

Parliament Lost – Parliament Regained? The Three Estates in the Reign of David II, 1329–1371

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Perhaps like no other king of Scots' reign, the long rule of the second and last Bruce monarch, David II (1329–71), has left striking proof that parliament, or general council, could be an extremely difficult and disputatious arena for the crown. These were assemblies that could be fuelled at once by the factional agendas and animosities of king and key magnates as well as by the developing political outlook of the three estates. Admittedly, much of the evolving nature of this assembly sprang from David's unpredictable and dramatic personal circumstances. Not only did he accede to the throne as a child faced with a lengthy minority but, on at least two occasions following the king's capture in battle against England in 1346, a Scottish parliament would record a point-blank refusal to countenance his plans for the admission of an English prince to the Scottish succession. Faced instead with the treaty obligation of paying off an onerous ransom of 100,000 merks to Edward III in just ten years, David – after his release in 1357 – seems to have found himself repeatedly in front of his subjects with crown-in-hand in search of revenues and approval for his diplomacy.¹ In return for his subjects' 'consent and assent' over these matters, parliament or council seemed able, throughout the 1360s especially, to extract numerous statutory concessions with regard to its expectations and concerns for royal justice, the behaviour of crown officers,

1. Compare England, where 'parliament . . . emerged not according to some pre-ordained plan, but through the pressures and accidents of circumstance'; W. M. Ormrod, *Political Life in Medieval England, 1300–1450* (London, 1995), p. 30.

taxation assessment and expenditure, the royal demesne, prise, hospitality and foreign relations. Robert Rait, reading all of this in the fragmentary extant record of parliamentary acts, was therefore convinced that David was a 'worthless man' whose reign was an opportunity for 'the development of a parliamentary influence comparable to that exercised by the English parliament in the later fourteenth century': in Rait's view, through the exchange of redress of subjects' grievances for regular subsidy, by 1371

Parliament or general council succeeded in placing important restrictions upon the power of the sovereign . . . The constitutional progress of the reign of David II was, therefore, the development of baronial rule over a weak monarch . . . The only possible leaders made an honest effort to prevent the king from wasting the revenues required for administrative purposes and for the payment of the ransom.²

Research has long since shown this thesis on the 'formulation of parliament' during David's reign to be far too black and white.³ This king was no broken political reed, nor did his rule witness the birth of an inflexible corporate identity among the three estates, ever intent on dictating conditions to an untrustworthy king in a manner akin to the English commons in the crisis years of 1290, 1310–11 or 1340–1.⁴ Instead, as might be expected, what emerges from a more detailed examination of the personalities and political context behind the mid-fourteenth-century Scottish parliamentary record is a murkier, less certain picture of a human institution of both pragmatic and reluctant give-and-take; a forum in which instances of real administrative improvement and crown-subject consultation for the utility of the realm can be found alongside moments of intense political division, criticism of royal government, and the intimidation by the king and his inner circle of sections of the estates. What has perhaps not been appreciated by historians to date, however, is the degree to which David II's need to play catch-up with the political initiative throughout his reign conditioned the way in which he tried to approach, manage and direct parliament, especially after 1357. His childhood

2. Rait, *Parliaments*, pp. 19–25.

3. B. Webster, 'David II and the government of fourteenth-century Scotland', *TRHS*, 5th series, xvi (1966), pp. 115–30; R. Nicholson, *Scotland: The Later Middle Ages* (Edinburgh, 1974), ch. 7; M. Penman, *The Bruce Dynasty in Scotland: David II, 1329–71* (East Linton, forthcoming).

4. H. G. Richardson and G. O. Sayles, *The English Parliament in the Middle Ages* (London 1981), v, p. 143–4, xvi, pp. 71–81, xxi, pt ii, pp. 1–15; R. Butt, *A History of Parliament: the Middle Ages* (London, 1989), chs 3, 4 and 5.

and severely disrupted adult kingship-of-two-halves meant that David, his officers and councillors never attained the same level of unchallenged control over such consultative assemblies as that exercised by Robert I's regime between 1309 and 1329. But this did not stop them from trying. Indeed, David can be shown to have had a constantly changing love-hate relationship with parliament and general council, engaging in a far more complex, improvisational game with increasingly politicised subjects and estates.

In the period before 1329, Robert I's armed usurpation had driven his need to dictate the output of his parliaments and councils, so as to project Bruce dynastic legitimacy and to bind key subjects to his political will. After 1309, he sought the estates' almost annual consent and the unquestioning appendage of seals to tailzies of succession, treaties of peace and alliance, new legislation, treason trials, grants of tax or important acts of patronage, and this may be interpreted on one level as a measure of just how uncertain Robert was of widespread support as king. But that these were parliamentary decisions recorded as 'the king decrees' or as 'the king wishes and commands' or after 'the king ordained and asserted' underlines the reality that it was Robert and his key noble supporters and clerical advisors who were responsible for the final formulation of such acts, not the community as a whole. Robert was undoubtedly prepared to listen to the grievances of his subjects and to preempt or ease their needs, but at crucial moments throughout the reign – 1309-10, 1314, 1315, 1318, 1320, 1326 and 1328 most obviously – many of the substantial regional men of the realm simply had no choice but to submit to royal policy and the manipulation of the documentary record.⁵ Such parliamentary usage of coercion, patronage, propaganda and spin worked to forge consensus as long as the majority of subjects could be persuaded to seek the same ends, namely peace for an independent Scotland with her southern neighbour and the guarantee of redistributed lands, offices and benefices under a stable royal dynasty.

However, with the deaths in quick succession of William Lamberton, bishop of St Andrews (1328), Robert I himself (1329), Sir James Douglas (1330), Bernard, abbot of Arbroath (1331) and then Sir Thomas Randolph, earl of Moray (1332), this focused management of parliament and council by the king and his skilled inner circle lapsed. As Roland Tanner argues, from 1332 on – with their king a mere child soon to be exiled to France – the Scottish political community could in theory reclaim the 'advisory and governmental'

5. R. J. Tanner, 'Cowing the community? Coercion and falsification in Robert Bruce's parliaments, 1309-18', above, Chapter 2; D. E. R. Watt, *Medieval Church Councils in Scotland* (Edinburgh, 2000), pp. 103-18.

role that the significant men of the realm had first adopted in the absence of an adult king by appointing guardians between 1286 and 1306.⁶ Some measure of this enlightened responsibility for the estates in choosing their leaders may have been envisaged by Robert I and his regime. The 1318 and 1326 acts of succession stipulated provision for the nobles and prelates to gather under the guardianship of Randolph or Douglas to select one of their number as king in the event of the early deaths of David Bruce (born 1324) and Robert Stewart (born 1316).⁷ Guardian Randolph, too, seems to have deliberately sought to associate his regency government and David II's formal elevation as monarch with the consent and homage of the estates. After Robert I's death, annual assemblies continued to be the norm, as had been the case in the 1320s, with a parliament recorded at Perth in March 1330 and a council at Kinross in December the same year. Most significantly, David's annointment and coronation at Scone on 24 November 1331 formed the focal point of a parliament summoned in September that year, just after the final payment of war reparations to England agreed by the Holyrood parliament of March 1328. This 1331 meeting of 'bishops, abbots, earls, barons [and] freeholders' was also to discuss 'arduous business touching us and our kingdom', namely the imminent war with Edward Balliol and England. The second Bruce king's ceremonial instalment, therefore, might have been delayed for over two years until the treaty obligations of the realm — undertaken in parliament — had been fulfilled. David's investiture was thus embedded in a public ceremony that gave his oaths of office a direct link to the political role of his subjects: it might easily have been expected that this vital rite for such a fledgling dynasty would have been carried out immediately on its own after Robert's funeral.⁸

However, it was always likely that after the old king's demise his close supporters would continue to act in concert to manipulate the outcome of these ostensibly consultative assemblies, determining the recorded will of the wider community. While Randolph was alive, he made sure that those favoured with charters in David II's name or, for example, knighted alongside the king at the coronation parliament were from the kindreds rewarded with extensive lands

6. Tanner 'Cowing the Community?'; A. A. B. McQueen, 'Parliament, the Guardians and John Balliol, 1284–1296', above, Chapter 1; Tanner, *Parliament*, pp. 276–7; G. W. S. Barrow, *Robert Bruce and the Community of the Realm of Scotland* (3rd edn, Edinburgh 1988), chs 1 and 6; N. Reid, 'The political role of the monarchy in Scotland, 1249–1329' (unpublished Ph.D. thesis, University of Edinburgh, 1984), chs 2, 4–6, and 9.

7. *RRS*, v, no. 301; *RPS*, 1318/30, 1326/2.

