From customary to constitutional right: the right to petition in Scotland before the 1707 Act of Union

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SUMMARY

The confirmation of a constitutional, rather than customary, right to petition the monarch in Scotland and England in 1689 has been recognised as an important precedent for modern constitutions, but the underlying forces impelling this historical transition have been less well recognised. The assertion of a constitutional right to petition the Scottish crown appeared after of decades of conflict over increasingly bold forms of collective political petitioning to crown and parliament. These innovations involved ordinary people in organised political protest, stimulating Scotland's monarchs to block what they considered seditious and tumultuous activity. Standing laws against *lese-majesté* and unauthorised meetings were deployed to restrict petitioning, despite claims by Scottish dissidents for a customary liberty and natural right to petition. Within the composite British monarchy formed in 1603, England experienced similar but not identical conflicts over participative petitioning, leading both realms to demand in 1689 a right to supplicate the crown without fear of prosecution. Though Scotland's monarchs still sought to discourage and evade unwelcome petitions, this new right allowed assertive political petitioning to crown and

parliament to re-emerge in Scotland, contributing to the formation of British political culture after the Union of 1707.

Introduction

A right to petition government is considered a hallmark of modern participative democracy. From its inception in 1999, the devolved Scottish parliament has welcomed petitions on matters of national policy and practice through its Public Petitions Committee, describing this as 'a key part of the Parliament's commitment to participation'.[1] Constitutional historians trace the modern constitutional right to petition back through the 1791 Bill of Rights for the new American republic to England's 1689 Declaration of Rights.[2] The short-term historical context for the assertion of a right to petition the English monarch is well known, involving a controversial trial of English bishops for seditious libel relating to a petition to James II.[3] But the appearance of this right also in

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1 Rule 15.4–15.8, *Standing Orders of the Scottish Parliament* (May 2017), http://www.parliament.scot/parliamentarybusiness/26505.aspx and http://www.parliament.scot/parliamentary-business.aspx [accessed 29 July 2017].

2 M. Tugendhat, *Liberty Intact: Human Rights in English Law* (Oxford, 2016), p. 152.

3 T. Harris, *Revolution: The Great Crisis of the British Monarchy, 1685–1720* (London, 2006), pp. 258-69; T. Harris, 'The people, the law and the constitution in Scotland and England: a comparative approach to the Glorious Revolution', *Journal of British Studies* 38, (1999), pp. 28–58.

Scotland's 1689 Claim of Right points to a more fundamental political transformation in both realms: the growth of adversarial, participative petitioning practices. This article will show how the contestation of a customary liberty to petition in Scotland under the late Stuart monarchs led to the confirmation of a revolutionary right to petition and ensured that collective petitioning would become a core element of British political culture.

In the late medieval period, subjects in Europe commonly enjoyed a customary liberty to humbly petition for relief of grievances.[4] This might be regulated by law, but the German maxim 'nobody is forbidden to hand in supplications and appeals' reflected a widely-held cultural faith in this freedom.[5] In seventeenth-century Scotland and England, however, oppositional groups used petitions to deliver assertive collective complaints, often augmented with mass subscription, supporting crowds and print publication.[6]

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[4] A. Würgler, 'Voices from among the "silent masses": humble petitions and social conflicts in early modern central Europe', *International Review of Social History* 46, suppl. 9, (2001), pp. 11–34 at p. 12.

[5] Würgler, 'Voices', p. 16.

[6] L.A.M. Stewart, *Rethinking the Scottish Revolution: Covenanted Scotland, 1637–1651* (Oxford, 2016), ch. 1, 6; D. Zaret, *Origins of Democratic Culture: Printing, Petitions, and the Public Sphere in Early-Modern England* (Princeton, 2000); M. Knights, *Representation and Misrepresentation in Later Stuart Britain: Partisanship and Political Culture* (Oxford, 2005).

The innovative and challenging nature of these practices is revealed by the efforts made by Stuart monarchs to restrict them. As this paper will show, in Scotland, successive monarchs refused to answer challenging petitions, scrutinised supplications submitted to parliament and prosecuted organisers for seditious speech and unauthorized meetings. In England, practices of collective complaint were moderated by a 1661 law restraining participative petitioning on matters of church or state. From the 1650s, the tactic of collective petitioning was adopted by government supporters in both realms with the practice of loyal addressing. The Revolutionary settlement of 1689 confirmed a place for political petitioning in Scotland and England, though assertive petitioning continued to be controversial and the right to petition the English parliament remained, as Mark Knights has shown, 'rather ill-defined'.[7] Because the Scottish Claim of Right protected petitioning to the king's commissioner in parliament as well as the crown, political petitioning became prominent again in Scotland, despite continuing attempts by monarchs and ministers to constrain this activity.

Customary petitioning in Scotland before 1638

[7] M. Knights, ''The lowest degree of freedom': the right to petition parliament, 1640-1800', *Parliamentary History* 37:S1, (July, 2018), pp. 19.

