome of Scotland*.<sup>4</sup> As Laura Stewart has put it, the 'act of publicizing the *Declaration* transgressed the customary norms of petitioning and posed a challenge to the authority of parliament'.<sup>5</sup> The *Declaration* was also a sign that the commission was determined to state its assessment of the sins of the Engagement, regardless of any influence the court might have over parliament. This was not so much a request for action to be taken, as a means for the churchmen to exonerate their consciences. The Engagement was in breach of Scotland's promises to God in the Solemn League and Covenant, and it was the duty of faithful ministers to point this out.

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<sup>3</sup> For various perspectives on the events described in this and the following paragraph, see Stewart, *Rethinking the Scottish Revolution*, ch. 6; Allan I. Macinnes, *The British Confederate: Archibald Campbell, Marquess of Argyll, c. 1607-1661* (Edinburgh: John Donald, 2011), ch. 9; David Stevenson, *Revolution and Counter-Revolution in Scotland, 1644-1651* (London: Royal Historical Society, 1977), chs. 3-4.

<sup>4</sup> *A Declaration of the Commissioners of the Generall Assembly, to the Whole Kirk and Kingdome of Scotland* (Edinburgh: Evan Tyler, 1648).

<sup>5</sup> Stewart, *Rethinking the Scottish Revolution*, 268.

The same agenda was evident in the reactions of some of the lower church courts to the preparations for war. As well as petitioning to speak out against the sins of the Engagement, ministers warned lay people not to comply with the military campaign. The presbytery of Perth, recording its adoption of a petition (the text of which I haven't found), noted that 'the presb have throught fit yt every one of Ws for discharging of our [con]sciencs in the sight of god sall mak publict signfica[tio]ne of our dislyk' of the Engagement. One reason was to encourage 'all who are Weill affected to the publict ends of the Covenant amongst yow in yowr congrega[tio]nes' to 'be warry to ingage Until the Law[fu]llnes of the ground may be' determined.<sup>6</sup>

At least ten of the lower church courts petitioned against the Engagement. Their addresses were statements of principled opposition to the policy, rather than attempts to negotiate with its proponents. In May 1648, the presbytery of Kirkcaldy tabled a petition at a meeting of the shire war committee of Fife. The petition, addressed to parliament, sought to excuse its signatories from cooperating with the levies of troops that parliament had ordered to assist the king. Even if there was no prospect of preventing troops from being raised to fight for the Engagement, the presbytery felt it necessary to state its position. Likewise, the presbytery of Dumbarton's petition, approved a week after Kirkcaldy's, asked parliament only that it 'suspend the forcing & compelling of them to concur in such undertakings, for the lawfulness wherof they themselvs have no light from gods word'.<sup>7</sup>

In various later petitions to parliament or other governing bodies, the ministers and lay elders involved acted simultaneously to relieve their consciences and to persuade potentially sympathetic people beyond parliament and the government. In October 1650, after the defeat of Scottish troops at the battle of Dunbar, the synod of Glasgow and Ayr expressed its concerns about the underlying causes of Scotland's failure in a 'remonstrance' to the committee of estates. Justifying its petition, the synod explained that 'our ingagment in a speciall way with our flocks beyond other parts of the land doeth not suffer ws to keep silence, but calls humbly to speak our thoughts of the provoaking causes of that wrath which now presseth the land'. While the document followed the familiar structure of a petition, the request for action with which it culminated was revealingly attenuated. 'May it therfor please

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<sup>6</sup> NRS, CH2/299/3, p. 18.

<sup>7</sup> NRS, CH2/546/1, p. 120.

your Lordships not only to take in good part what we have spoken in the sincerity of our hearts ... but also give such real evidence of your humiliation for these things, and of your purpose to do no more so'.<sup>8</sup> It is unclear whether the synod seriously expected to affect much change in the committee's actions.

Another so-called 'remonstrance' by a church court against the drift of national policy was drawn up by the synod of Glasgow in September 1669. This document protested against the crown's policy of indulgence. After the re-establishment of episcopacy in 1661-2, the Church faced the combined problems of widespread presbyterian nonconformity and large numbers of vacant parish churches, from which presbyterian dissenters had been removed. The indulgences were meant to address these problems by licensing selected presbyterian ministers to preach in specified vacant parishes, mostly in the south-west. As far as the episcopalian clergy were concerned, however, this approach seemed to magnify the problem of presbyterian dissent, by countenancing the activities of the nonconformist clergy. Meanwhile, the episcopalians claimed that the laws against services conducted by presbyterian ministers who were not indulged were inadequately enforced.