8. *RPS*, 1330/1, 1331/2; *RRS*, vi, nos 3, 480–1; *RMS*, i, app. ii, no. 716; A. A. M. Duncan, 'The early parliaments of Scotland', *SHR*, xlv (1966), pp. 36–58, 55–7.

by the Bruce regime after Bannockburn.⁹ Yet with Randolph's early death, which was followed swiftly by two disastrous defeats against Balliol and Edward III by July 1333 that culled the nobles of the guardian's generation, the yawning power vacuum in the Bruce party was exposed.¹⁰ In this uncertain context, a new generation of Scottish leaders might easily have adopted the techniques exploited by the Bruce regime since 1309 and used them to inflate the governmental role of the responsible estates. The precedent of securing the estates' ratification of important acts of policy – a process ruthlessly controlled by Robert I and his officers – might now become normal practice, with the initiative instead springing from the council or parliament floor. In the same way, documents rooted in assemblies of the community but drafted by and for the crown – like the declarations of the nobility or clergy (1309–10) or the nobles' letter to the pope (1320) – might be plundered for precedents that, on paper, spoke for the supervisory powers of the estates in determining the behaviour of their king and the policies of the realm.

If there was a section of the political community equipped and motivated to develop such a strong political tradition during David's minority it was the clerical estate. After 1332, as between 1286 and 1329, the churchmen of Scotland played a pivotal role in sustaining Scottish administration and diplomacy in the face of English invasion. New clerical leaders emerged – men like William de Landellis (bishop of St Andrews by 1342), Walter Moffat (future archdeacon of Lothian) and Thomas Fingask (future bishop of Caithness) – all with records as students or teachers in Paris and Orléans in canon law and the Aristotelian idea of political and legislative power ascending from people to ruler. For such figures, David's childhood exile in France was a crisis, but also an opportunity to educate and shape a king to be sensitive to the input of the estates in parliament.¹¹

In reality, however, the most likely challenge to Bruce control of parliament or council after 1332 was an ambitious noble able to exploit the chaos of successive seasons of war. Just as Robert I had tried to intrude his own agenda through his office as co-guardian for King John in 1298–1300,¹² so his grandson,

9. *RRS*, vi, nos 5–8, 10; *Chron. Fordun*, i, p. 354, and *Chron. Bower*, vii, p. 71, name John Stewart, earl of Angus, and Thomas Randolph's son, Thomas, among those knighted.

10. R. Nicholson, *Edward III and the Scots* (Cambridge, 1965).

11. D. E. R. Watt, *A Biographical Dictionary of Scottish Graduates to AD 1410* (Oxford, 1977), pp. 328, 187–9, 400–1; Penman, *David II*, ch. 2; W. Ullmann, *Law and Politics in the Middle Ages* (London, 1975), passim especially chs. 7 and 8; J. P. Canning, 'Development c. 1150–c. 1450: politics, institutions and ideas', in J. H. Burns (ed.), *The Cambridge History of Medieval Political Thought, c. 350 – c. 1450* (Cambridge, 1988), pp. 341–66.

12. G. O. Sayles, 'The guardians of Scotland and a parliament at Rutherglen in 1300', *SHR*, xxiv (1927), pp. 245–50; *CDS*, ii, no. 1,978; Barrow, *Robert Bruce*, pp. 83–5, 106–9.

Robert the Steward, nephew and heir-presumptive of David II, would be suspected of advancing his own political and territorial interests in the 1330s. In the resulting tensions between the Steward and David's government-in-exile, parliament and its authority became a focus of conflict.

Even before the Steward came to prominence, difficult questions were raised between rulers and subjects about the consultative role of the political community. With Randolph dead, John of Fordun's anonymous source reports that, at what was most likely an emergency council, 'all the magnates, both churchmen and laymen, were gathered together at Perth, on the second of August [1332]; and after a great deal of wrangling and sundry disputes, they, with one voice, chose Donald, earl of Mar, as guardian of the kingdom'. The heated debate suggested here might not only have been about the new choice of leader in the teeth of Balliol's invasion: it might also have concerned the powers of that office. Although Fordun's source would go on to designate all of Mar's successors as 'guardian', the style employed by these officers in their *acta* was 'king's lieutenant', and it is likely that Mar too was given that title. This change in title might have reflected a lesser political authority for a lieutenant as opposed to a 'guardian'. The lieutenant might only have had military or regional jurisdiction, requiring the input of a committee of nobles and prelates elected by parliament or council — and after May 1334, input from David's household in Normandy — to issue patronage and conduct peace talks. Four charters of direct royal patronage in David's name survive from Randolph's time as 'guardian'; but no such act remains from the period of the lieutenantancies of August 1332 to June 1341, only orders to shrival officials and a single grant by Sir Andrew Murray, all contained in letters patent.¹³

When, however, Robert the Steward was given (or assumed) the lieutenantancy in 1334–5 and proved particularly effective at recovering territory, taking homages and negotiating his own position with the enemy, he came into conflict with magnates closer to the Bruce party in France. At what is recorded by the Scottish chroniclers as a 'parliament' (but was surely a war council of captains in the field) at Dairsie in Fife in April 1335, the Steward and the temporary defector David Strathbogie, earl of Atholl, clashed with John Randolph, earl of Moray, and that other rising wartime star, William Douglas of Lothian.¹⁴ On this occasion those representing the crown prevailed. The

13. *Chron. Fordun*, i, pp. 354–63; *RRS*, vi, nos 1–24 (11–14 and 16 for lieutenantancies). Is it possible that Randolph was styled 'guardian' because he took up office before there was a crowned monarch in whose name he could rule — in the same manner as the guardians for the Maid of Norway? That said, a royal act issued by David in council in 1342 would style Archibald Douglas 'guardian' c. 1332–3 (NLS, MS 72, f. 60r, printed *RRS*, vi, no. 44).

14. *Chron. Fordun*, i, p. 358; *Chron. Bower*, vii, pp. 109–11.

Steward sulked off to submit to the English, and first Randolph – briefly in conjunction with the Steward – and then Andrew Murray of Bothwell (David II's uncle) assumed the lieutenancy. No evidence for further parliaments or councils during the two-and-a-half years of Murray's command has survived although these might have been held for the estates to hear and reject Anglo-Scottish peace offers brokered by the pope. Political direction in this period seems to have come from David's household in France through knights and clerics travelling as intermediaries, but with Randolph an English captive by 1336, the key bishopric of St Andrews vacant, and Andrew Murray dead by mid-1338, the Steward was elected (presumably by another council of which no records survive) to resume the lieutenancy.¹⁵

This time around, the Steward was more aggressive in the advancement of his designs on the earldoms of central Scotland. As well as interfering in royal revenues, the king's lieutenant may also have used meetings of the estates for his own ends.¹⁶ At a parliament in Perth in October 1339 an assize of unrecorded composition found Malise, earl of Strathearn, innocent and thus 'immune' of the charge of treason for resigning his earldom to Edward Balliol.¹⁷ This was a decision that not only deprived the crown of a claim to Strathearn, but also set a legal precedent that protected the Steward from prosecution and forfeiture for his own brief defection in 1335. It probably also cemented a private deal between Malise, the Steward and others over the fate of Strathearn (a title the Steward would secure by 1357). Robert's considerable military success at this time in besieging royal castles, alongside his commission as lieutenant and his already-guaranteed place in the royal succession through two parliamentary tailzies (1318 and 1326), brought him natural authority in directing the outcome of the 1339 parliament. All the later evidence suggests that this assembly's decisions ran contrary to the wishes of David and his household, and four years later the king found cause to reopen the Strathearn case in parliament. By 1340 the seventeen-year-old monarch had already begun to exercise his own authority in Scotland; another council or parliament meeting at Dundee in late 1340 or early 1341 granted a small contribution to pay for the king's expenses in returning home. However, the exchequer records for this period make it clear that David and the lieutenant were issuing competing orders to financial officials. In the end David had to

15. London, Public Record Office [PRO], E39/11; *Rot. Scot.*, i, pp. 327, 334, 390, 395, 398, 410, 417, 431, 449, 498; *CDS*, iii, nos 1,171, 1,185, v, no. 765; *Chron. Fordun*, i, p. 363; Penman, *David II*, ch. 2.

16. *ER*, i, p. 435.

17. *RPS*, 1339/1, 1344/2.

borrow French gold while his parliamentary subsidy was delayed.¹⁸ This was a fate that would befall many of David's taxes upon the estates.