In late sixteenth-century Scotland, petitions were submitted routinely on matters of public and private business to the Scottish parliament, privy council and monarch. Petitions to the Scottish parliament normally were submitted to a preparatory committee known as the Lords of the Articles. In 1594 a desire for greater scrutiny of petitions can be seen in an act recommending new procedures to prune out 'impertinent, frivolous and improper matters'.[8] After the 1603 Union of the Scottish and English crowns and the departure of the Scottish monarch to London, scrutiny increased significantly and it became difficult to deliver petitions on sensitive policy matters to the parliament or the absent monarch.[9] In 1621, a group of clerics were prevented from submitting a

[8] K.M. Brown *et al* (eds) *The Records of The Parliaments of Scotland to 1707* [*RPS*] (St Andrews, 2007-18), 1594/4/39, 8 June 1594; A.R. Macdonald, 'Uncovering the legislative process in the parliaments of James VI', *Historical Research* 84:226, (2011), pp. 1–17 at pp. 6–8.

[9] A.R. Macdonald, 'Deliberative processes in Parliament c.1567–1639: multi-cameralism and the Lords of the Articles', *Scottish Historical Review* 81, 1: 211, (2002), pp. 42–4; J.R. Young, 'Charles I and the 1633 Parliament', in K.M. Brown and A.J. Mann (eds), *Parliament and Politics in Scotland, 1567–1707* (Edinburgh, 2005), pp. 101–37. In Scotland, as in England, Charles I restricted access to his person for the submission of private petitions. P. Donald, *An Uncounselled King: Charles I and the Scottish Troubles 1637–1641* (Cambridge, 1990); J. Richards, '"His Nowe Majesty" and the English monarchy: the kingship of Charles I before 1640', *Past & Present* 113, (1986), pp. 79–81.

supplication to parliament protesting recent changes to Scottish worship practices, and in 1633 a similar clerical statement of 'just griuances and resonable petitions' was suppressed by the king's clerk register.[10] Charges of sedition were levelled in relation to a collective supplication to King Charles I drafted after the 1633 parliament in the name of 'a great number of the Nobility and other Commissioners in the late Parliament'. Intended to be signed by a substantial dissenting minority, this stated that the subscribing members had been prevented from explaining why they had voted against Charles' legislative programme and sought to outline their views for his consideration.[11] As Peter Donald has noted, this collective petition 'went further than anything before in the relative starkness of its criticisms', not just of the king's policies but of his behaviour in the parliamentary session.[12] The crown charged John Elphinstone, Lord Balmerino with 'lesing-making' (seditious slander of the monarch, a form of *lese-majesté*), when he was found to have a copy of the petition with edits in his own hand.[13] The indictment described the supplication as 'a most

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[10] D. Calderwood, *The History of the Kirk of Scotland*, 8 vols (Edinburgh, 1842-49), vol. vii, p. 486; Sir J. Balfour, *Historical Works*, 4 vols (Edinburgh, 1824-25), vol. ii, pp. 205–16.

[11] T.B. Howell (ed.), *A Complete Collection of State Trials*, 5 vols (London, 1809-16), vol. iii, pp. 594, 604–8.

[12] Donald, *Uncounselled King*, p. 32.

[13] 'Lesing-making', n.2, *Dictionary of the Older Scottish Tongue*, http://www.dsl.ac.uk/entry/dost/lesing_making [accessed 3 August 2017].

scandalous, reproachful, odious and seditious Libel' full of lies and misconstructions expressed in a 'bitter, invective and viperous style'.[14] Moreover, the unusual design to gather subscriptions from adherents threatened the 'derogation' of the king's 'sacred and glorious name'.[15] In a 1634 trial that attracted large crowds in Edinburgh, Balmerino was found guilty of having failed to report a seditious document and sentenced to death.[16]

Though a royal pardon reprieved Balmerino, the case established a precedent for the application of lesing-making laws against antagonistic petitioning. These laws aimed to prevent subjects from speaking or writing any public or private slander of the king that might cause, as expressed in 1585, 'any misliking' between 'his highness and his nobility and loving subjects'.[17] Balmerino's indictment stated that 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

[14] *State Trials*, vol. iii, p. 597. See L.A.M. Stewart's paper in this Special Issue for more on these charges.

[15] *State Trials*, vol. iii, p. 601.

[16] *State Trials*, vol. iii, p. 711.

[17] *RPS* 1425/3/23, 12 March 1425; 1458/3/38, 6 March 1458; 1540/12/25, 10 December 1540; 1584/5/14, 22 May 1584; 1585/12/9, 10 December 1585; 1594/4/26, 8 June 1594.

the person, laws, and authority of their supreme sovereign'.[18] This overrode the view of Balmerino's supporters that 'thair is na offence to supplicat'.[19]

The promulgation, by royal proclamation, of a new service book for the Scottish church in 1637 stimulated a fresh battle over the liberty of petitioning. After a handful of petitions asking for relief from the service book were submitted to the privy council in August 1637, at least 45 further supplications were brought from burghs, presbyteries and parishes on 20 September with a general petition signed by 'verie many' nobles, gentry, burgesses and clergy.[20] This choreographed attack represented an escalation in adversarial petitioning.[21] The supplicants did not repeat the criticism of the king that had condemned Balmerino, but offered robust complaints on the service book and its lack of

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[18] *State Trials*, vol. iii, p. 598.

