

## From Customary to Constitutional Right: Collective Petitioning and The Right to Petition in Scotland before the Union of 1707

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Collective petitioning is a hallmark of modern participative democracy. Since its inception in 1999, the Scottish parliament has received petitions on matters of national policy and practice through its Public Petitions Committee, recognising public petitions as ‘a key part of the Parliament's commitment to participation.’<sup>1</sup> The enshrining of a right to petition in modern democratic constitutions can be traced from the 1791 Bill of Rights for the new United States of America to the constitutional documents the Revolution of 1688-89 in the British monarchies, England's Bill of Rights and Scotland's Claim of Right. Both documents stated the subject's right to petition the monarch and barred any prosecution of petitioners. This assertion of a statutory right responded to a period of conflict over what had been a customary liberty. Since the 1630s, adversarial collective petitioning had challenged normal practices of humble supplication for the relief of grievances and triggered the imposition of new restrictions on political petitioning that were countered by constitutional claims of right. This paper will explore this early modern transition from customary to constitutional right through the case of Scotland, with a comparative look at England.

In Scotland, aggressive group petitioning in the 1630s and 1640s, involving presentations by large crowds, widespread subscription and the circulation of supporting texts and tracts, transformed a customary freedom of humble petition into a mode of insistent collective protest. The Scottish government sought to repress what it saw as dangerous and disorderly petitioning by enforcing standing laws against seditious words and unauthorised meetings against organisers and participants. Administrative regulations on petitioning to parliament were tightened up and an accusation of treason was brought against a high-profile petitioner in 1633. A burgeoning of assertive petitioning from 1637 led to a clamp-down in the Restoration era. In England, a 1661 statute made it more difficult to bring forward collective petitions on affairs of church and state, while Scotland's Restoration government sought to stamp out political petitioning with another conspicuous treason trial in 1661 and the outlawing of ‘mutinous and tumultuary petitions’ in 1661-2.<sup>2</sup> Petitions and addresses expressing subjection to royal authority were acceptable; all others were pursued at law despite dissenting arguments for a normative and natural liberty to petition. When the government of James II prosecuted English bishops for an unwelcome petition in 1688, the subject's right to petition the monarch was asserted in England's 1689 Bill of Rights. Though Scotland's Claim of Right was more radical in other respects, on this point it echoed England exactly. This allowed collective political petitioning to re-emerge in Scotland with addresses to parliament and the monarch, especially from 1700 to 1707. While England's 1661 statute remained in force and cultural norms of humility and decorum in parliamentary petitioning were re-asserted in 1701, Scottish political petitions tended to use forthright language, with an added rhetorical emphasis on the right to petition. In response, though now limited by the Claim of Right, from 1689 to the Union of 1707 the Scottish government continued to frown on assertive collective petitioning and used standing law to discourage popular participation in petitioning campaigns.

### *Customary Liberties before 1638*

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<sup>1</sup> Rule 15.4-15.8, *Standing Orders of the Scottish Parliament* (May 2017). See <http://www.parliament.scot/parliamentarybusiness/26505.aspx> and <http://www.parliament.scot/parliamentary-business.aspx> [last accessed 29 July 2017]. For another 20<sup>th</sup> century example, see Richard W. Taylor, ‘The right to petition in the Federal Republic of Germany: a democratic symbol?’, *Peace & Change* 11:1 (1985), 91-108.

<sup>2</sup> Quote at RPS 1662/5/20, 24 June 1662.

Petitioning developed across the medieval period as a routine means of initiating requests or resolving problems with figures of authority. Proverbs indicated a cultural commitment to a liberty to petition, as in the German saying, 'nobody is forbidden to hand in supplications and appeals'.<sup>3</sup> The language of supplication can be found across Europe: Andreas Würigler has noted '[p]etitions, grievances, and supplications, *Gravamina, Suppliken, and Beschwerden, doléances, requêtes, and représentations, gravami, petizioni, and querele, clamores, greuges and griefs*'.<sup>4</sup> Town citizens petitioned city councils, peasants supplicated lords, clergy petitioned the pope, litigants petitioned courts and estates supplicated princes, using customary expressions of humble pleading. The Christian value of charity gave moral weight to petitions: when petitioners begged, recipients had an obligation to hear their pleas. But beggars and petitioners were meant to be orderly and submissive, and political petitioners often were not. In the Spanish Netherlands in 1566, a group of 200 dissident nobles were castigated as disruptive beggars for their presentation of collective petition for religious toleration. They inverted the insult by dressing as beggars with a grey cloak, a begging bowl and a medal celebrating their humility and faithfulness to the king.<sup>5</sup> In Scotland and England too, insistent petitioning on religious issues in a post-Reformation context pushed the boundaries of routine administrative and judicial petitioning and triggered debates on the propriety and limits of petitioning.

In Sir David Lindsay's mid-sixteenth century play, 'Ane Satyre of the Thrie Estates', reformation in kirk and state was achieved through the resolution of grievances expressed to parliament by the Pauper (an impoverished tenant farmer) and John the Commonweil (a personification of the common good).<sup>6</sup> This fictional representation demonstrates the importance placed on petitioning in Scotland for the redress of injuries to the commons and the common good. An example in practice is a 1597 act against usury stating that 'the king's majesty and his estates' were 'moved by the heavy complaint of the lieges', especially 'the poor lieges'.<sup>7</sup> From 1594, however, petitions to parliament were regulated by an act requiring the submission of all petitions to the clerk register for review by a committee, known as the Lords of the Articles, to prune out 'impertinent, frivolous and improper matters'.<sup>8</sup> As Alan Macdonald and John Young have shown, these procedures were tightened after the 1603 union of the Scottish and English crowns and it became more difficult to express political dissent in petitions.<sup>9</sup> In 1621, a group of clerics were prevented from submitting a supplication to parliament on church affairs and in 1633, another clerical statement of 'just griuances and resonable petitions' submitted to parliament was suppressed by the clerk register.<sup>10</sup>

Restrictions on collective petitions increased in 1633 with a notorious trial of a noble petitioner for seditious libel. After a contentious meeting of the Scottish parliament, a collective supplication to the king was drafted in the name of 'a great number of the Nobility and other Commissioners in the late Parliament'. The petition stated that the supplicants had been prevented from expressing their reasons for voting against the king's legislative programme at the 1633 parliament and asked Charles to consider their views. It reassured the king of their affection for him

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<sup>3</sup> Würigler, 'Voices', 16. See also Edward Vallance, 'Harrington, petitioning and the construction of public opinion' in D. Wieman and G. Mahlberg (eds), *Perspectives on English Revolutionary Republicanism* (Farnham, 2014), 119.