As a result of these struggles during David II's absence, when he returned to Scotland as an inexperienced teenage king in June 1341 and began his 'first' kingship, he faced an uphill struggle to restore royal authority over the Steward, Douglas of Lothian and others after more than a decade of minority government. Most crucially of all, David and his close daily council could not be confident that parliament could be controlled as a tried-and-tested method for the crown to restore Bruce rule over key subjects who had themselves now gained considerable experience in directing political power through that institution.

David waited just three months before calling his first parliament at Scone in September 1341. As with all but one of the community's assemblies before the battle of Neville's Cross in 1346, no record of the proceedings of this meeting has survived — only a handful of charters and letters issued by the king during its session.¹⁹ Yet this must have been an extremely difficult gathering. As with David's first assembly after his return from English captivity in 1357 (for which proceedings are extant),²⁰ there must have been a high level of mutual expectancy expressed by king and subjects. The king might have renewed his coronation oaths to uphold the kingdom's laws, customs and the church. A backlog of legal hearings would have been started, and it is likely that provision was made for refilling lapsed or sensitive administrative offices and recovering the royal demesne and revenues. Charters of fresh grants and confirmations or inspections of past royal patronage were made, and the crown also seems to have secured another small tax, perhaps in return for florid promises from David, noted by some chroniclers, to complete the recovery of the borders and to reward those who had fought and fallen in his name since 1332.²¹

18. *RPS*, DavII/1; *RMS*, i, app. i, no. 111; *ER*, i, pp. 458, 460, 463, 501, 513–4. This meeting of the nobles and clergy at Dundee c. 1340–1 might have prepared for David's return landing at Inverbervie just up the coast.

19. *RRS*, vi, nos 33–7, 489.

20. *RPS*, 1357/11/1–20.

21. *ER*, i, 501; *Oeuvres de Froissart publiées avec les variants des divers manuscrits*, ed. Baron Kervyn de Lettenhove (Brussels, 1876–7), iii, pp. 432–6. Andrew Wyntoun's contemporary source relates the tale of an incident from David's return in 1357 when in his first (daily?) council he had to beat back suitors with the ceremonial mace as they pressed in on him with demands as 'they were wont to do' (*Chron. Wyntoun* (Amours), vi, pp. 232–4).

Yet evidence from subsequent meetings of the political community before 1346 makes it clear that parliament was not simply dominated once again by the king and his officers and trusted daily council after 1341. Indeed, it is possible that direct challenges to David's plans for the redistribution of lands and offices to secure support for the crown and to check regional magnates were lodged at this first gathering. Certainly, the meeting at Scone seems to have been curtailed, with continuation to a council scheduled for February 1342 at the Friars Preachers' at Aberdeen. This was arguably friendlier ground for the king since it was in the heart of a region that had supplied his court in exile, and that he had first toured in the summer of 1341. David's participation in raids into northern England during the intervening winter, and expenditure on a tournament at Aberdeen held just before the council sat, might also have been designed to win attendees' backing.²² But the king and his councillors must have had a rude shock when Robert the Steward and William Douglas sought the judgement of an assize in this council that declared for the former's right to possess the border lordship of Liddesdale, leaving the royal heir-presumptive free to exchange this land with Douglas for the central earldom of Atholl, which the king had granted to Douglas just eight months previously. David was left with no choice but to confirm these two lords in their regional dominance during this council.²³ This bold insistence on the application of the law thus sabotaged the king's early attempts to 'divide and rule' by redrawing the map of lordship in lowland Scotland. One suspects that such a use of council by subjects would not have been tolerated under Robert I. A few weeks later, the Steward defied the crown again in protecting Douglas from the king's wrath – and perhaps an assize in parliament – for the murder of a royal favourite and officer, Alexander Ramsay of Dalhousie.²⁴

With David licking his wounds, his next assembly of the community, a council in June 1342, gathered at Restenneth priory in Angus, the burial place of his infant brother, John Bruce.²⁵ No progress appears to have been made with the emerging royal agenda of reducing the territorial influence of certain

22. *RRS*, vi, nos 25-43, 46; *Chron. Bower*, vii, pp. 151-3.

23. *RPS*, 1342/2/1; *RRS*, vi, nos 31, 44. The Steward might also have secured a pardon for his brief submission to Balliol in this council along with a confirmation of his lands (*RMS*, i, app. ii, no. 823).

24. *Chron. Fordun*, i, pp. 365-6; *Chron. Bower*, vii, pp. 153-5. In May 1342, Douglas also obliged David to confirm a re-tailzie of family lands, in this instance giving Douglas a claim to the lands of his exiled nephew and ward, William, lord of Douglas (*RRS*, vi, no. 51).

25. *RPS*, 1342/6/1; *RRS*, vi, no. 52; *RMS*, i, app. i, no. 118.

great lords. However, the record of the next parliament of significance, held at Scone in June 1344,²⁶ again makes it clear that those of David's key subjects who had prospered in his absence were prepared to use parliament as a means to defend their interests. Malise, earl of Strathearn — probably encouraged by interested parties like his daughter's guardian, William, earl of Ross,²⁷ and by Robert the Steward — had seemingly challenged David's grant of October 1343 of the Strathearn lands and title to Sir Maurice Murray of Drumsargard,²⁸ citing the judgement of innocence passed upon Malise in the 1339 parliament under the Steward's lieutenancy. David had clearly learned the value of weighting an assize with men favoured by the crown, for the body of nineteen nobles named in judgement upon Malise at Scone — most of them well rewarded by the crown since 1341 — made the somewhat dubious distinction that the earl was innocent of treason but guilty of resigning his earldom to Balliol, and thus his lands were forfeit to the king; Maurice was soon confirmed in his new title.²⁹ Nonetheless, the king's lawyers had been forced to present 'diverse opposing allegations' to the claims of Malise's attorneys — both the earl and the bishop of Ross — suggesting that the matter had been well debated in parliament even before it went to a retrial, and Maurice would never use his full style as earl of Strathearn in royal acts.

In the same way, the succinct statute of the June 1344 recording that 'Sir John Randolph . . . confessed that he had no right to the office of justiciar on the north side of the Scottish sea by way of heritage, but threw himself on the will of the lord king for obtaining the said office' is arguably the result of a less-than-convincing move by David and his right-hand man, the earl of Moray, to dispossess the earl of Ross from this valuable judicial office that he had assumed in the 1330s.³⁰ The June 1334 parliamentary record also included David's acknowledgment of a 'declaration of the prelates', that the bishop of Aberdeen was entitled to the second teinds of Aberdeenshire and Banffshire. But David had already attempted to ringfence these revenues for the bishop through an assize appointed by parliament in September 1341 and again in the council of February 1342; moreover, it is clear that Ross continued

26. For what follows see *RPS*, 1344/1–5; Thomson, 'A roll of the Scottish parliament, 1344', pp. 235–40.

27. B. E. Crawford, 'The earls of Orkney-Caithness and the relations with Norway and Scotland, 1158–1470' (unpublished Ph.D. thesis, University of St Andrews, 1971), pp. 21–39, 112–34, 163–78, 217–24.

28. *RRS*, vi, no. 77.

29. *RMS*, i, app. ii, no. 896; for David's patronage c. 1341–6 see Penman, *David II*, ch. 3.

30. For Ross as justiciar, see *Chron. Wyntoun* (Amours), pp. 134–5; *Registrum de Dunfermelyn* (Bannatyne Club, 1842), p. 259.

to interfere in the collection of these monies, and there is no solid evidence that the earl was removed by the crown as justiciar before 1346: this was an office which Ross was certainly free to exploit in the king's absence between 1346 and 1358.³¹

In sum, David's real success in the 1344 parliament was small beer, limited to obliging his domestic antagonists, the Steward and Patrick, earl of March (another defector to Balliol c. 1332-4), to present themselves as cautioners for William Douglas in a statutory settlement of his feud with the followers of the slain Alexander Ramsay (an affinity now favoured by the king). At this stage the ability of David and his daily council to manipulate parliament in no sense approached the high level of personal control required to forward his plans to disentail the Steward and others. No evidence for progress on this front survives for the two remaining councils of this period, at Edinburgh in April 1345 and at Perth in June 1346. Instead, the young king turned back to his father's method of war as a means of asserting his authority over his subjects, but David's campaign went disastrously wrong at the battle of Neville's Cross when he was captured by the English.³²

David's military policy failed completely and most of his officers and daily councillors from 1341-6, including Randolph, the chancellor and the chamberlain, were killed in the battle; the king was now to be confined in England without significant contact with Scotland for over a year. This left Robert the Steward, the rightful heir to the throne, as the only alternative (and perhaps a popular one) for election once more by the estates as 'king's lieutenant'. This had surely occurred before the first identifiable council of David's captivity at Dundee in November 1347.³³ Moreover, the evidence of the period suggests that this time the Steward had a much stronger hand in determining the political direction of the realm. If and when the nobility and prelates did meet amidst the disrupted wartime conditions of c. 1347-56, their assembly could easily have been packed with the Steward's supporters. Robert named his own chancellor and chamberlain and appointed regional lieutenants such as John Menteith of Knapdale, John Murray of Bothwell and Thomas Stewart, earl of Angus (chamberlain by 1354). Letters issued in David's name at the November 1347 council banishing Flemings from Scotland as enemies

31. *RPS*, 1342/2/2; *RRS*, vi, no. 47; *Abdn. Reg.*, i, pp. 69, 73; *ER*, i, pp. clxiv, 501.