[19] Stewart, *Rethinking the Scottish Revolution*, p. 63.

[20] *Register of the Privy Council of Scotland* [*RPC*], 2nd series, 1625-1660, 8 vols, ed. P.H. Brown (Edinburgh, 1899-1908), vol. vi (1635-37), pp. 528–9, 699–71; J. Leslie, earl of Rothes, *A Relation of Proceedings Concerning the Affairs of the Kirk of Scotland* (Edinburgh, 1830), pp. 47–8; quote from J. Row, *The History of the Kirk of Scotland* (Edinburgh, 1842), p. 484. For more on the 1637 supplications, see Stewart, *Rethinking the Scottish Revolution*, pp. 62–70.

[21] On the novelty of this campaign, see the introduction to K. Bowie (ed.), *Addresses Against Incorporating Union, 1706–07* (Woodbridge, 2018) and Stewart, *Rethinking the Scottish Revolution*, p. 64.

approbation by the Scottish parliament or general assembly of the Scottish church. The clergy and lay elders of the presbytery of Perth assured the privy council that they had shown 'loyall obedience unto our dread soveraigne' by acquiring the book, yet found 'it conteans manie thinges both in worship and doctreine' which were 'contrair to the divyne Scripture and to the Confessiounes of this Kirk of Scotland authorized be actis of Parliament and General Assemblis'.[22] Huge crowds flooded Edinburgh for the presentation of petitions in September and returned on 17 October in anticipation of an answer from King Charles I. 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'.[23]

Charles followed custom by hearing the petitions, but refused to respond, instead issuing a proclamation ordering the crowds in Edinburgh to disperse 'under pane of rebellion'.[24] The privy council condemned the 'tumultous gathering of the promiscuous and vulgar multitude' acting in a way 'verie disgraceful to his Majesteis auctoritie' and forbade any public meetings in

[22] *RPC*, series 2, vol. vi, p. 715.

[23] *Extracts from the Records of the Burgh of Glasgow, 1573–1642*, ed. J.D. Marwick (Glasgow, 1874), p. 385.

[24] Leslie, *Relation*, p. 13.

Edinburgh or any private meetings 'tending to factioun and tumult'.[25] These orders rested on Scottish statutes designed to prevent unauthorized gatherings for feuds, plots or civil war.[26] Charles advised his privy council to find and punish agitators in Edinburgh and Glasgow and seek out and burn copies of an embarrassing tract offering arguments against the prayer book to the 'Theatre of the World'.[27] The privy council was ordered to relocate to Linlithgow and then Dundee to discourage unwanted crowds.[28]

The supplicants objected to the characterization of their gathering as tumultuous, arguing that it was permissible to gather petitioners to hear answers to supplications.[29] Another collective petition was submitted to the privy council on 18 October, signed by 482 nobles, gentlemen, burgesses and clergy on behalf

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[25] *RPC*, series 2, vol. vi, pp. 541–2.

[26] A 1563 statute banned 'secret conventions' and bellicose assemblies in burghs (*RPS* A1563/6/21, 4 June 1563); a 1584 statute banned meetings to discuss affairs of state or kirk without the king's license (*RPS* 1584/5/10, 22 May 1584); a 1606 statute declared unauthorized meetings in towns 'factious and seditious' (*RPS* 1606/6/45, 9 July 1606).

[27] *RPC*, series 2, vol. vi, pp. 536–8; [G. Gillespie], *A Dispute against the English Popish Ceremonies, Obtruded on the Kirk of Scotland* ([Leiden], 1637), sig. A2.

[28] *RPC*, series 2, vol. vi, pp. 537–8.

[29] Leslie, *Relation*, p. 13.

of their shires, burghs and parishes.[30] This petition targeted the Scottish bishops as evil counsellors, alleging that the bishops had encouraged discord between king and subject by advancing the service book 'contrarie to our gracious soveraigne his pious intentioun'. If anyone had been seditious, it was the bishops. Claiming a 'bounden duetie to God, our King and native countrey', the petitioners asked the privy council to represent their complaint to the king again, so that their 'wrongis may be redressit'. Copies of the new supplication were circulated for subscription in sympathetic localities.[31] While many of the September petitions had been signed by clerks or provosts in the name of local communities, this round of petitioning included signatures of ordinary inhabitants. A copy from the presbytery of Kirkcudbright included the signatures of 459 ministers, elders, landowners, burgesses and tenant farmers, with notaries signing for those not able to write.[32]

Charles again refused to answer these petitions, indicating his sense of the dissonance between customary petitioning and these unusual supplications. He acknowledged that subjects normally would expect an answer from 'so just and religious a prince', but he could not overlook the insult to his authority made by

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[30] D. H. Fleming, *Scotland's Supplication and Complaint against the Book of Common Prayer* (Edinburgh, 1927), pp. 60-7.