<sup>4</sup> Andreas Würigler, 'Voices From Among the "Silent Masses": Humble Petitions and Social Conflicts in Early Modern Central Europe', *International Review of Social History* 46 (2001), supplement, 11-34, at p. 12.

<sup>5</sup> Henk Van Nierop, 'A Beggar's Banquet: The Compromise of the Nobility and the Politics of Inversion', *European History Quarterly* 21 (1991) pp. 419-443, at 419- 425.

<sup>6</sup> Sir David Lindsay, *Ane Satyre of the Thrie Estaitis* (Edinburgh, 1993), lines 2543-2673, 2728-3771, 3061-3091.

<sup>7</sup> RPS A1597/5/7, 13 May 1597.

<sup>8</sup> RPS 1594/4/39, 8 June 1594.

<sup>9</sup> Macdonald, 'Deliberative processes', 42-44; John Young, 'Charles I and the 1633 Parliament' in Keith M. Brown and Alasdair J. Mann (eds), *Parliament and Politics in Scotland, 1567-1707* (Edinburgh, 2005), 101-137.

<sup>10</sup> David Calderwood, *The History of the Kirk of Scotland*, vol. 7 (Edinburgh, 1845), 486; Sir John Balfour, *Historical* 205-216.

and their intention to 'give [him] full content in every thing'—insofar as this was compatible with 'our Religion and Laws'.<sup>11</sup> The crown charged John Elphinstone, Lord Balmerino with 'leasing-making' (seditious slander of the monarch, a form of *lese-majesté*) for possessing a copy of the draft petition with edits in his own hand.<sup>12</sup> The indictment described the supplication as 'a most scandalous, reproachful, odious and seditious Libel'.<sup>13</sup> It rejected the petitioners' complaints as lies and misconstructions expressed in a 'bitter, invective and viperous style'. The intended subscription campaign threatened the 'derogation of our sacred and glorious name'.<sup>14</sup> In a trial that attracted large crowds in Edinburgh, Balmerino was found guilty and sentenced to death. Though a royal pardon reprieved him, the case established a clear precedent for the application of laws against seditious speech to authors, organisers and subscribers of adversarial petitions.<sup>15</sup> As stated by the indictment, complaints against 'God's lieutenant on earth' would not be entertained, for 'all subjects are bound and tyed in conscience to content themselves in humble submission to obey and reverence the person, laws, and authority of their supreme sovereign'.<sup>16</sup>

A campaign in 1637 attempted to evade these restrictions while delivering collective supplications against a new service book for the Scottish church to the privy council. At least 45 supplications were provided on 20 September from burghs, presbyteries and parishes plus a general petition signed by 'verie many' landowners, burgesses and clergy.<sup>17</sup> As has been shown, these supplications established new practices in adversarial petitioning, yet the supplicants did not repeat the direct attack on the king that had condemned Balmerino.<sup>18</sup> The petitions asked the privy council to intercede with the king for relief from the new service book. They offered criticism on the service book and its unconventional publication by proclamation without blaming anyone and included assurances of the petitioners' loyalty to the king. The presbytery of Perth assured the council that they had shown 'loyall obedience unto our dread soveraigne' by acquiring the book, but found 'it conteans manie thinges both in worship and doctreine which after dew examinatioun wilbe found contrair to the divyne Scripture and to the Confessiounes of this Kirk of Scotland authorized be actis of Parliament and General Assemblis'.<sup>19</sup> Huge crowds flooded Edinburgh for the presentation of the petitions in September and returned on 17 October in anticipation of an answer from the king. These were more than mere onlookers: the burgh council in Glasgow, for example, sent a commissioner to Edinburgh in October 'to attend ane gracious ansuer of his Majestie anent the buik of commoun prayer'.<sup>20</sup>

The privy council paused the implementation of the service book in Edinburgh until the king could respond to the supplications, confirming the customary role of petitioning as a mode of conflict resolution.<sup>21</sup> The crown, however, rejected the supplicants' new style of collective petitioning. Charles chose not to make a formal response to the petitions, instead issuing a proclamation via the privy council ordering the crowds in Edinburgh to disperse 'under pane of

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<sup>11</sup> Cobbett, *State Trials*, 604-8; Balmerino's edits were said to have aimed to soften some of this language. Cobbett, 594.

<sup>12</sup> 'Lesing-making', n.2, *Dictionary of the Older Scottish Tongue*, [http://www.dsl.ac.uk/entry/dost/lesing\\_making](http://www.dsl.ac.uk/entry/dost/lesing_making) [accessed 3 Aug 2017].

<sup>13</sup> Cobbett, *State Trials*, 597.

<sup>14</sup> Cobbett, *State Trials*, 601.

<sup>15</sup> RPS, 1584, 1585, 1594

<sup>16</sup> Cobbett, 598.

<sup>17</sup> *Register of the Privy Council*, second series, ed. P. Hume Brown (Edinburgh, 1905) vi, 699-71; Leslie, *Relation*, 47-48; quote from Row, *History of the Kirk*, 484.

<sup>18</sup> Bowie, *Scottish Public Opinion*, 57; 'Introduction', *Addresses against Incorporating Union, 1706-07* (SHS, forthcoming).

<sup>19</sup> RPC, vi, 715.

<sup>20</sup> *Extracts from the Records of the Burgh of Glasgow Vol. 1, 1573-1642*, ed. J D Marwick (Glasgow, 1874), p. 385.

<sup>21</sup> RPC, vi, 534.

rebellion'.<sup>22</sup> He also advised the privy council to find and punish ringleaders of crowds in Edinburgh and Glasgow and seek out and burn copies of a tract by the clergyman George Gillespie, *A Dispute against the English Popish Ceremonies, Obtruded on the Kirk of Scotland*.<sup>23</sup> The privy council was ordered to relocate to Linlithgow and then Dundee to discourage unwanted crowds.<sup>24</sup> Finding themselves surrounded by a hostile throng in Edinburgh awaiting the king's answer on 18 October, the privy council issued a public condemnation of the 'tumultous gathering of the promiscuous and vulgar multitude' acting in a way 'verie disgraceful to his Majesteis auctoritie'. The council forbade any public meetings in Edinburgh, and any private meetings 'tending to factioun and tumult'.<sup>25</sup> While this order rested on strong legal precedents, it had little effect, and the council was forced to negotiate with leaders of the opposition, eventually agreeing that representatives of each estate would remain in Edinburgh to await further communications from the king.<sup>26</sup> The council cited standing laws against unauthorised convocations of the lieges, while the organisers defended their meetings as a permissible gathering of petitioners to hear answers to their supplications.<sup>27</sup>