32. *RRS*, vi, nos 88, 267. For the Douglas versus Ramsay feud and the 1346 campaign, see M. Penman, 'The Scots at the battle of Neville's Cross, 17 October 1346', *SHR*, lxxx (2001), pp. 157-80. The loss of the exchequer rolls for much of 1343-6 makes it difficult to tell if any further meetings of the community were held.

33. *RRS*, vi, nos 109-10.

of France, and moving the burgh staple to Flanders, were also surely the Steward's moves, engineered through the estates and in no way conducive to release talks with England.³⁴

David soon fought back, however, and sought to revive the royal party in Scotland by combining patronage with crown control of parliament through the offices of lieutenant and royal clerks. It is possible that at an unrecorded council some time in 1348–9 the Steward was ousted from office by the earls of Ross and Mar and William, lord of Douglas.³⁵ Aided by embassies by Scottish churchmen-lawyers such as William, bishop of St Andrews, this triumvirate of 'lieutenants' in turn facilitated the presentation of various offers for peace with England and David's release, made first to a council at Dundee in May 1351 and then to a parliament at Scone in February 1352. The controversial nature of these proposals – many of them brokered by David himself – meant that the estates had to be consulted.³⁶ This gave the Steward his chance. The parliamentary briefing document or *quaestio* of 1364, translated and analysed by A. A. M. Duncan, makes it clear that at the 1351 council there was a full-scale debate that resulted in the rejection of proposals for a ransom of £40,000 for the king, the admission of Edward III as David's heir-presumptive, the restoration of the disinherited to Scottish lands and an Anglo-Scottish alliance.³⁷ This must have been the first of many assemblies at which the Steward and his supporters presented a variety of arguments against such terms, appealing directly to the concerns of each Scottish estate: namely, real fears for the loss of valuable noble lands distributed before 1329; the new threat to the independence of Scotland's church and laws; the spectre of intensive taxation, revocation, military conscription and mercantile trickery by an English king and his subjects to the ruin of Scotland's chivalry and trade; the binding sanctity of the estates' acts of succession under Robert I; and the royal neglect of Scotland's patriotic war effort since 1306.³⁸ The Steward

34. London, British Library, Add. MSS 33, 245 f. 53b–54 for Sir Robert Erskine as chamberlain; Watt, *Scottish Graduates*, pp. 72–3 for William Caldwell as chancellor; *RRS*, vi, no. 492 for Menteith; *ER*, i, p. 595 for Angus. For Murray, see *Calendar of Entries in the Papal Registers relating to Great Britain and Ireland: Petitions to the Pope*, ed. W. H. Bliss (London, 1896) [*CPP*], i, p. 303; *RRS*, vi, nos 135, 139; *Rot. Scot.*, i, pp. 687–8; *ER*, i, pp. 547, 550, 576, 583. The Steward also used the royal seal to secure a papal legitimation for his first marriage and children (*CPP*, i, p. 124; *RRS*, vi, p. 45; *Scots Peerage*, vii, pp. 327–8).

35. *CPR*, iii, p. 200; Penman, *David II*, ch. 5.

36. A. A. M. Duncan, 'Honi soit qui mal y pense: David II and Edward III, 1346–52', *SHR*, lxxvii (1988), pp. 113–41; *RRS*, vi, no. 115.

37. A. A. M. Duncan, 'A question about the succession, 1364', *Miscellany of the Scottish History Society*, xii (1994), pp. 1–57, 5–6, clauses 5 and 35.

38. Duncan, 'A question about the succession', pp. 35–55, clauses 24–53.

would also have been able to cite Scotland's existing alliance commitments to France, ratified by parliament in 1326 and perhaps reaffirmed before the estates in the 1330s.³⁹ Such potent arguments would have been enough to turn many of David's potential supporters.

Such emotive and patriotic arguments may have enabled the Steward to recover the office of lieutenant before the parliament of February 1352.⁴⁰ Here Robert and his speakers faced David in person. Edward III paroled his captive after David promised to persuade his subjects to accept a revamped deal that did not involve a ransom but did concede acceptance of a younger son of the English king as the Scottish king's heir-presumptive.⁴¹ That David was now aware of a need to appeal to each of the three estates is reflected in the small-print of the treaty he attempted to sell. This included guarantees of ecclesiastical, legal and mercantile rights as well as a promise that no Scottish parliamentary business would be heard outwith the realm; numerous clauses sought to offset the fears of the Scottish nobility as well as the community's dread of extraordinary taxation.⁴²

Nevertheless, the Steward and others in opposition once again prevailed in parliament and David returned to captivity. Moreover, in expressing their rejection of the terms some sections of the community went further than in 1351. According to the English chronicle (1337-96) of cleric Henry Knighton, when David was paroled to speak to his subjects:

the Scots refused to have their King unless he entirely renounced the influence of the English, and similarly refused to submit themselves to them. And they warned him that they would neither ransom him nor allow him to be ransomed unless he pardoned them for all their acts and injuries that they had done, and all the offences that they had committed during the time of his captivity, and he should give them

39. *RRS*, v, no. 299. *Chron. Lanercost*, p. 287, asserts that in 1336 the bishop of Glasgow died defending a Scottish cargo of 'charters, conventions and indentures which had been concluded between the king of France and the Scots'. In 1433, Abbot Walter Bower, a crown employee, would speak out in parliament against James I's proposal to break off the alliance with France in favour of England (*Chron. Bower*, viii, pp. 287-91).
40. The first extant act of the Steward as lieutenant once more dates from 17 October 1354 [*RRS*, vi, no. 133] but the 1364 *quaestio* gives the impression that the Steward had overseen the assembly which had rejected the release terms in David's presence [Duncan, 'A question about the succession', p. 27, clauses 4-5].
41. *CDS*, iii, no. 1,557; *Rot. Scot.*, i, pp. 745, 748.
42. PRO E39/2/2 for the proposed treaty, reproduced in Duncan, 'Honi soit qui mal y pense', pp. 139-41, where it is revised and redated from its inclusion in *APS*, i, p. 497, under talks of late 1363.

security for that, or otherwise they threatened to choose another king to rule them.⁴³

If true, there is more than a faint echo here of the Declaration of Arbroath's pledge in the name of the Scottish nobility to banish and replace any king who brought in the English, replacing him with 'some other man who was able to defend us'.⁴⁴ Ironically, the spirit of Robert I's propaganda was now being used to constrain his son. This role for the estates in defending the integrity of the realm over and above the person of the monarch — invoking impeachment if necessary — might have been a principle the Steward wished to encourage in the event that he sought to have himself declared king while David remained captive. The Steward's inability to defend the realm from English attack when he was king in the 1380s would be a pretext upon which his sons directed packed councils of the estates to transfer royal authority to a lieutenant.⁴⁵

Thus between 1352 and 1357 an uneasy balance might be said to have existed in Scotland, with Robert the Steward and his sub-lieutenants controlling war and revenues, but with a greater background role for the wider community when peace talks beckoned. The Steward's ability to rouse anti-English opposition in council must have been effective once more in 1354 when David almost succeeded in pushing through a straightforward release deal conceding a ransom and hostages. French gold (and, as in 1351–2, letters from John II of France) persuaded Scottish nobles against concluding these talks.⁴⁶ But with Edward III's destruction of Lothian in the 'Burnt Candlemas' of 1356 and the capture of King John of France at Poitiers the following September, pressure from David and various noble and clerical parties in Scotland for final talks proved irresistible.⁴⁷

In issuing letters as lieutenant authorising these talks, contrary to his own

43. G. H. Martin (ed.), *Knighton's Chronicle, 1337–96* (Oxford, 1995) [*Chron. Knighton*], pp. 113, 121–3.

44. A. A. M. Duncan, *The Nation of Scots and the Declaration of Arbroath* (1320) (London, 1970), p. 36; *Chron. Bower*, vii, pp. 7–9; G. G. Simpson, 'The Declaration of Arbroath revitalised', *SHR*, lvi (1977), pp. 11–33, 28–32; A. Grant, *Independence and Nationhood, Scotland 1306–1469* (Edinburgh 1984), pp. 56–7.