[31] Leslie, *Relation*, p. 21.

[32] *RPC*, series 2, vol. vi, pp. 710–15.

tumultuous crowds.[33] In a period of intense political manoeuvring, some privy councillors advised the supplicants to make their pleas more conventionally humble in hopes of engineering a settlement.[34] Finally, in a proclamation on 19 February 1638, Charles took personal responsibility for the service book, making any criticism of the book a seditious attack on him. Attributing the recent furore to 'preposterous zeale', Charles again rejected any petitions 'prejudiciall to his Majesteis regall auctoritie' and ordered all meetings to cease 'under the pane of treason'.[35]

The supplicants continued to assert the acceptability of their actions while pursuing further innovations. Even after the king's latest proclamation, the burgh council of Glasgow hoped to persevere in 'humbl[y] supplicating thair sacreid Soveraigne'.[36] With no royal answer forthcoming, on 28 February 1638 the leaders of the supplicants took the extraordinary step of renewing a 1581 confession of faith with a cooperative promise to defend the reformed church. This band was circulated for general subscription by all members of the church, male and female, as a national covenant.[37] This provocative act moved the privy

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[33] *RPC*, series 2, vol. vi, pp. 547.

[34] Row, *History of the Kirk*, pp. 486, 488; Leslie, *Relation*, p. 51.

[35] *RPC*, series 2, vol. vii (1638-43), pp. 3–4.

[36] *Records of the Burgh of Glasgow*, pp. 386–7.

[37] Row, *History of the Kirk*, pp. 488–9.

council once more to ask the king to 'take tryal of his subjects grieevances', pointing out they were unable to enforce the laws against unauthorized meetings because the subjects were too angry to obey.[38]

This impasse over petitioned grievances led to open rebellion from 1639 and a polarization of attitudes towards petitioning. While a Scottish royalist pasquil asked God to deliver Scotland 'From proud and perwers [perverse] suplications/Pute wp in lawless conuocations [convocations]', the Covenanter regime in 1640 passed an act stating that their meetings had been lawful because they had been acting in the public good.[39] With the restoration of Charles II in 1660, a royalist regime in Scotland aimed to prevent any return to adversarial collective supplication.

Restrictions on petitioning, 1660–87

Scotland's 1661 Restoration parliament again used standing law against lesing-making and unauthorized meetings to restrict petitioning, pointing out that 'due observance of these laws' might have helped to prevent the nation's late

[38] *RPC*, series 2, vol. vii, pp. 8–11, quote at p. 9.

[39] J. Maidment (ed.), *A Book of Scotish Pasquils* (Edinburgh, 1868), p. 54; *RPS* 1640/6/29, 6 June 1640. See L. Stewart's paper in this Special Issue for a discussion of the Covenanter regime's stance towards petitioning in the 1640s.

'confusions and troubles'.[40] 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.[41] Guthrie argued that he had no seditious intent, the small meeting was not tumultuous and the petition had not been made public. Nevertheless, his expressions of loyalty in the draft petition were deemed duplicitous and his plan to 'publish and disperse' his petition would have 'sow[ed] sedition amongst his majesty's subjects'.[42] Guthrie was sentenced to death with no reprieve.[43] A proclamation barred the clergy and laity from 'meddling' in the question of church government with any public communications, including petitions.[44] The 1662 parliament condemned 'wild and rebellious courses', including 'mutinous and tumultuary petitions', and required officeholders to declare that such petitioning was 'unlawful and seditious'.[45]

It became very dangerous to present collective petitions on politically sensitive topics in Restoration Scotland. In June 1674, a group of wives and

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[40] *RPS* 1661/1/23, 16 January 1661.

[41] G. Burnet, *The History of My Own Time*, 2 vols, ed. O. Airy, (Oxford, 1897-1900), vol. i, pp. 204–5.

[42] *RPS* A1661/1/67–68, 10 April 1661.

[43] *RPS* 1661/1/90, 28 May 1661.

[44] *RPS* 1661/1/362, 18 June 1661.

[45] *RPS* 1662/5/20, 24 June 1662; *RPS* 1662/5/70, 5 September 1662.

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.[46] In 1637, a similar group of women had successfully petitioned the privy council to allow nonconformist clerics from Ulster to preach where called by a Scottish congregation.[47] By contrast, on 10 June 1674 the presentation of the women’s petition to the chancellor at the council house door, with at least 100 women in attendance, was deemed a ‘tumult’ by the privy council.[48] A letter from the king bracketed petitioning with unauthorized conventicles as ‘insolent seditious practices’ and urged ‘vigorous suppressing and punishing of the ringleaders’.[49] Sixteen women were banished from Edinburgh for tumult and sedition.[50]

As grievances grew under the governance of John Maitland, first Duke of Lauderdale, ‘addresses’ and ‘letters’ expressing complaints on royal policy were pursued as vigorously as ‘petitions’ or ‘supplications’. In August 1674, the king

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[46] *RPC*, series 3, 1661-89, 14 vols, ed. P.H. Brown (Edinburgh, 1908-33), vol. iv (1673-76), p. 260.