The king's failure to reply to the September supplications led the petitioners to target the Scottish bishops as evil counsellors. A group of noblemen submitted a new petition to the privy council on 18 October and copies followed from local bodies. To avoid attacking the king directly, the petition alleging that the bishops had advanced the service book 'contrarie to our gracious souveraigne his pious intention'. Indeed, the king had been so 'wrongit' by the bishops as to have 'insnaire[d] his subjectis', 'rent our kirk' and encouraged discord between king and subject. If anyone had been seditious, it was the bishops.<sup>28</sup> Claiming a 'bounden duetie to God, our King and native country', the petitioners again asked the privy council to represent their complaint to the king, so that 'from the influence of his gracious government and justice thir wrongis may be redressit'.<sup>29</sup> While many of the September petitions had been signed by clerks or provosts in name of local communities, this round of petitioning included signatures of ordinary inhabitants. A surviving copy of the petition from the presbytery of Kirkcudbright shows the signatures of 459 ministers, elders, landowners, burgesses and tenant farmers, with notaries signing for those not able to write.<sup>30</sup> As with the first round of supplications, these were addressed to the privy council and forwarded to the king.<sup>31</sup>

The king continued to acknowledge the normative status of petitioning, noting in a proclamation of 7 December that the subjects would have expected an answer to their September supplications from 'so just and religious a prince'. However, he refused again to provide an answer to their grievances because of the insult to his authority made by the tumults of 18 October.<sup>32</sup> Meanwhile, the crown's supporters spoke of the supplicants as seditious and rebellious.<sup>33</sup> Some privy councillors tried to make the petitions more acceptable to the king by urging the organisers, unsuccessfully, to petition only on the service book without any criticism of the bishops.<sup>34</sup> In a further proclamation on 19 February, the king obviated the supplicants' strategy of blaming the

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<sup>22</sup> Leslie, *Relation*, 13.

<sup>23</sup> RPC, vi, 536-8, quote at 537.

<sup>24</sup> RPC, vi, 537-8.

<sup>25</sup> RPC vi, 541-2.

<sup>26</sup> RPC, vi, 544-5. These groups became known as 'the Tables'.

<sup>27</sup> RPC, vi, 545; Leslie, *Relation*, 13.

<sup>28</sup> RPC, vi, 710.

<sup>29</sup> RPC, vi, 710.

<sup>30</sup> RPC, vi, 710-15. The document suggests that the organisers carried the petition to the parishes for subscription.

<sup>31</sup> RPC, vi, 553-4.

<sup>32</sup> RPC, vi, 547.

<sup>33</sup> Row, 486; Leslie, *Relation*, 51.

<sup>34</sup> Row, 488. The petitioners submitted a further petition to the council in December with a declinator stating that the bishops should not sit in the council in judgement of petitions in which they were the subject of complaint. Leslie, *Relation*, 50-1.

bishops by taking responsibility for the service book on himself. This crystallised the conflict into a constitutional question of whether the king could alter the national liturgy without the consent of the general assembly or parliament. The king made clear that the supplications were an insult to his royal authority, both in content and 'cariage', and that the organisers had acted unlawfully in holding unauthorised meetings to organise the petitions. In an exercise of grace, he attributed their actions to 'preposterous zeale' and declined to pursue them at law, but ordered all such meetings to cease 'under the pane of treason'. He indicated that any future petitions would only be accepted if they were not 'prejudiciall to his Majesteis regall auctoritie'.<sup>35</sup>

This episode demonstrates the importance of the liberty of petitioning for the expression of grievances, especially in the context of the 1603 union of the Scottish and English crowns, which removed the Scottish monarch to London. Even after the king's February proclamation, the burgh council of Glasgow still hoped to persuade the king by 'humbl[y] supplicating thair sacreid Sovereigne'.<sup>36</sup> In a pamphlet, the prayer book supplications were justified as a 'humble and loyal way of petitioning his Majestie for legall redresse'.<sup>37</sup> Because the supplications had received no answer, on 28 February 1638 dissidents renewed Scotland's 1581 confession of faith with a list of laws establishing the presbyterian church and a promise of mutual defence and circulated this new national covenant for general subscription.<sup>38</sup> This moved the privy council once more to ask the king to 'take tryal of his subjects grieevances'. They pointed out they were unable to enforce the laws against unauthorised convocations because the subjects were too angry to obey.<sup>39</sup>

This impasse over petitioned grievances led to open conflict and a polarisation of attitudes towards petitioning. The Covenanters went to war with their king in the Bishops Wars (1639-40) and from 1640, opponents of Charles I in England generated similar collective petitioning campaigns enhanced by greater access to printing presses, creating a transformative level of popular engagement in parliamentary politics. English petitioning in this period became dialogic, with petitions and counter-petitions expressing a range of opinions from the grassroots.<sup>40</sup> For royalists, however, the ensuing civil war, execution of Charles I and the establishment of a British commonwealth confirmed the extraordinary dangers of tumultuous petitioning. A contemporary pasquil asked God to deliver Scotland 'From proud and perwers [perverse] suplications/Pute wp in lawless conuocations [convocations]'.<sup>41</sup> The Restoration government aimed to prevent any repetition of collective supplications arising from unlawful meetings.

### *Restrictions on Petitioning in the Restoration (1660-1687)*

The Restoration parliament of 1661 made clear that Scottish laws on leasing-making and unauthorised meetings would be used to restrict petitioning. Charges of treason were brought against the clergyman James Guthrie for, among other things, calling a meeting in 1660 to prepare a petition to the newly restored Charles II.<sup>42</sup> Both the document and the meeting were said to be illegal.<sup>43</sup> Guthrie's defence argued that the laws did not apply because he had no seditious intent, the small meeting was not tumultuous and the petition had not been made public.<sup>44</sup> As in the

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<sup>35</sup> RPC, vii, 3-4.

<sup>36</sup> Glasgow, 386-7.

<sup>37</sup> *An Information to all good Christians within the Kingdome of England* (Edinburgh, 1639), 4-5.

<sup>38</sup> Row, 488-9. In a July protestation, this was justified as necessary to ensure the granting of supplicated grievances. [Walter Balquanhall], *Large Declaration*, 100.

<sup>39</sup> RPC, vii, 8-11, quote at p. 9.

<sup>40</sup> David Zaret, *Origins of Democratic Culture: Printing, Petitions and the Public Sphere in Early Modern England* (Princeton, 2000); Judith Maltby, *Prayer Book and People in Elizabethan and Early Stuart England* (Cambridge, 1998), ch. 5.

<sup>41</sup> James Maidment (ed.), *A Book of Scottish Pasquils* (Edinburgh, 1868), 51-57 at 54.

<sup>42</sup> Burnet, *History*, i, 204-5.

<sup>43</sup> RPS A1661/1/67, 10 April 1661.

<sup>44</sup> RPS A1661/1/68, 10 April 1661.