45. S. Boardman, *The Early Stewart Kings: Robert II and Robert III, 1371–1406* (East Linton, 1996), pp. 131–2; J. Dunbabin, 'Government' in Burns, *Cambridge History of Medieval Political Thought*, pp. 477–518, 498–9.

46. *Rot. Scot.*, i, p. 768; *Chron. Fordun*, i, pp. 370–1; *The Parliamentary Records of Scotland*, ed. W. Roberston (Edinburgh, 1804), pp. 99–100; Paris, Archives Nationales, JJ 36620, 621.

47. *Chron. Bower*, vii, pp. 295–301; Penman, *David II*, ch. 6.

best interests, the Steward thus bowed to the collective political will of a majority of the three estates. This fact is confirmed by the individual commissions (probably reflecting separate meetings in advance) to negotiate David's release issued by each section of the political community at a council in Edinburgh in late September 1357. Proctors were empowered on behalf of 'our chapters and all the clergy of the kingdom of Scotland', and 'all the earls, nobles, barons and of the community of the kingdom of Scotland', and with 'the common assent and will of the whole community of the said burghs and the regions adjacent to them'.⁴⁸ David's plight had necessitated an expansion of the role of simple ratification and underwriting, performed by the three estates in 1326 and 1328 in Robert I's treaties with France and England, into one of direct supervision and responsibility for diplomatic talks in c. 1351-7 and the resulting issues of finance and sovereignty. The Steward's own letters to the ambassadors issued in two Edinburgh councils in January and September 1357 were also given with 'the unanimous and clear consent and assent of all the prelates, barons and the entire community of the kingdom of Scotland'.⁴⁹ Just as in 1339 and 1340, the period between late 1356 and early 1357 saw David simultaneously issuing his own acts through loyal officers established in Scotland.⁵⁰ But the fact that both king and heir-presumptive knew they were now committed to seeking support against each other from all the highly politicised communities of the realm was underlined by the efforts made by David just before his release. He secured general safe-conducts to England for Oxbridge studies and mercantile trade by the Scottish clergy and burgesses respectively, two of the parliamentary estates whom he would soon have to tax to raise his ransom.⁵¹

During his decade of captivity David had the opportunity to study Edward III and his ministers in their management of councils and parliament. The English crown used many ploys to make the houses of lords and commons more receptive to royal wishes. The king's monopoly on naming the time and place of parliament enabled Edward to call fewer assemblies from the 1350s. The English king also deployed patronage of chivalry and piety to motivate his political subjects to support his military campaigns financially; summonses for the community to meet were often enclosed with war propaganda statements.

48. *Foedera*, iii (i), pp. 370-2.

49. PRO, E/39/99/36, 37; *RRS*, vi, nos 141, 146.

50. *RRS*, vi, nos 140, 142, 144-5, 147; A. A. M. Duncan, 'The regnal year of David II', *SHR*, lxxviii (1989), pp. 105-19.

51. *Rot. Scot.*, i, p. 815; *Chron. Knighton*, p. 163, also remarks upon David's arrangements for this Anglo-Scottish traffic.

But in seeking to deflect the commons' insistence that grievances be redressed in return for war subsidy, Edward could also call a select council — where tax could still be granted — instead of a full parliament, the only forum to which petitions of common grievances could be presented. He could also ensure that the statutory response to this lobbying was only made *after* revenues had been approved. Ultimately, the formulation of any legislation remained the responsibility of Edward's ministers and judicial bench, present in parliament and overseeing the 'intercommuning' on business matters between lords and commons. These officers were just as adept at invoking political theories and Aristotelian jurisprudence to demand concessions in the king's favour as those members of parliament seeking to enhance the role of the shire representatives. Besides, if there was no immediate means of heading off parliamentary criticism and the limitation of royal power, the crown could concede acts but then not enforce them later on or even revoke them (as Edward had done in response to the crisis of 1340–1), or it could pass petitions over while 'the king shall reflect'.⁵²

As we shall see, during David's 'second reign' his government would employ its own version of a number of these stratagems, as well as attempt to emulate some of the management methods of his father's reign. However, after another prolonged period of lieutenancy, including several sessions of parliamentary debate and opposition to the crown roused by the Steward, David again had to begin the process of recovering political power from an even more confined position than after 1341. Not only did he have to face up to the regional dominance of some of the nobles of the realm, but also to the fact that the supervisory role of the three estates in council and parliament had been built into the political fabric with the treaty of Berwick of October 1357, by which the Scots were obliged to pay to England 100,000 merks by 1367.⁵³

The extant parliamentary record for the period 1357–71 is relatively complete, and includes proceedings for David's homecoming council of November 1357 and the assemblies dominated by talks with England between March 1364 until the end of the reign. An initial survey of the language of the recorded decisions of these meetings makes it graphically clear that much of the impetus for policy came from the three estates, with acts affecting domestic matters initiated through private or collective subjects' petitions and shaped by their input. Thus, while Robert I's parliamentary statutes had

52. W. M. Ormrod, *The Reign of Edward III: Crown and Political Society in England, 1327–77* (London, 1990), pp. 60–80, 208–9, table 5.

53. For David's initial confirmation in 1357–8 of Stewart, Douglas and March control of earldoms and offices see Penman, *David II*, ch. 7.

been prefaced by the 'king decrees' or 'the king wishes and commands', all of the acts recorded by David's councils and parliaments were variously 'agreed and assented by the three communities there present' (1357); decided by 'the king acting upon the counsel and consent of the communities' (1364); 'expressly granted and also publicly proclaimed by the king in the said parliament at the instance of the three communities' (1366); 'ordained and agreed by the deliverance of the three communities of the realm' (1367); given 'with the consent and confirmation of the assembled three communities' (1369); or 'ordained and decreed by the said assembled and chosen three communities' (1369).⁵⁴ By the late 1360s, so natural was it for statutes to be recorded with such clauses of consensus that the shorthand prefix of 'they deliver' – clearly referring to the assembled estates – became common scribal practice at the beginning of an act.⁵⁵

Such a sustained motif of consultation and unified purpose might, of course, have been a veneer, a vocabulary imposed by the king's chancery which in fact gave the crown greater power once the estates could not escape their commitment to matters on paper. But that this was not the case after 1357 is evident from both the level and duration of debate behind these recorded decisions and the nature of many of the statutes passed.

Even some of David's own grants issued under his great seal during councils or parliaments, and witnessed by some of those in attendance, were the subject of discussion by the king's daily council interacting with the wider community present. For example, in inspecting the regalities of monastic houses in November 1357 at Scone, David noted that his clarifications of bounds and rights to Arbroath, Scone and Melrose abbeys were given with advice 'pointed out to us and our council' and 'with the deliverance of our council'. At the council at Dundee in April 1359, David restored the Menteith lordship of Strath Gartney to John Menteith of Knapdale (undoing a grant of this land to John Logie given in 1343) after being 'more truly informed by our council' of the lawful sasine. Then in a council at Perth in April 1360, the second teinds of Aberdeen were reviewed even though 'discussions have frequently been held on these matters, both in our parliament and elsewhere with our council'.⁵⁶

It was, though, in the ongoing controversy of David's attempts to negotiate what he saw as a better deal with England that the estates' powers of deliberation, and ultimately veto, really continued to expand. Most famously, in

54. *RPS*, 1357/11/1, 1364/1, 1366/7/6, 1367/9/12, 1369/3/1, 1369/3/1. This analysis is made all the easier by the Scottish Parliament Project's new database search facility.

55. For example *RPS*, 1370/1/9-14, 35.

56. *RRS*, vi, nos 151-2, 212, 234.