[47] T. McCrie, *Life of Robert Blair* (Edinburgh, 1848), pp. 153–4.

[48] *RPC*, series 3, vol. iv, pp. 208, 259.

[49] *RPC*, series 3, vol. iv, pp. 211–12. The letter was recorded in council on 30 June.

[50] *RPC*, series 3, vol. iv, pp. 241–2, 258–61, 295; McCrie, *Life of Blair*, pp. 538–40, 545, 552. For the text of the petition, see J. Anderson, *Ladies of the Covenant* (Edinburgh, 1857), p. 158.

ordered Scotland's royal burghs to modify their election procedures for burgh officers. In a written response, the Convention of Royal Burghs objected to this and other recent laws relating to the burghs and begged the king to be assured that their election practices were established by long custom.[51] Their letter was deemed 'most undutifull, impertinent and insolent'.[52] Both the 'harsh' tone of the letter and its preparation in unauthorized meetings in 'tavernes' were castigated. As in the Balmerino and Guthrie cases, 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'. When brought before the privy council, three ringleaders 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 on burdensome laws to the monarch for redress. They were convicted, fined and banned from holding public office.[53]

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[51] *Records of the Convention of the Royal Burghs of Scotland*, 1295-1738, 5 vols, ed. J.D. Marwick (Edinburgh, 1866-90), vol. iii (1615-76), pp. 639–42.

[52] The document was described as a letter by the privy council though Burnet called it a petition. Burnet, *History*, vol. ii, p. 57.

[53] *RPC*, series 3, vol. iv, pp. 367–76, 396.

A group of Scottish lawyers received similar discouragement after submitting a collective 'humble address' to the privy council on 28 January 1675 defending a right of judicial appeal from Scotland's highest civil court, the Court of Session, to the Scottish parliament. The address was deemed 'insolent' because it appeared after two royal statements on the question of appellate rights and the banishment of the advocates from Edinburgh for contumacy. The crown's legal counsel declared that it was the duty of subjects to acquiesce in monarchical judgements and any attempt to question a royal declaration, 'specially if a number of persons joyn and combyn together', was dangerous and unlawful.[54] The advocates were only readmitted to legal practice after making contrite submissions.[55]

Petitions to the Restoration parliament came under greater scrutiny with the revival of the 1594 requirement for review. Oral complaints raised in parliament were referred immediately to committee.[56] Uncontroversial petitions

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[54] *RPC*, series 3, vol. iv, pp. 337–8, 347–56.

[55] *RPC*, series 3, vol. iv, pp. 379, 385–6, 393–5; H. Paton (ed.), *Report on the Laing Manuscripts*, 2 vols, (London, 1914-25), vol. i, p. 401; McCrie, *Life of Blair*, p. 556; J.D. Ford, 'Protestations to parliament for remeid of law', *Scottish Historical Review* 87, 1: 255, (2009), pp. 68–71; C. Jackson and P. Glennie, 'Restoration politics and the advocates' secession, 1674–1676', *Scottish Historical Review* 91, 1: 231, (2012), pp. 76–105.

[56] Burnet, *History*, vol. ii, pp. 39–41; *RPS* M1673/11/3, 17 November 1673.

were processed safely and some corrective legislation was developed in response to complaints referred to committee, but the restriction of speeches on grievances was criticized as a hindrance of parliament's duty to inform the monarch of the state of the nation.[57] Censorship of Scottish presses by the privy council limited the expression of grievances in print, though in 1675 the Presbyterian lawyer James Stewart of Goodtrees managed to publish *An Accompt of Scotlands Grievances by Reason of the D. of Lauderdales Ministry, Humbly Tendred to his Sacred Majesty*.[58] In October 1675, the clergyman Gilbert Burnet advised the leader of the parliamentary opposition, William Hamilton (formerly Douglas), third Duke of Hamilton, that because grievances had been suppressed, politicians in London believed the nation was content. He recommended that Hamilton 'see how the generality of the nation can be gott to send their complaints to the king'.[59] Burnet later recorded that Hamilton and other nobles were unwilling to provide petitions to the king for fear of being

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[57] *RPS* A1669/10/3, 23 December 1669; [J. Stewart of Goodtrees], *An Accompt of Scotlands Grievances by Reason of the D. of Lauderdales Ministry, Humbly Tendred to his Sacred Majesty* ([Edinburgh, 1675]), pp. 11, 13–17.

[58] [J. Stewart of Goodtrees], *An Accompt of Scotlands Grievances.* On censorship in Restoration Scotland, see A.J. Mann, *The Scottish Book Trade 1500–1720* (East Linton, 2000), ch. 6.