Balmerino case, however, a draft petition was considered seditious. The indictment saw its expressions of loyalty as duplicitous and emphasised Guthrie's apparent intent to 'publish and disperse the same; thereby to sow sedition amongst his majesty's subjects'.<sup>45</sup> Guthrie further argued that the 1638 National Covenant and 1643 Solemn League and Covenant compelled him to act to preserve the constitution of the church and realm and allowed him as a minister of the church to petition the king, who also had taken the covenant. This argument did not convince a parliament that had already voted to reject the obligations of the Solemn League and annul acts of parliament confirming the covenants.<sup>46</sup> Guthrie was sentenced to death and not reprieved. His death sentence was followed on 18 June 1661 with a proclamation barring the clergy and laity from 'meddling' in the question of church government with any public communications, including petitions.<sup>47</sup> In the following 1662 parliament, an 'Act for preservation of his majesty's person, authority and government' condemned the 'wild and rebellious courses' arising from 1637, including 'mutinous and tumultuary petitions'.<sup>48</sup> Office-holders were required to declare that such petitioning was 'unlawful and seditious'.<sup>49</sup>

The lawyer James Stewart of Goodtrees cited these restrictions on petitioning as one of the causes of a 1666 uprising by Presbyterian dissenters in the southwest of Scotland. Stewart, who would become Lord Advocate after the 1689 Revolution, argued in a 1669 pamphlet that the Scots were 'denied the very liberty, which is the privilege of all free subjects' and the 'birthright and native privilege of all men, viz. to supplicate'. He further adduced an 'old received maxim' from Roman law, '*cuivis licet supplicare & protestari*' [anyone is allowed to supplicate or make protestation], and the 'law of nature and nations'.<sup>50</sup> For Stewart, petitioning was not just an internationally accepted civil liberty but a natural right.<sup>51</sup>

Nevertheless, the government's repressive stance on collective petitioning can be seen in its vigorous suppression of dissent in 1674-75. In June 1674, a group of wives and widows of nonconformist ministers and burgesses, described as 'Several Women of the City of Edinburgh', petitioned the privy council for a *de facto* toleration for dissenting preachers.<sup>52</sup> The women followed an earlier precedent from 1637, at the time of the supplications against the prayer book, when another group of burgess and clerical wives had handed a supplication to the treasurer, the earl of Traquair, at the privy council door. Their request, that nonconformist clerics who had been expelled from posts in Ulster should be allowed to preach where called by a Scottish congregation, was granted.<sup>53</sup> By contrast, on 10 June 1674 the presentation of the women's petition at the council house door to the chancellor, John Leslie, earl of Rothes, with least 100 women in attendance, was deemed a 'tumult' by the privy council.<sup>54</sup> The council questioned and imprisoned several women, spurred on by a letter from the king that identified petitioning and field conventicles as 'insolent seditious practices' and urged 'vigorous suppressing and punishing of the ringleaders'.<sup>55</sup> Sixteen

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<sup>45</sup> RPS A1661/1/67, 10 April 1661. See also the 1681 trial of the earl of Argyll, in which Sir George Lockhart argued that Balmerino's petition had been seditious despite its protestations of loyalty. Wodrow, *History*, ii, app, 76.

<sup>46</sup> RPS 1661/1/36, 22 Jan. 1661; 1661/1/88, 27 Feb. 1661; 1661/1/58, 28 Mar. 1661.

<sup>47</sup> Unlike Balmerino, Guthrie was not reprieved. RPS 1661/1/90, 28 May 1661; 1661/1/362, 18 June 1661.

<sup>48</sup> RPS 1662/5/20, 24 June 1662.

<sup>49</sup> RPS 1662/5/70, 5 Sept 1662.

<sup>50</sup> [James Stewart of Goodtrees], *Jus Populi Vindicatum* (London, 1669), 8, 30.

<sup>51</sup> Laura Stewart, "'Thair is na offence to supplicat': Presbyterian petitioning in early modern Scotland", *The Many Headed Monster* (November 2016), <https://manyheadedmonster.wordpress.com/2016/11/23/thair-is-na-offence-to-supplicat-presbyterian-petitioning-in-early-modern-scotland/> [last accessed 27 July 2017].

<sup>52</sup> The women did not subscribe the petition, probably for fear of prosecution. Their social status and religious interests mean they would have been literate and able to sign. RPC, series 3, vol. iv, 260.

<sup>53</sup> Thomas McCrie, *Life of Robert Blair*, 153-4. The supplication was not registered in the privy council record.

<sup>54</sup> RPC, series 3, vol. iv, 208. The charges accused the women of staging a tumult on 'pretence' of presenting a petition, stating that the courtyard 'wes filled with women and a disorderly rable' (p. 259).

<sup>55</sup> RPC, iv, 211-12. The letter was recorded in council on 30 June.

women were banished from Edinburgh for tumultuous convocation and 'contryving and presenting the said petition' containing seditious words.<sup>56</sup>

A legal dispute in 1674 over rights of appeal from the Court of Session to parliament stimulated a collective 'humble address' to the privy council on 2 February 1675 from 27 advocates [barristers]. The address was deemed 'insolent' because it appeared after a royal declaration on the question of appellate rights. The crown's legal counsel declared that it was the duty of subjects to acquiesce in monarchical judgements and any petition attempting to question a royal proclamation or decision, 'specially if a number of persons joyn and combyn together', was dangerous and unlawful.<sup>57</sup> The advocates supporting the humble address were banished from Edinburgh and only readmitted to legal practice by after making a contrite supplication to the king in London and the Privy Council in Edinburgh.<sup>58</sup>

Repression of petitionary dissent extended to Scotland's institutions. In August 1674, the king ordered the Convention of Royal Burghs to alter election procedures in the burghs. The Convention begged the king to be assured that their practices were established by long custom and added a series of complaints on other royal policies relating to the burghs.<sup>59</sup> Their petitionary letter was deemed 'most undutifull, impertinent and insolent' and three ringleaders were imprisoned and brought before the privy council.<sup>60</sup> Both the method of preparing the letter, by meetings of a faction in 'tavernes', and the tone of the letter, described as 'harsh', were castigated. As in the case of Balmerino and subsequent petitioners, the inclusion of assurances of loyalty to the king did not compensate for the Convention's snub to royal authority, especially as it was done in 'so publick a way', 'there being so much noise of the same and copies scattered abroad'. The letter, in which the burghs gave opinions on 'great affaires of state' outwith their 'narrow sphere', was deemed 'insolent and dangerous and factious' and liable to be 'severly punished' to set an example to others. The accused humbly professed that they were ignorant of the 'style of language becoming the tender and delicate ear of a prince'. More significantly, they admitted themselves 'mistaken' in believing that it was 'allowable' to represent grievances to the monarch on burdensome laws for lawful redress. They were convicted, fined and banned from holding public office.<sup>61</sup>