Having received complaints from episcopalian ministers across the diocese, the synod of Glasgow remarked, it was necessary that the court now speak out, lest 'further silence ... may be constructed as Infidelity or Cowardize as to the great concernem[en]ts of the Church'. Formally, the 'remonstrance' was not a petition to the king or council, but an act of the synod, requesting that the archbishop of Glasgow represent its grievances to the other bishops and the council.<sup>9</sup> The result of Archbishop Alexander Burnet's connivance in this protest against royal policy was his removal from the bishopric. Further indulgences were granted to presbyterians in 1672. Thus the synod's remonstrance did nothing to moderate the crown's policy, and perhaps increased the resolve of the king's councillors to see it through.

My final case study focuses on the series of petitions made by the commission of the general assembly to parliament during the passage of the act of union with England in late 1706 and early 1707. Many scholars have written about these documents, not least Karin Bowie in published and forthcoming work. But I don't think that it has always been recognised that the commission's addresses served not merely to make requests of parliament, but also

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<sup>8</sup> *RCGA*, III, 558-62, quotations at 558, 562.

<sup>9</sup> *Lauderdale Papers*, II, app, lxiv-lxvii.

allowed the ministers on the commission to fulfil what they perceived as their duty as faithful clergymen in a time of national upheaval. I'll briefly show how these motivations were entwined in the commission's addressing campaign.

The commission's first address to parliament, adopted on 11 October 1706 and read in parliament on 17th, asked for specific measures to be taken to secure the presbyterian settlement of the Church. 'We do most humbly and earnestly Supplicate and Beseech your Grace and Lordships, That you may be pleased to Establish and Confirm the true Protestant Religion, and all our Sacred and Religious Concerns, in the most Effectual Manner, for their unalterable Security'. The result was that the government introduced into parliament a measure to guarantee the presbyterian constitution of the Church. The first address, then, was a successful negotiation between the commission and parliament about the religious implications of union.

Agreed on 8 November and read in parliament on that day, the commission's second address served a somewhat different agenda. Describing the first petition as a 'General Address', it now proposed, 'with all Humility', 'some Particulars' for members of parliament to consider. Of the six matters raised, three were within the power of the Scottish parliament to address. Thus the act of security for the Church, responding to the second address, promised that Scots would not in future be required to swear state oaths contrary to presbyterian principles. The act also imposed on monarchs succeeding after Queen Anne a new oath to secure the presbyterian settlement. Parliament also complied with the commission's request to create a post-union mechanism for creating new parishes and valuing teinds, functions hitherto performed by a committee of parliament.

But the second address also objected to aspects of the union that the Scottish parliament could do little to modify. It complained that the English sacramental Test and abjuration oath, conditions for holding public office in England, and presumably for post-union British offices, were incompatible with presbyterian principles and thus discriminated against Scottish presbyterians. But only the English parliament (or its British successor) could alter these requirements. The commission's address concluded by complaining about the presence of bishops in the future British parliament, which most presbyterian ministers saw as incompatible with Scotland's commitments under the Solemn League and Covenant. Here the commission expressed a fundamental objection to Anglo-Scottish union, not in the

expectation of changing the constitution of the future British parliament, but to put on record the essential incompatibility between presbyterian principles and the settlement. ‘And lest our Silence should be constructed to Import Our Consent to, or Approbation of the Civil Places and Power of Churchmen, We crave Leave in all Humility, and due Respect to Your Grace and Honourable Estates of Parliament, to Represent, That it is contrary to Our known Principles and Covenants, that any Church-man should bear Civil Offices, or have Power in the Common-Wealth.’ Here the address was a form of protest, rather than a step towards negotiation.

This is also true of the commission’s third address, agreed on 16 January 1707, and submitted to parliament shortly before the union and act of security for the Church were finally approved. The address objected to a clause added to the act of security at the last minute, allowing the English parliament to pass a parallel measure to guarantee the constitution of the Church of England. The commission claimed that the clause in the Scottish legislation was a ‘manifest Homologation’ of any resulting legislation in favour of episcopacy and Anglican ceremonies, and would thus ‘involve’ parliament ‘and this Nation in *Guilt*’. Because the Solemn League and Covenant committed those who considered it binding to attempt to ‘extirpate’ episcopacy, the parliament seemed to be acting contrary to a sworn national engagement, and thus committing the sin of perjury. But members of the commission probably did not expect parliament to remove the clause. As in 1650, and perhaps also in 1669, a church court petitioned to express its conscientious objection to a policy, for vindication before God and the Scottish people, but not necessarily in the expectation of changing the minds of those in power.

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We have seen that petitioning in the church courts was variously a routine way of conducting business, a means of negotiating with higher courts and the civil authorities about particular issues, and also a form of protest. Though some of the documents we’ve looked at departed in significant ways from the standard form of supplication, it was also possible to put a conventional petition to all these uses.