[59] J.H. McMaster and M. Wood (eds), *Supplementary Report on the Manuscripts of His Grace the Duke of Hamilton K.T.*, vol. 2 (London, 1932), p. 90.

charged with lesing-making, though they did express concerns orally in personal visits to the Court in London.[60] A backchannel was utilized after an uprising in 1679 when James Scott (formerly Crofts) Duke of Monmouth and first Duke of Buccleuch, was asked to take three petitions to the king asking for an indemnity for the rebels, and liberty of preaching and worship for Presbyterian dissenters.[61]

Restrictions on petitioning stimulated the defence of customary rights of supplication. In a 1669 pamphlet, Stewart of Goodtrees explained that an inability to petition for relief of grievances had been one of the causes of a 1666 uprising by unhappy Presbyterian dissenters in the southwest of Scotland. Stewart, who would become Lord Advocate after the 1688–89 Revolution, argued that the dissenters were 'denyed 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

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60 Burnet, *History*, vol. ii, pp. 57–8.

61 R. Wodrow, *History of the Suffering of the Church of Scotland from the Restauration to the Revolution*, 2 vols (Edinburgh, 1721-22), vol. ii, p. 95, appendix pp. 31–2; *Supplementary Report on the Manuscripts of the His Grace the Duke of Hamilton*, vol. 2, pp. 100–1.

protestation], and the 'law of nature and nations'.[62] For Stewart, petitioning was an ancient tradition, an internationally accepted civil liberty and a natural right.

Though petitions critical of the Scottish regime were repressed, supporters of the Restoration used a novel form of petition, the 'loyal address', to provide public statements of adherence to the monarch and his policies. Appearing in England in the late 1650s, the loyal address has been identified by Ted Vallance as 'a new way of manufacturing the appearance of consent'.[63] At the Ayr circuit court in 1679, the assembled magistrates and about 40 gentlemen signed an address to the privy council expressing their revulsion at recent Presbyterian disorders. In 1684, the authorities were reported to have tried to force the Ayrshire gentry to sign an address to the king offering to take a test oath voluntarily.[64] This test oath, required of public officer-holders from 1681, confirmed the king as the 'supreme governor' of kirk and state and rejected unauthorized meetings.[65] Another circuit court used a humble address to make a voluntary offer of cess [land tax] from the shire.[66]

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[62] [J. Stewart of Goodtrees], *Jus Populi Vindicatum* (London, 1669), pp. 8, 30.

[63] E. Vallance, 'Harrington, petitioning and the construction of public opinion', in D. Wieman and G. Mahlberg (eds), *Perspectives on English Revolutionary Republicanism* (Farnham, 2014), p. 120.

[64] *Laing Manuscripts*, vol. i, p. 416; Wodrow, *History*, vol. ii, pp. 410–12.

[65] *RPS* 1681/7/29, 31 August 1681.

[66] Sir D. Hume of Crossrigg, *Domestic Details* (Edinburgh, 1843), pp. 34–5.

A brief comparison to Restoration England shows loyal addresses also appearing alongside attempts to rein in adversarial collective petitioning with new statutory controls. As in Scotland, adversarial petitioning was seen as 'a great meanes of the late unhappy Wars Confusions and Calamities in this Nation'. Though in England petitions on private matters could be submitted to Charles II with relative ease, the 1661 parliament passed an act restricting 'Tumultuous and other Disorderly solliciting and procuring of Hands' on collective petitions to crown or parliament for 'redresse of p[re]tended greivances in Church or State'.[67] 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 ten persons.[68] This statute provided the basis for a proclamation against tumultuous petitioning issued in December 1679 aiming to quell a nascent campaign petitioning the crown for a meeting of the English parliament. The proclamation condemned 'evil disposed Persons' for collecting hands from 'multitudes' in an unlawful fashion. The king commanded his subjects not to promote or

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[67] B. Weiser, 'Access and petitioning during the reign of Charles II', in E. Cruickshanks (ed.), *The Stuart Courts* (Stroud, 2000), pp. 203–13.

[68] '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', *Statutes of the Realm*, 11 vols, (London, 1810-28), vol. 5, p. 308.

participate in the petitions, 'upon Peril of the utmost Rigour of the Law'.[69] Subsequent petitions presented from December 1679 angered Charles II, especially as some had not secured the required permissions.[70] These were not prosecuted, but the petitions stimulated a small number of shires and boroughs to present loyal addresses expressing their 'abhorrence' of the campaign. This led the House of Commons in 1680 to approve a motion confirming the subject's right to petition parliament and rejecting aspersions of sedition. Sympathetic localities addressed their MPs expressing thanks for parliament's defence of the right to petition.[71] After the dissolution of parliament in March 1681, a final tranche of petitions to the crown calling for a meeting of parliament was met with a large cluster of loyal addresses signed by at least 40,000 hands. During this episode from 1679 to 1681, a handful of magistrates sought to use charges of seditious libel to restrain unwelcome petitions.[72] Nevertheless, though the 1661 law placed restrictions on public petitioning, a customary right to petition the English parliament was reaffirmed. In contrast to

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[69] *London Gazette* 1468 (11–15 December 1679).