Another case of institutional petitioning, by the synods of Glasgow, Edinburgh and Auchterarder, also failed, though less publicly. As Julia Buckroyd has shown, the synod of Glasgow petitioned the privy council in December 1673 and again in April 1674 requesting that the council ask the king to call a national meeting of the church, followed by the synod of Auchterarder. The bishop of Edinburgh refused to allow his synod to follow suit but agreed to petition the council 'against papists and fanatiques and other schismaticks'.<sup>62</sup> Though no formal rebuff was recorded on these petitions, they were ignored.<sup>63</sup>

The Lauderdale regime required that any complaints to parliament were to be reviewed by the Lords of the Articles, with any oral complaints being referred immediately to committee. This was consistent with the aims of the 1594 statute but was seen as a barrier to open debate.<sup>64</sup> In the

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<sup>56</sup> RPC, iv, 241-2, 258-61, 295; McCrie, *Life of Blair*, 538-40, 545, 552. For the text of the petition, see James Anderson, *Ladies of the Covenant*, 158. Not surprisingly in these circumstances, a petition drafted in late June by a conference of nonconformist clergymen in Edinburgh appears not to have been presented. McCrie, *Life of Blair*, 543-5. Buckroyd, *Church and State*, 106.

<sup>57</sup> RPC, ed. P.H. Brown, third series, iv, 337-8, 347-56.

<sup>58</sup> RPC, iv, 379, 385-86, 393-5; HMC Laing, i, 401; McCrie, *Life of Blair*, 556; Ford, 'Protestation', 68-71.

<sup>59</sup> *Extracts from the Records of the Convention of Royal Burghs*, ed. J. D. Marwick (Edinburgh, 1866), iii, 639-642.

<sup>60</sup> The document was described as a letter by the privy council though Burnet called it a petition. Gilbert Burnet, *The History of My Own Time*, ed. E. Airy, 2 vols (Oxford, 1897-1900), ii, 57.

<sup>61</sup> RPC, iv, 367-376, 396.

<sup>62</sup> HMC Laing, i, 400-1.

<sup>63</sup> Julia Buckroyd, *Church and State in Scotland, 1660-1681* (Edinburgh, 1980), 107-11.

<sup>64</sup> Burnet, *History*, ii, 39-41. See for example the remit of grievances to the lords of the articles in 1673: RPS M1673/11/3, 17 Nov. 1673.

1673 session, some corrective legislation was developed in response to complaints referred to committee, but the inability to air grievances in open parliament was criticised as a hindrance of parliament's duty to inform the monarch of the state of the nation.<sup>65</sup> In October 1675, the clergyman Gilbert Burnet advised the leader of the parliamentary opposition, the third duke of Hamilton, that the suppressing of petitions from Scotland had led London to believe the nation was generally content. He recommended that Hamilton 'see how the generality of the nation can be gott to send their complaints to the king'.<sup>66</sup> Burnet later recorded that Hamilton and other nobles were unwilling to provide written complaints directly to the king for fear of being charged with leasing-making, though they did express concerns orally in personal visits to the Court.<sup>67</sup> A hypothetical petition to the king was printed by James Stewart of Goodtrees in his *An Accompt of Scotlands Grievances by Reason of the D. of Lauderdale's Ministry, Humbly Tendred to his Sacred Majesty*.<sup>68</sup>

Access to the monarch for the expression of grievances remained a point of contention.<sup>69</sup> Petitions were not entirely suppressed: a 1669 petition to parliament from the noblemen, gentlemen and heritors of Berwick and Teviotdale, with a complaint on English encroachment of the petitioners' fishing rights on the Tweed, was referred by parliament to the monarch.<sup>70</sup> But successful collective petitioning in this period usually relied on backchannels or humble submission to royal authority. In 1679, some Presbyterians managed to evade the strictures of the privy council by asking the duke of Monmouth to bear three petitions from them to the king asking for an indemnity after the Bothwell Bridge uprising and liberty of preaching and worship.<sup>71</sup> Royalists orchestrated meek petitions from localities to signal loyal obedience. At the circuit courts in Ayr in 1679, the assembled magistrates and about 40 gentlemen signed an address to the privy council to express their revulsion at recent disorders, and in 1684, the authorities were reported to have tried to force the gentry to sign a collective petition from the shire to the king offering to take the Test oath voluntarily.<sup>72</sup> Another circuit court made a voluntary offer of cess (land tax) from the shire through a humble address.<sup>73</sup>

In England, collective petitioning to king and parliament was regulated by statute but the subject's right to petition was defended by the House of Commons. The 1661 parliament restricted 'Tumultuous and other Disorderly solliciting and procuring of Hands' on collective petitions for 'redresse of p[re]tended greivances in Church or State'. As in Scotland, these practices were seen as 'a great meanes of the late unhappy Wars Confusions and Calamities in this Nation'. Signatures were limited to 20 unless the petition had the approbation of three justices of the peace, a grand jury or the magistrates of London. Petitions were not to be presented by more than 10 persons.<sup>74</sup> This statute provided the basis for a proclamation against tumultuous petitioning issued in December 1679. This aimed to quell petitions calling for a meeting of parliament. It condemned 'evil disposed Persons' for collecting hands from 'multitudes' in an unlawful fashion. The king commanded his subjects not to promote or participate in the petitions, 'upon Peril of the utmost

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<sup>65</sup> [Stewart of Goodtrees], *Accompt of Scotlands Grievances*, 11, 13-17.

<sup>66</sup> HMC Hamilton supp vol 2, 90.

<sup>67</sup> Burnet, *History*, ii, 57-8.

<sup>68</sup> ESTC dates this as 1675. Internal evidence suggests 1674.

<sup>69</sup> HMC Hamilton supp vol 2, 95-100.

<sup>70</sup> RPS A1669/10/3, 23 Dec. 1669.

<sup>71</sup> Wodrow, *History*, ii, 95, app. 31-32. Hamilton recorded petitions from gentlemen in the Western shires, nonconformist clergy and Presbyterians in Edinburgh. HMC Hamilton supp vol 2, 100-101.

<sup>72</sup> HMC Laing, vol i, 416; Wodrow, *History*, ii, 410-12.

<sup>73</sup> Sir David Hume of Crossrigg, *Domestic Details* (Edinburgh, 1843), 34-35.

<sup>74</sup> 'Charles II, 1661: An Act against Tumults and Disorders upon p[re]tence of p[re]paring or p[re]senting publick Petic[i]ons or other Addresses to His Majesty or the Parliament', in *Statutes of the Realm: Volume 5, 1628-80*, ed. John Raithby (s.l, 1819), p. 308. *British History Online* <http://www.british-history.ac.uk/statutes-realm/vol5/p308> [accessed 18 July 2017].