March 1364, a parliament at Scone considered a revised version of the 1351–2 peace plan whereby Edward III would be admitted to the Scottish succession ahead of the Stewarts, the ransom would be cancelled, and the disinherited compensated with English cash in return for an Anglo-Scottish military alliance. This was an indenture David had gone to London in late 1363 to negotiate, promising to send word of his subjects' reply to Edward by the following spring.⁵⁷ The subsequent meeting of the estates (for which summonses must have been dispatched before David went south in November 1363) might have been short, with the parliamentary record stating quite succinctly that

the response expressly given by the three communities there present was that, as previously noted, they would in no way give in to the demands which had been made by the king of England and his council, or assent to them in any way, but that, consistent with preserving the position of the king, and the freedom and integrity of the kingdom intact . . . [they were willing to consider further talks] to achieve everything which could be achieved to establish a good peace . . . , [so that] the truce should be restored [and] the king's ransom should be paid.⁵⁸

Nonetheless, the *quaestio* recalled from memory by cleric Walter Spyny at the turn of the century suggests that members of the estates, who had had time to prepare, might have entered the parliament chamber in March 1364 well briefed in the pros and cons of this treaty and with opposing sides drawn.⁵⁹

This *quaestio* draws on clerical, legal and philosophical authorities that a generation of ambitious Scottish churchmen would have encountered while studying and teaching in canon and civil law in the English Nations at the universities of Paris or Orléans – or while serving at the curia – in the 1340s and 1350s. Many of these articulate men could have experienced the radical political atmosphere in Paris in 1356–7 during the reaction of the French estates general to John II's costly defeat and arbitrary powers of taxation; some could have witnessed the considerably less savoury Jacquerie peasants' revolt of 1358.⁶⁰ Although Spyny and his transcriber possibly altered their

57. PRO E39/2/2; CDS, iv, nos 91–3; APS, i, 493–4.

58. RPS, 1364/1.

59. Duncan, 'A question about the succession, 1364', pp. 7–12, 25–9; Watt, *Scottish Graduates*, pp. 503–6; E. W. M. Balfour-Melville, 'Debate in general-council', *Miscellany of the Scottish History Society*, ix (1958), pp. 36–50.

60. R. Cazelles, *Société Politique, Noblesse et Couronne sous Jean le Bon et Charles V* (Paris,

record of the 1364 debate to fit political developments between 1371 and c. 1420, the several references in the *quaestio* to the advisory powers of the 'populus' among its thirty or more clauses arguing against the treaty (a section headed a 'loyal opinion') again underline an awareness of contemporary theories of authority ascending from subjects to ruler. The word 'populus' was also used frequently in the Declaration of Arbroath, and reflected a clerical school of political thought which would culminate in the conciliar movement and the schismatic challenge to absolute papal authority after 1378.⁶¹ In Scotland in the 1360s, key figures in the Scottish church might have wished to establish the estates' input into the crown's governance of the realm in order to strengthen their protest at David's extraction of an annual tenth of ecclesiastical revenues after 1360. This was a levy which Fordun's source claims the king exploited beyond the three years sanctioned by the pope, much to Scottish clerical annoyance.⁶² A number of the other *quaestio* clauses in opposition – again drawing on theoretical texts – also point to specific issues where subjects might have insisted upon their right to limit royal prerogative. One such issue was the 'inalienability' of both royal resources and the territorial and feudal sovereignty of the realm without community consent, lest a burden of unreasonable debt be passed down to the subjects or thralldom ensue.⁶³ Such lawyers' glosses on paper could translate into emotive and practical arguments to oppose David's plans. As in 1351-2, the Steward and others were undeniably able to make, or commission, speeches in parliament in 1364 highlighting legitimate concerns and grievances affecting all three estates. These were sufficient to persuade a majority of the community to reject the 1363 deal with England.⁶⁴

1982), pp. 229-87, 318-37, 354-69; Canning, 'Politics, institutions and ideas', pp. 354-6; J. Goodare, 'The estates in the Scottish parliament, 1286-1707' in C. Jones (ed.), *The Scots and Parliament* (Edinburgh, 1996), pp. 11-32, 13; *Chron. Bower*, vii, pp. 307-9.

61. Duncan, 'A question about the succession', p. 35, clause 24 and p. 5, where the editor suggests that Spyny had learned his civil law from the commentaries of Bartolus of Sassoferrato (died 1357), a strong exponent at Padua of 'ascending' political ideas and the political representation of the 'populus'. However, Spyny and other Scots clerics could have been influenced in France by many such works (Ullmann, *Law and Politics in the Middle Ages*, pp. 86, 108-10, 269-99).
62. *Chron. Fordun*, i, p. 378; *ER*, ii, pp. 109, 16, 171, reveals the high level of non-payment of this levy.
63. As Duncan notes in 'A question about the succession', pp. 39-41, clause 29 cites authorities on 'inalienability'. See also J. P. Canning, 'Law, sovereignty and corporation theory, 1300-1450' in Burns, *Cambridge History of Medieval Political Thought*, pp. 545-76, 462, for a discussion of how this theory was often bound up with coronation oaths.
64. Penman, *David II*, ch. 9.

This culture of Scottish parliamentary debate continued to grow as David pressed on with talks with England between 1364 and 1371.⁶⁵ Consideration of various proposals involving an English succession, homage, a military alliance and a return to cross-border landholding would be the primary purpose for summoning councils and parliaments in this period, together with renegotiated ransom terms and the taxes necessary to meet them. In a council at Perth in July 1365, 'after some discussion was had', those assembled gave their unanimous consent to alternative conditions to be taken back to the English.⁶⁶ But ten months later in a council at Holyrood, 'after lengthy discussion', these same four 'ways' to peace were 'finally refuted as insufferable and unacceptable'.⁶⁷ Nevertheless, talks continued through the offices of David's trusted ambassadorial team, Sir Robert Erskine (chamberlain in 1363), Gilbert Armstrong, archdeacon of St Andrews, and William Wardlaw, bishop of Glasgow. Yet, in a parliament at Scone in June 1368, 'having had mature deliberation and assiduous counsel for *four days and more*' [my italics] with regard to peace terms offered since 1364, it was enacted that 'it is still not proper nor expedient to enter nor attempt negotiation'. This was a decision, moreover, that specifically upheld a ruling rejecting terms 'which formerly in full parliament, at which more numerous and more important people were present than now are here present, were unanimously rejected by the three communities'.⁶⁸

David's unrelenting obsession with this controversial diplomacy empowered the estates to seek legislation and statutory promises from the crown designed to meet their expectations of kingship in return for financing the ransom, repeated embassies south and, at times, the royal household. Councils and parliament were remarkably generous in supplementing royal revenue in this state of emergency. The tripled customs were assigned to the ransom in the council of November 1357 and expanded in subsequent assemblies. This first meeting after David's return agreed to a nationwide assessment of lay and ecclesiastical lands upon which councils between 1358 and 1360 based three small extraordinary contributions.⁶⁹ A January council at Perth in 1365 added provision for a ten-year grant of a subsidy of six pence in the pound to help to meet the eventuality of a fully re-set ransom.⁷⁰ With the ransom repayments recalculated in the end at £4,000 per annum (by an indenture of

65. Penman, *David II*, chs 10–11; Duncan, 'A question about the succession', pp. 13–20.

66. *RPS*, 1365/7/1–3.

67. *RPS*, 1366/5/1.

68. *RPS*, 1368/6/9. For the envoy team see *Rot. Scot.* i, per indicem.

69. *RPS*, 1357/11/1–19; *ER*, ii, pp. 5, 48 (1st contribution), 49, 57 (2nd), 34, 73–5, 110 (3rd).

70. *RPS*, 1365/1/15.

May 1365), the Scone parliament of July 1366 authorised another contribution of 8,000 merks (with 2,000 merks advanced by the estates – 1,000 by the barons, 600 by the clergy and 400 by the burgesses).⁷¹ Only the Scone parliament of June 1368 saw no need for a contribution, raising the customs on wool instead.⁷² In addition, two parliamentary revocations of royal demesne were permitted back to the days of Robert I (in 1357 and 1367), and the Perth parliament of February 1370 ordained a moratorium on crown debts for hospitality between 1357 and 1368.⁷³

The parliamentary *quid pro quo* for this subsidy saw the beginnings of the estates' bromide of the fifteenth century (avoided by the Stewart rulers of 1371-1424 who tried not to tax), that the king should 'live of his own' ordinary lands and revenues.⁷⁴ On a number of occasions after 1357, council or parliament stipulated (by invoking 'inalienability' theory) that the crown should on no account gift away land recovered to the royal demesne without the 'mature counsel' of the estates.⁷⁵ In the same way nobody was to solicit, or be granted, a gift, remission or casualty out of any contribution, or revocation income, designated for the ransom or the expenses of the king and his envoys.⁷⁶ In the same vein, although parliament in October 1367 relented and allowed the crown to devalue the silver content of new coinage, after 'common deliberation' in parliament in February 1370 the king was 'required' to regulate the export of specie.⁷⁷ Numerous acts were also passed prohibiting unnecessary billeting of noble and ecclesiastical retinues on overburdened landlords and insisting upon prompt market-rate payment for livestock and household debts.⁷⁸ Such contingencies clearly offered only limited relief to the king's taxable subjects, and 'deforcement' of tax-collectors and non-payment of contributions was not restricted to the king's obvious domestic antagonists.⁷⁹ It was in part to offset resentment of this tax regime that the estates obliged the crown to undertake a fresh assessment of the taxable value of all lands and goods, which reported to parliament at Scone in July 1366, and took account of the wastage of warfare and disease since the late thirteenth century.⁸⁰

71. RPS, 1366/7/1-5; CDS, iv, nos 108, 111.

72. RPS, 1368/6/8-17.

73. RPS, 1370/2/1-40; Nicholson, *Later Middle Ages*, pp. 164-5.

74. RPS, per indicem, for 'taxation'; Tanner, *Parliament*, per indicem.

75. RPS, 1357/11/9 (1357), 1358/1/4 (1358), 1367/9/14 (1367), 1370/2/12 (1370 – 'unless it was previously discussed and unanimously delivered by the three communities in parliament'); Rait, *Parliaments*, pp. 482-3.