[70] M. Knights, *Politics and Opinion in Crisis, 1678–1681* (Cambridge, 1994), pp. 229–36; M. Knights, 'London's "monster" petition of 1680', *Historical Journal* 36, (1993), pp. 39–67.

[71] Knights, *Politics and Opinion*, pp. 266–8, 275–81, 291–3.

[72] Knights, *Politics and Opinion*, pp. 330–9; M. Knights, *Representation and Misrepresentation*, pp. 127–8.

Scotland, collective petitioning to crown and parliament remained possible, with waves of petitions being countered by loyal addresses.

The right to petition, 1688–1707

The Revolution of 1688–89 established a constitutional right to petition the monarch for redress of grievances in Scotland and England. This was expressed in Scotland's Claim of Right as 'it is the right of the subjects to petition the king' and 'all imprisonments and prosecutions for such petitioning are contrary to law'.[73] As Tim Harris has pointed out, the bi-partisan nature of the Revolution Convention in England led it to confirm existing laws and liberties in its Declaration of Rights, while a more whiggish Scottish Convention used the Claim of Right to overturn unwanted laws and judicial precedents.[74] For the English Convention, the clause on petitioning responded to the prosecution of seven Anglican bishops for seditious libel 'under pretence of a Petition' when they used a petition to query the constitutionality of James II's April 1688 indulgence suspending penal laws against non-Anglican worship.[75] The English Declaration of Rights thus confirmed a right to supplicate the crown without

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[73] *RPS* 1689/3/108, 11 April 1689.

[74] T. Harris, *Revolution*, pp. 329–354, 391–409; T. Harris, 'The people, the law and the constitution'.

[75] Harris, *Revolution*, pp. 258–67; Knights, *Representation*, pp. 128–9.

fear of prosecution, though the right to petition the English parliament remained 'implicit'.[76] In Scotland, by contrast, the absentee nature of the monarchy allowed the Claim of Right to encompass petitions to the monarch's commissioner in parliament. The Scottish Convention also abolished the Lords of the Articles, allowing petitions to be submitted to parliament without advance scrutiny. Pursuit of petitioners for sedition or unauthorised meetings became more difficult, though conservative opinion still frowned on collective petitioning. As a 1689 Scottish pasquil noted, the Presbyterians 'at many a meeting a petition make'.[77] The crown in Scotland continued to restrict and regulate oppositional petitioning as far as possible, while welcoming sympathetic addresses. In reply, dissident petitioners asserted constitutional, statutory and natural rights to petition.

Late in 1699, after William II and III had failed to support the Company of Scotland's colonial venture in Central America during a weather-induced economic slump, a group of dissident Scottish nobles organized a collective petition to the king asking for a meeting of parliament to redress the grievances

[76] Knights, 'Right to petition', p. 24.

[77] Maidment (ed.), *Scotish Pasquils*, p. 290.

of the nation.[78] As in England in 1679, the monarch sought to discourage this project. Though William could not point to a Scottish equivalent of the English 1661 statute on petitioning, a royal proclamation expressed stern disapproval of a device that threatened to 'Alienate from Us the Hearts of our good Subjects' and insisted that 'the Liberty of Petitioning' established by the Claim of Right should be exercised 'in an Orderly manner'.[79] This stance met with sharp resistance in the Scottish 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, the proclamation stimulated angry assertions of 'the subjects' privilege and freedom' to petition the king.[80] Though a charge of lesing-making was brought against Dr Archibald Pitcairne for writing in a private letter that 'Twice So many have signed [the petition] since the proclamation' and that the petition constituted a 'national covenant', the

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[78] J. Young, 'The Scottish parliament and the politics of empire: Parliament and the Darien Project, 1695-1707', *Parliaments, Estates and Representation* 27:1 (Nov. 2007), pp. 175-90.

[79] *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), pp. 103–5.

[80] *A Selection from the Papers of the Earls of Marchmont, 1685–1750,* ed. G.H. Rose, vol. 3 (London, 1831), pp. 193–4, 196–8.

dissident nobles were allowed to present their petition to William in London in March 1700.[81] Pitcairne, a medical doctor with Jacobite sympathies, was released after making a humble submission attributing his letter to drunkenness.[82]

The parliamentary opposition in Scotland continued to organize collective petitions to parliament and the monarch on national grievances. Five shires and three burghs presented petitions to the May 1700 Scottish parliament and disgruntled members of parliament provided a joint petition to William in London in June 1700. Another petition with a general subscription of nobles, gentlemen and burgesses was presented to William in October 1700, followed by a second wave of petitions to parliament from 11 shires and seven burghs in January 1701.[83] With the abolition of the Lords of the Articles in 1690, parliamentary commissioners were able to present these shire and burgh petitions in open parliament without any vetting. No charges were brought against the organizers of these petitions, even though the chancellor, Patrick

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[81] *A Full and Exact Collection*, pp. 105–7.