Rigour of the Law'.<sup>75</sup> A first wave of petitions presented from December 1679 angered Charles II, especially as some had not secured the required permissions.<sup>76</sup> These were not prosecuted but the petitions (with a second wave in April-May 1680) stimulated a small number of shires and boroughs to present loyal addresses expressing their 'abhorrence' at the petitions.<sup>77</sup> This led the Commons in 1680 to approve a motion confirming the subject's right to petition and rejecting the treatment of petitions as seditious.<sup>78</sup> Following this session, addresses to MPs included thanks for defending the right to petition.<sup>79</sup> After the dissolution of parliament in March 1681, a final wave of petitions for a meeting of parliament were met with a large cluster of loyal addresses signed by at least 40,000 hands. Though many of these came from grand juries, boroughs and other local authorities, some did not. Loyal addressing thus provided more scope for collective participation than was allowed by the 1661 statute. A handful of magistrates sought to restrain unwelcome petitions with charges of seditious libel and petitioning by the city of London contributed to a revocation of its charter in 1682. Yet the right to petition was affirmed and practices of collective addressing, conveying political messages within expressions of loyalty and involving ordinary people, developed in response to the revival of collective petitioning.<sup>80</sup>

The contrast between England and Scotland reveals the more vulnerable position of petitioning in Scotland. As the earl of Perth commented to the new monarch James VII of Scotland and II of England in 1685, '[m]easures need not be too nicely kept' with the Scots.<sup>81</sup> Ignoring customary liberties to petition for justice and relief, the government imposed stringent restrictions on petitioning in the period from 1661 to 1688. Whereas discourse and practice in England included affirmations of the subject's right to petition parliament and the facilitation of public debate between partisan groups, loyal addressing in Restoration Scotland confirmed the relative absence of adversarial petitions.

#### *The Right to Petition, 1689-1707*

The Revolution of 1688-89 established a constitutional right to petition the monarch for redress of grievances in Scotland and England. As expressed in Scotland's Claim of Right, 'it is the right of the subjects to petition the king' and 'all imprisonments and prosecutions for such petitioning are contrary to law'.<sup>82</sup> Though this clause specified only petitions to the monarch, the clause came to be seen as encompassing petitions and addresses to parliament. Prosecutions in Scotland for leasing-making or seditious libel in relation to petitions became more difficult, yet conservative opinion still frowned on collective petitioning. A 1689 pasquil noted that Presbyterians 'at many a meeting a petition make'.<sup>83</sup> Political petitioning re-emerged in Scottish politics from 1688 without the statutory constraints found in England and developed an edginess that was discouraged in England after the arrest of petitioners from Kent in 1701. The crown in Scotland continued to restrict and regulate these activities as far as possible. In reply, dissident petitioners claimed a natural as well as a constitutional right to petition.

As Tim Harris has pointed out, the bi-partisan nature of the 1689 English Convention meant that revolutionary settlement confirmed existing laws and liberties, while the more Whiggish

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<sup>75</sup> *London Gazette* 1468 (11-15 Dec 1679).

<sup>76</sup> Mark Knights, *Politics and Opinion in Crisis, 1678-1681* (Cambridge, 1994), 229-236. See also Mark Knights, 'London's "monster" petition of 1680', *Historical Journal* 36:1 (Mar. 1993), 39-67.

<sup>77</sup> Knights, *Politics and Opinion*, 266-8.

<sup>78</sup> Knights, *Politics and Opinion*, 275-80

<sup>79</sup> Knights, *Politics and Opinion*, 280-1, 291-93.

<sup>80</sup> Knights, *Politics and Opinion*, 330-39; Mark Knights, *Representation and Misrepresentation in Later Stuart Britain: Partisanship and Political Culture* (Oxford, 2005), 127-128.

<sup>81</sup> HMC Laing, vol 1, 443.

<sup>82</sup> *RPS* 1689/3/108, 11 April 1689.

<sup>83</sup> James Maidment (ed.), *A Book of Scottish Pasquils* (Edinburgh, 1868), 289-91 at 290.

Scottish Convention used the Claim of Right to overturn unwanted laws and judicial precedents.<sup>84</sup> In the case of petitioning, the English Convention responded to the prosecution of seven Anglican bishops by James II for a petition querying the constitutionality of his April 1688 indulgence suspending penal laws against non-Anglican worship. While charges of seditious libel 'under pretence of a Petition' might have been successful in a Scottish context, this gambit failed in the English court of King's Bench.<sup>85</sup> In Scotland, the Convention responded to the repression of petitioning by Restoration regimes by adopting the English clause. Pamphlets took the case a step further by arguing that petitioning was a natural right. John Locke's *Second Treatise*, published in 1689 but reflecting his experience as a signatory of a London petition in 1680, argued for a natural right of the people to appeal to parliament to redress grievances and prevent the abuse of royal power.<sup>86</sup>

Faced with adversarial petitions late in 1699, the crown attempted to impose conditions on the right to petition in Scotland. Late in 1699, a group of dissident nobles began to organise a petition to the king asking for a meeting of parliament to redress the grievances of the nation.<sup>87</sup> On 18 December, William's ministry sought to dampen this project with a proclamation expressing stern disapproval of a device that threatened to 'Alienate from Us the Hearts of our good Subjects'. The king assured his subjects that he would not 'discourage the Liberty of Petitioning'--if 'the same is done in an Orderly manner'.<sup>88</sup> This stance met with resistance in the privy council with the argument that 'the Council could not in law prescribe the ways and methods of the subjects' petitioning'. Only a narrow majority of 13 to 10 voted to issue the king's proclamation. Rather than quieting the petitioners, this stimulated discourse on 'the subjects' privilege and freedom' to petition the king.<sup>89</sup> In January, a charge of leasing-making was brought against an individual who had written in a private letter that 'Twice So many have signed since the proclamation' and that the petition constituted a 'national covenant'.<sup>90</sup> The author, a medical doctor with Jacobite sympathies, Dr. Archibald Pitcairne, was released after making a humble submission attributing his letter to drunkenness.