76. RPS, 1366/7/7, 1370/2/7-10.

77. RPS, 1367/9/10, 1370/2/9-10.

78. For example RPS, 1366/7/12, 1370/2/7-8.

79. For non-payment of levies, see Penman, *David II*, ch. 8.

80. RPS, 1366/5/1. See E. Gemmill and N. Mayhew, *Changing Values in Medieval Scotland*

Alongside these fiscal expectations, the estates also prompted legislation on further duties of the monarchy. The demand in council in November 1357 that David should review old homicides, then oversee justice ayres himself 'to inspire terror in delinquents' and quell noble feuds was natural enough after a prolonged royal absence.⁸¹ But David's regime would be the first to be criticised openly by parliament for selling pardons for homicides and other crimes (later a recurrent parliamentary grievance against James III).⁸² The estates were also suspicious of the partisan nature of royal justice arising from David's low-key political conflict with the Steward and other nobles for regional control of lands and offices. Parliament in July 1366, 'at the instance of the three communities', ordained that

common justice be done to everyone without favour being shown to anybody and without exception . . . and, in order that justice be shown, that the letters written for the purpose of doing justice that should emanate from the king's chancery . . . shall not be revoked by any other letters under any seal whatsoever.

That the several disputes heard before parliament in June 1368 and February 1370 usually favoured men in the crown's favour suggests that these and other acts about the impartial behaviour of royal officers were not always heeded.⁸³

Therefore, after 1357, council and parliament remained a forum that critics and opponents of the crown could use to protect and forward their interests. In particular, the Steward sought to mobilise this institution on at least two occasions to challenge and marginalise the authority and person of the king.

In April 1359, David returned from London having concluded a secret deal with Edward III and Prince John of Gaunt designed to forward plans for a succession-ransom treaty. However, although the king seems to have intended to broach this matter with his subjects in an assembly at Scone, he appears to have been forced by nervous nobles to accept the alternative of a council at Dundee — the site of his humiliation by the Steward in 1351 and the only time such a gathering was held there after 1357. The acts issued by David at this assembly and in its wake indicate that he was briefly coerced

(Cambridge, 1995), pp. 363–8, for a discussion of this assessment which reveals a slump of up to 50 per cent in land values after 1286.

81. *RPS*, 1357/11/7.

82. *RPS*, 1370/2/12 (1370); N. A. T. Macdougall, *James III: A Political Study* (Edinburgh, 1982), pp. 40, 99, 120, 201–3.

83. *RPS*, 1366/7/6 (1366), 1368/6/1–7 (1368), 1370/2/17–24 (1370). For a discussion of these cases, see Penman, *David II*, chs 10–11.

into abandoning his plans for treaty with England and into seeking alliance with France. Remarkably, the commission to the envoys to France forced out of David made provision for the king's incapacity and replacement by a lieutenant acting on behalf of the 'prelates, nobles and the community of our kingdom', arguably laying the ground for a coup by the Steward.⁸⁴

The 1359 Franco-Scottish treaty proved abortive, but in the spring of 1363, when David once more threatened to conclude a deal with England (as well as take a new wife), the Stewarts and the earls of Douglas and March rebelled against the crown and its close supporters with 'the design of bending [the king] to their views . . . or banishing him'. Fordun's source adds that the rebels drew up indentures of alliance 'sealed with their several seals'. These documents – to which David and his adherents replied with their own propaganda – could easily have been intended to justify the king's deprivation from power to a council or parliament. Indeed, the contemporary Northumbrian chronicler, Sir Thomas Gray, asserts that the earls

affixed their seals to a petition laid before the said king, complain[ing] that the said king had forced them to break the conditions, to which they had sworn on the body of God⁸⁵ before the King of England, about paying the ransom . . . which ransom had been levied by an impost on the commonalty and squandered by evil counsel, wherefore they demanded reparation and wiser government.

This 'wiser government' envisaged by the rebels was probably a return to a Stewart lieutenancy regulated by council. As with the *quaestio* of 1364, and the arguments deployed by the crown's opponents before the community in 1351 and 1352, these were legitimate arguments crafted to appeal to the national concerns of the three estates. They masked the more pressing, private grievances of lordship of these rebels against the king and his favoured 'people'. But it is striking that David did not dare to call a parliament to try and forfeit the earls throughout the remainder of 1363, relying instead on a seemingly magnanimous compromise in daily council, where his nephew was easier to intimidate. Yet, the Steward was still able to rouse opposition in the estates to defeat the king's diplomacy in parliament a year later.⁸⁶

84. *RRS*, vi, nos 209, 211-4; Paris, Archives Nationales, J677 nos 7, 8; M. Penman and R. J. Tanner, 'An unpublished act of David II, 1359', *SHR* (forthcoming, 2004). This embassy consisted of just three knights – not the usual earl, baron and bishop a council or parliament of the estates might authorise.

85. And in a council in November 1357.

86. *Chron. Fordun*, i, pp. 381-2; *Chron. Bower*, vii, pp. 323-33; *Scalacronica* (Maxwell),

Partial defeat at Scone in March 1364 marked a watershed in David II's dealings with the estates.⁸⁷ The period 1364–71 provides the strongest qualification to Rait's view of weak Bruce rule in the face of baronial control of parliament. In these years David and his officers can be found deploying many of the methods of parliamentary management favoured by Robert I and Edward III. Most obviously, after March 1364, David did not call another full parliament for over two years.⁸⁸ But the next meeting – a council in Perth in January 1365 – saw the crown keep tight control over the attendance, agenda and output of the political community. In reality, the eleven prelates, twenty nobles and eight burgesses named as present on this occasion (the first of only five surviving sederunts from the reign) were dominated by David's daily council and favoured chivalric cadre of knights and bureaucrat clerics: the troublesome earls of Douglas, March and Mar were notably cited for absence. Moreover, once this council had ordained acts reviving David's controversial diplomacy and maximum ransom levies, the Steward, Douglas and March were noted in the parliamentary record as 'adding their advice and consent to all and singular the foregoing in the presence of our lord king at Edinburgh, after taking a bodily oath, although they were not personally present when the aforesaid matters were ordained at Perth'. Thus, in a private audience of the royal court, David extracted the consensus of these former rebels who may have evaded the Perth council. Their submissions were then added to the oath on the gospels that the rest of that council had sworn: to agree to and defend (against all treasonous parties) any terms for peace concluded by the ambassadors to England.⁸⁹

pp. 173–4; *RRS*, vi, no. 15; Penman, *David II*, ch. 9. As A. A. M. Duncan notes, the *quaestio* does such a good job of opposing the treaty, it surely reflects the feelings of the majority in parliament that this treaty would truly be 'a proposal very damaging and dangerous to the kingdom of Scotland which would altogether betray, weaken and destroy the whole freedom of the kingdom, and would wipe out not only the freedom of the kingdom but also, in course of time, all the magnates and people' (Duncan, 'A question about the succession', p. 29, clause 6).