Collective petitions were presented to the May 1700 parliament from five shires and three burghs and to the king from disgruntled members of parliament in June 1700. Another general subscription over the summer of 1700 was presented to William in October, followed by a second wave of petitions to parliament from eleven shires and seven burghs in January 1701. Because the Lords of the Articles had been abolished in the Revolution settlement, parliamentary commissioners were able to present the shire and burgh petitions in open parliament without any vetting.<sup>91</sup> The organisers were not pursued, though ministers discouraged subscriptions in private conversations and the chancellor, the earl of Marchmont, expressed the view that the second national address was 'certainly a league or combination contrary to law'.<sup>92</sup>

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<sup>84</sup> Tim Harris, *Revolution: The Great Crisis of the British Monarchy, 1685-1720* (London, 2006), 332-6, 343, 391, 401; Tim Harris, 'The People, the law and the constitution in Scotland and England: a comparative approach to the Glorious Revolution', *Journal of British Studies* 38:1 (Jan. 1999), 28-58. *RPS* 1689/3/108, 11 April 1689

<sup>85</sup> Harris, *Revolution*, 258-267; Knights, *Representation*, 128-29.

<sup>86</sup> Knights, 'Petitioning', 104-6.

<sup>87</sup> *A Full and Exact Collection of all the Considerable Addresses, Memorials, Petitions, Answers, Proclamations, Declarations, Letters and other Public Papers, Relating to the Company of Scotland* ([Edinburgh], 1700), 105-107.

<sup>88</sup> NRS, PC1/52, Acts of the Privy Council, 1699-1703, 23-24, reprinted in *A Full and Exact Collection*, 103-105.

<sup>89</sup> George H. Rose (ed.), *A Selection from the Papers of the Earls of Marchmont, 1685-1750*, vol. 3 (London, 1831), 193-194, 196-198.

<sup>90</sup> NRS PC 1/52, Acts of the Privy Council, 1699-1703, 61-63, 66-69.

<sup>91</sup> *RPS* 1700/5/41-42, 27 May 1700; 1700/10/164, 9 Jan. 1700; Sir David Hume of Crossrigg, *A Diary of the Proceedings in the Parliament and Privy Council of Scotland, May 21, 1700-March 7, 1707* (Edinburgh, 1828), 5-6, 45.

<sup>92</sup> Bowie, *Scottish Public Opinion*, 59; *Papers of the Earls of Marchmont*, 213.

A dispute in the 1702 parliamentary session led to another tussle over the right to petition. Asserting that new elections should have been called after the death of King William, the duke of Hamilton quit the diet with a body of supporters.<sup>93</sup> These members and dozens of other gentlemen in Edinburgh signed an address to the queen.<sup>94</sup> Charges were brought against a group of 20 advocates and the dean of the faculty of advocates for signing the address, which was deemed an affront to the authority of parliament.<sup>95</sup> In a letter to Lord Godolphin, treasurer of England, the duke of Hamilton asserted that 'our Lawes are verie expres as to the receiving the petitions of subjects and by the claim of Reight it's what the people look on as one of ther greatest securitys with ther Prince'.<sup>96</sup> Nevertheless, Anne refused to accept the address in London, telling its bearer to take it back to her commissioner, the duke of Queensberry, in Edinburgh.<sup>97</sup>

By contrast, the queen welcomed a set of petitions from deposed Episcopalian clergy and lay dissenters in 1703 asking her to protect them in their worship. In this campaign, organised with the support of a former Scottish archbishop and George Mackenzie, earl of Cromarty, royalist voices took up collective petitioning in the knowledge that the new queen sympathised with them. The clergy's address combined congratulations on Anne's accession, in terms typical of a loyal address, with a plea for subsistence and toleration of Episcopalian worship services. The queen received the address and promised to fulfil it 'as far as conveniently I can'.<sup>98</sup> Petitions to the queen from groups of dissenting laity for religious toleration were reported from Glasgow, Dundee, Aberdeen, Elgin and Fife.<sup>99</sup> In an ensuing pamphlet controversy, the earl of Cromarty emphasised that 'People may lawfully address and supplicat for Amendments in Laws, and Toleration from Rigours, without being Rebels', as long as they did not 'rise in Mobbs'.<sup>100</sup> No doubt fearing that collective counter-petitions would not be welcome, the established church, with advice from the lord advocate, Sir James Stewart of Goodtrees, responded with a representation to parliament against a proposed toleration act.<sup>101</sup> Rather than question the Episcopalians' right to petition, one pamphleteer sought to undermine the petitions with accusations of 'shamm Subscriptions'.<sup>102</sup>

At the same time as petitioning became more liberalised in Scotland, the English House of Commons characterised a 1701 address from a grand jury in Kent as 'scandalous, insolent and seditious'. Though compliant with the 1661 statute, the address expressed Whig demands in blunt terms and was considered offensive by a majority in the House. Pamphleteers, including Daniel Defoe, condemned the arrest of the Kentish gentlemen who presented the petition. Though this

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<sup>93</sup> On this episode, see Keith M. Brown, 'Party politics and parliament: Scotland's last election and its aftermath, 1702-03' in *Parliaments and Politics in Scotland, 1567-1707*, ed. K.M. Brown and A.J. Mann (Edinburgh, 2005), 245-286, at 246-50.

<sup>94</sup> Marchmont said 57, George Lockhart of Carnwath said 79 and Hamilton named between 70 and 80 including the clerk register and the constable and earl marischal of Scotland. *Papers of the Earls of Marchmont*, 240; George Lockhart of Carnwath, *'Scotland's Ruine': Lockhart of Carnwath's Memoirs of the Union* (Aberdeen, 1995), 14; HMC Hamilton supp vol 2, 154.

<sup>95</sup> RPS 1702/6/26, 34, 35, 37, 49, 62, 12-30 June 1702. An underlying factor was the ministry's suspicion that these advocates held Jacobite sympathies. HMC Hamilton supp, vol 2, 153-156.

<sup>96</sup> HMC Hamilton, supp vol 2, 153.

<sup>97</sup> Bowie, *Scottish Public Opinion*, 59-60.

<sup>98</sup> *To the Queen's most excellent majestie, the humble address and supplication of the suffering Episcopal clergy in the kingdom of Scotland, whose names and designations are underwritten* ([Edinburgh, 1703]).

<sup>99</sup> [George Mackenzie, earl of Cromarty], *A Few Brief and Modest Reflexions Perswading a Just Indulgence to Be Granted to the Episcopal Clergy and People in Scotland* ([Edinburgh, 1703]).

<sup>100</sup> [George Mackenzie, earl of Cromarty], *A Continuation of a Few Brief and Modest Reflexions* ([Edinburgh, 1703]), 9.

<sup>101</sup> *The Humble Representation of the Commission of the late General Assembly* ([Edinburgh, 1703]).

<sup>102</sup> [Robert Wylie], *A Short Answer to a Short Paper, Intituled, A Few Brief and Modest Reflections Persuading a Just Indulgence to Be Granted to the Episcopal Clergy and People in Scotland* ([Edinburgh, 1703]), 5; Bowie, *Scottish Public Opinion*, 36-37, 60.

case did not undermine the right to petition in England, it affirmed an expectation that petitions should use respectful and temperate language.<sup>103</sup>

Eighty-five addresses were presented to the Scottish parliament from October 1706 to January 1707, nearly all against a treaty of incorporating union between Scotland and England. These met with resistance from the government, but the organisation and presentation of the addresses was not prevented. The queen's ministers welcomed an address from the national church on 17 October asking that Scotland's Presbyterian establishment be protected in union, stating that 'they did not doubt but what was therein Craven would be obtained.'<sup>104</sup> They took a sterner stance when addresses from Perthshire, Midlothian and Linlithgowshire came to parliament on 1 November as parliament began to vote on each article of the treaty of union. The earl of Marchmont tried to stop the reading of the addresses on the grounds that they were seditious, while the duke of Argyll treated them with contempt, saying they were of 'no other use than to make kites'.<sup>105</sup> It was objected that the Claim of Right protected the petitioners.<sup>106</sup> The matter was said to have been resolved by the suggestion that parliament would be overrun by angry subscribers if they did not allow the petitions.<sup>107</sup> When further petitions arrived on 6 November, after parliament had voted in favour of the first article of the treaty for a union of the realms, it was argued that addresses against the union were redundant and should not be read. This was unsuccessful.<sup>108</sup> The address of the Convention of Royal Burghs reminded parliament that 'by the claim of right It is the priviledge of all subjects to petition'. This was reiterated in sixteen other addresses from burghs and parishes.<sup>109</sup> The parishes of Airth, Larbert, Dunipace and Denny went further in declaring 'it is the naturall right of all subjects to represent their grievances, and petition for remedy thereof, and that besydes it is the particular allowance of these of this Nation by their Claim of right'.<sup>110</sup> The only remaining barrier to presentation was the registration fee of one guinea (about £12 Scots) payable to the clerk register. One member with a stack of parish petitions tried to secure a discount by offering half a guinea each, but the clerk refused.<sup>111</sup>

The Scottish addresses retained formulaic humble phrases while advancing bold arguments. The English pamphleteer Daniel Defoe, who wrote pro-union tracts on behalf of the English government, condemned the assertive tone of the Scottish addresses and characterised them as 'Tumultuous'.<sup>112</sup> Yet only one address, from the presbytery of Hamilton warning parliament that angry crowds might resist the union, was seen by some as 'seditious'.<sup>113</sup> The authorities in Scotland in 1706-07 were more concerned about crowds and popular disorder. An attempt by the duke of Athol and duchess of Hamilton to gather petitioners in Edinburgh for a national address to the queen in December 1706 was dissolved by a proclamation against tumultuous and seditious meetings. This

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<sup>103</sup> Knights, *Representation*, 129-135; Ted Vallance, 'Daniel Defoe, public opinion and the Anglo-Scottish Union', *The Historian* 124 (2015), 20-24.

<sup>104</sup> NRS, Supplementary Parliamentary Papers PA 7/20/6; NRS, Registers of Acts of the Commission of the General Assembly, 14 Oct. 1706, CH1/3/8. See Karin Bowie, *Addresses against Incorporating Union, 1706-07* (forthcoming) for transcripts of the 1706-07 addresses cited in this paper.

<sup>105</sup> Lockhart, *Memoirs*, 150.

<sup>106</sup> NRS, Papers of the dukes of Hamilton and Brandon, James, duke of Hamilton to Anne, duchess of Hamilton (7 November 1706), GD406/1/6013, 8107.

<sup>107</sup> Lockhart, *Memoirs*, 150-151.

<sup>108</sup> NRS, Papers of the Dukes of Hamilton and Brandon GD406/1/6013, 8107, James, duke of Hamilton, Holyroodhouse, to Anne, duchess of Hamilton, Hamilton, 7 November 1706.

<sup>109</sup> See the addresses of the Convention of Royal Burghs, the burghs of Glasgow, Cupar, Kirkcudbright and Douglas, and the parishes of Glenkens, East Kilbride, Avondale, Bothwell, Cambusnethan, Dalsersf, East Monkland, Old Monkland, Lesmahagow, Shotts, Stonehouse and Calder in NRS, Supplementary Parliamentary Papers PA 7/20, 78 and Bowie, *Addresses*.

<sup>110</sup> NRS, Supplementary Parliamentary Papers, PA7/28/49 and Bowie, *Addresses*.

<sup>111</sup> Crossrigg, *Diary*, 180.

<sup>112</sup> [Daniel Defoe], *Two Great Questions Considered*, (Edinburgh, 1707) 3, 7.

<sup>113</sup> George H. Healey (ed.), *The Letters of Daniel Defoe* (Oxford, 1955), 187.

assured the subjects that parliament had their addresses under consideration and forbade them from travelling to Edinburgh to hear answers to their petitions, characterising this as ‘unwarrantable and contrary to law’.<sup>114</sup>

### *Conclusion*

In 1706-07, the right to petition established in the Scottish Claim of Right allowed the presentation of what the Lord Advocate called an ‘unprecedented’ number of petitions from Scottish shires, burghs and church courts, signed by over 20,000 individuals.<sup>115</sup> Though these challenged the queen’s policy of incorporating union in robust terms, attempts to block them on the grounds of sedition or insolence failed. ‘Tumultuous’ petitioning, however, continued to be unacceptable and laws against unauthorised convocations were deployed to limit unwanted addressing by subjects at large.<sup>116</sup> In both Scotland and England, decades of conflict with late Stuart monarchs had transformed a customary liberty into a constitutional right hedged with statutory restrictions designed to curb direct participation. Writing in 1765, the jurist William Blackstone saw the right to petition the Westminster parliament as an ‘auxiliary’ right allowing subjects to defend and preserve their primary natural rights of security, liberty and property. For Blackstone, the ‘gentle and moderate’ restrictions of the 1661 statute ensured that there would be no repetition of the regrettably tumultuous petitioning of the 1640s.<sup>117</sup> This British constitutional consensus would be challenged from the 1780s and especially the 1840s with large-scale petitioning campaigns for abolition and Chartism, establishing new standards for the participation of ordinary subjects in government through petitioning.<sup>118</sup>

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<sup>114</sup> Lockhart, *Memoirs*, 184-188; RPS 1706/10/176, 27 December 1706.

<sup>115</sup> Lockhart, *Memoirs*, 191.

<sup>116</sup> Whether members of parliament should obey petitions was a different question which was debated fiercely in Scotland, as in England. This debate is beyond the scope of this paper but see the introduction to Bowie, *Addresses*.

<sup>117</sup> William Blackstone, *Commentaries on the Laws of England*, Book I (Oxford, 1765), 136-40.

<sup>118</sup> Paul A. Pickering, “‘And your petitioners &c’”: Chartist petitioning in popular politics’, *English Historical Review* 116: 466 (Apr. 2001), 368-87.