87. David was probably content to see the indenture which would have made Edward III his heir-presumptive defeated, pressing on instead with talks for John of Gaunt in this role (an idea with which the 1363 *quaestio* closes). This may be why Bower states David was merely testing his subjects in parliament in 1364 (*Chron. Bower*, vii, p. 323; Duncan, 'A question about the succession', pp. 55–7).
88. Following his scare in April 1359, David may have also avoided summoning assemblies between the councils in October 1359 and April and October 1360 and a council in Aberdeen in September 1362.
89. *RPS*, 1365/1/19. These oaths allowed David to ratify an agreement he struck with England over the ransom in May 1365 on the following 12 June, a ratification styled as

The next 'council', again in Perth, in July 1365 was an even more select congregation of only seventeen named nobles and prelates. This group was also required to swear an oath on the gospels upholding just a few recorded decisions that again furthered the dialogue on the thorny issue of a military alliance with Edward III. This assembly might also have seen a rare compulsion by the crown of attendance by west-coast magnates like John MacDougall of Lorne and Gillespie Campbell of Lochawe; one of the peace terms under consideration involved service in England's armies in Ireland by such west-coast neighbours of Robert the Steward (whose main family lands lay in Clydeside).⁹⁰ The next council, again at Perth, in January 1366 seems only to have approved the crown's installation of trons and weigh clerks in all royal burghs to collect yet more levies on wool.⁹¹ A council at Holyrood the following May again approved the continuation of Anglo-Scottish negotiations, but also prepared contingencies with the remarkable aim of placing the crown in a position to pay off all the remaining ransom by the end of the existing truce in February 1370. This would not only necessitate 'that there be a tax again' levied at the old rate of assessment on lay and ecclesiastical lands, but that officials designated by the king and chamberlain were also to ask individuals 'how much each person is willing to give freely' as a 'donation'.⁹²

This last statute underlines the fact that the crown, in Scotland as in England, usually retained the final word. David, like Edward III, had skilled churchmen for officers and parliamentary and household clerks. Men like Landellis, Armstrong, Wardlaw, John of Carrick (the king's secretary and chamberlain by 1370), David de Mar (archdeacon of Lothian by 1367) and Alexander de Bur (bishop of Moray by 1362) had had the requisite legal training in France to justify such forced loans to the crown under both the canon and Roman law principles of 'urgent necessity' in the interests of the realm.⁹³ The estates had, after all, acknowledged their perpetual obligation in

given by the king 'in full council' even though this did not meet until 15 July (*RRS*, vi, nos 346, 499; *CDS*, v, no. 838). In September 1367 parliament also granted David the power to send ambassadors south without first seeking the estates' approval (*RPS*, 1367/9/8).

90. *RPS*, 1365/7/3. The 'John of Islay' listed on this sederunt might have been John MacDonald of the Isles but is more likely to have been John Lyle, a royal household steward (*ER*, ii, pp. 50, 129).

91. *RPS*, 1366/1/1.

92. *RPS*, 1366/5/1.

93. Watt, *Scottish Graduates*, pp. 328, 16-8, 569-76, 89-91, 382-4, 67-70. For example, an act of 1 October 1367, issued in a parliament at Scone, saw David reserve his right to levy exactions on the abbey of Arbroath in the event of such 'urgent necessity' (*RPS*, 1367/9/14; *RRS*, vi, no. 384). For the English crown's use of this principle in parliament, see Ormrod, *The Reign of Edward III*, pp. 64-5.

this regard by ratifying the treaty of Berwick, and the same doctrine must have been used by the crown to extract both demesne revocations, the several contributions, and the arbitrary cancellation of crown debts. The estates might attach conditions to these fiscal concessions, but, as with many of the statutes of councils and parliaments between 1357 and 1371, these were still acts that could be used (or ignored) to benefit the king.

Indeed, a number of the parliamentary acts of the 1360s that at first glance appear to stem from criticism of the royal government were crown initiatives that could be directed against domestic opponents. Recurrent complaints between 1366 and 1370 about lawlessness in the north could be used to legitimise David's interference in the lands of the Stewarts (in Atholl and Badenoch), the earls of Ross and Mar and others. These men and their territories were specifically named and bound over by parliament to quell trouble or face penalties imposed by the king. Parliament's insistence that David spend more time in the north to spread the cost of his household could also be allied to royal attempts to oblige John MacDonald of the Isles to pay taxation. Even the fresh tax assessment secured by the July 1366 parliament was overseen by the crown, and produced results with suggestively high levies and debts laid against the lands of the Steward and MacDonald.⁹⁴

The king could control to his benefit another administrative innovation celebrated by Rait as a constitutional advance.⁹⁵ The practice of 'electing' two separate committees for 'general business' and hearing falsed legal judgments was first introduced in parliament in September 1367 (and used again in parliaments of 1369 and 1370) when seventeen clerics, thirteen barons and thirteen burgesses remained behind while the rest of the community went home to deal with the harvest. But behind this sensible solution lay an expediency by which David could more easily impose the collective will of his close daily council on a smaller parliament, a managerial approach sharpened by statutes limiting the retinues and number of '*consiliarii*' individuals could bring to sittings of the estates.⁹⁶

It is noticeable that during those meetings of the estates where the crown attempted to determine the make-up and size of attendance, the king often took the opportunity to issue controversial acts of patronage with a marked effect on the balance of locality power. These include, for example, an abortive grant of the earldom of Moray to Henry, duke of Lancaster, in the

94. RPS, 1366/7/18 [1366], 1368/6/11-12, 1370/2/8, 32. MacDonald was forced by David to submit at Inverness in 1369.

95. Rait, *Parliaments of Scotland*, pp. 350-5.

96. RPS, 1367/9/1 (1367), 1369/3/1-4 (1369); 1370/2/2-4, 29 (1370, including '*de personis consiliariis*').

council that quickly got out of hand in April 1359; granting extensive Perthshire lands to his new brother-in-law, Sir Walter Oliphant, in the January 1365 council; requiring a core of prelates and barons to attach their seals to a letter in their name acknowledging the royal grant of the lordship of Annandale to the king's stepson, John Logie, in the July 1366 parliament; entailing the earldom of Carrick to John Stewart of Kyle and his new wife, Annabella Drummond, niece of David's second queen in the June 1368 parliament; and regranting the earldom of Ross to David's old antagonist Earl William of Ross, but with a tailzie of his title to the crown's favourite crusader, Sir Walter Leslie, in the October 1370 parliament.⁹⁷ The extra authority to be drawn from granting such patronage (or deciding land disputes in favour of crown men as in 1368 and 1370) 'in full parliament' is obvious. Indeed, the attachment of the seals of the Steward, Douglas, March, Ross and others to such *acta* – together with their written oaths condoning ongoing peace talks with England extracted in the four councils of 1365–6 – was as close as David ever came to emulating the more famous loyalty-test declarations and sederunts of Robert I's reign.⁹⁸ As such, parliament in the late 1360s once more became a potentially effective forum for advancing Bruce plans to remould territorial lordship in favour of its supporters. This much is suggested by the repeated absences from these later assemblies of crown antagonists like the earls of Douglas, March, Ross and Mar, and MacDonald of the Isles.⁹⁹

Towards the end of David II's reign, the dialogue with parliament became more bearable, workable and productive from the crown's point of view. Even in the period 1357–64, financial support from the estates was relatively easy to secure, despite resentment of David's non-payment of the ransom after 1360. Once the king and his officers relaxed their requests for the estates to approve a change in parliament's historic view on the royal succession, new avenues of control opened up for the crown after 1366–7. Significant sections of the apparently enlightened legislation produced by council and parliament towards the end of that decade, couched in an established – if still in many ways ambivalent – vocabulary of consultation, can be shown to reflect the royal political will. Underpinned by the cumulative effect of David's generous patronage to key prelates, knights and burgesses (enjoying trade with England), this increasingly comfortable crown influence over the estates boded well for the future, especially if the king could produce an heir with

97. *RRS*, vi, nos 211, 337–341, 353, 400; *RMS*, i, no. 354.

98. See Tanner, 'Cowing the community', above.

99. *RPS*, 1367/9/1 (1367), 1368/6/12 (1368), 1369/3/2–4 (1369), 1370/2/1 (1370).

his intended third wife, Agnes Dunbar. In such a context, David and his officers did not shirk from holding parliaments in Perth or Scone in what was the heart of Stewart power, adjacent to Atholl, Strathearn and Menteith.¹⁰⁰ The ability of the Steward and others to mobilise the estates' supervisory powers to challenge the crown, an ability that had escalated in the periods 1332–41 and 1346–64, was undeniably cowed. Some protest might have been roused in parliament c. 1370 and beyond about the level of David's income (at a time when the ransom had been further reduced to just 4,000 merks per annum in 1369).¹⁰¹ Ironically, however, this evolving right and capacity of the three estates in council and parliament to limit the development of a strong, independent monarchy — a political voice encouraged and championed by Robert the Steward before 1371 — would be used by his ambitious Stewart sons to compromise and in the end marginalise his own period of rule as Robert II.

100. By 1370 David had arguably packed the area around Perth and Scone with the male kindred of his second wife, Oliphant, the Erskines and other crown men (Penman, *David II*, chs 10–11).

	<i>Known Parliaments</i>	<i>Known Councils</i>	<i>Totals</i>
Perth	5	9	14
Scone	11	1	12
Edinburgh	0	5	5
Aberdeen	0	2	2
Dundee	0	4	4
Others	0	6	6
Totals	16	27	43

101. PRO E39/37; *Rot. Scot.*, i, pp. 933, 938; *RRS*, vi, no. 441.