[82] National Records of Scotland [NRS], Acts of the Privy Council, 1699–1703, PC 1/52, 61–63, 66–69.

[83] *RPS* 1700/5/41–42, 27 May 1700; 1700/10/164, 9 January 1700; Sir D. Hume of Crossrigg, *A Diary of the Proceedings in the Parliament and Privy Council of Scotland, May 21, 1700–March 7, 1707* (Edinburgh, 1828), pp. 5–6, 45.

Hume, first Earl of Marchmont, tried to argue that the second national address was 'certainly a league or combination contrary to law'.[84]

A dispute in 1702 confirmed the right to petition parliament, but also demonstrated that the Scottish monarch could play on this right to divert petitions. Asserting that new elections should have been called after the 1701 death of William, the leader of the oppositional Country party, James Hamilton, fourth Duke of Hamilton and later first Duke of Brandon, abandoned the 1702 parliament with a body of supporters.[85] These members and dozens of other gentlemen in Edinburgh signed an address to the queen calling for fresh elections.[86] Though the duke of Hamilton asserted that 'our Lawes are verie expres as to the receiving the petitions of the subjects and by the claim of

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[84] K. Bowie, *Scottish Public Opinion and the Anglo-Scottish Union, 1699–1707* (Woodbridge, 2007), p. 59; *Papers of the Earls of Marchmont,* p. 213.

[85] K.M. Brown, 'Party politics and parliament: Scotland's last election and its aftermath, 1702–03', in *Parliaments and Politics in Scotland, 1567–1707*, eds K.M. Brown and A.J. Mann (Edinburgh, 2005), pp. 246–50.

[86] The earl of Marchmont said 57, George Lockhart of Carnwath said 79 and the duke of Hamilton named between 70 and 80 including the clerk register and the constable and earl marischal of Scotland. *Papers of the Earls of Marchmont*, p. 240; G. Lockhart of Carnwath, *'Scotland's Ruine': Lockhart of Carnwath's Memoirs of the Union* (Aberdeen, 1995), p. 14; *Supplementary Report on the Manuscripts of the Duke of Hamilton*, vol. 2, p. 154.

Reight it's what the people look on as one of ther greatest securitys with ther Prince', the new monarch, Queen Anne, used her absentee status to order the bearer of the address to take it back to her commissioner, James Douglas, second Duke of Queensberry and later first Duke of Dover, in Edinburgh.[87] Charges were brought against a group of 20 advocates and the dean of their faculty for signing the address, which was deemed an affront to the authority of parliament.[88]

In 1703, by contrast, the queen welcomed a set of petitions from deposed Episcopalian clergy and lay dissenters asking her to protect them in their worship. In this campaign, organized with the support of a former Scottish archbishop and George Mackenzie, first earl of Cromarty, royalists took up collective petitioning in the knowledge that the new queen sympathized with them. The clergy's 'address and supplication' provided congratulations on Anne's accession in terms typical of a loyal address alongside pleas for financial support and legal toleration. The queen received the paper and

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87 *Supplementary Report on the Manuscripts of the Duke of Hamilton*, vol. 2, p. 153; Bowie, *Scottish Public Opinion*, pp. 59–60.

88 *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. *Supplementary Report on the Manuscripts of the Duke of Hamilton*, vol. 2, pp. 153–6.

promised to fulfil it ‘as far as conveniently I can’.[89] Supporting petitions to the queen for religious toleration were reported from groups of dissenting laity in Glasgow, Dundee, Aberdeen, Elgin and Fife.[90] In an ensuing pamphlet controversy, the earl of Cromarty asserted 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’.[91] Rather than question the Episcopalians’ right to petition, one Presbyterian pamphleteer sought to undermine the petitions with accusations of ‘shamm Subscriptions’.[92] No doubt fearing that the queen would not welcome collective counter-petitions, the established Church, with advice from the Lord Advocate, Sir James Stewart of

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89 *To the Queen’s Most Excellent Majestie, the Humble Address and Supplication of the Suffering Episcopal Clergy in the Kingdom of Scotland* ([Edinburgh, 1703]).

90 [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]), p. 4.

91 [George Mackenzie, earl of Cromarty], *A Continuation of a Few Brief and Modest Reflexions* ([Edinburgh, 1703]), p. 9.

92 [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]), p. 5; Bowie, *Scottish Public Opinion*, pp. 36–7, 60.

Goodtrees, responded with a representation to parliament against a proposed toleration act.[93]

By 1706, the Claim of Right had allowed petitions to be sent to parliament by shires and burghs and collective petitions and addresses to be provided to the monarch outside of parliamentary sessions. When a treaty of incorporating union between Scotland and England came before the Scottish parliament, eighty-five addresses, petitions and representations were presented between 3 October 1706 and 16 January 1707 (when the treaty was ratified) asking that the treaty be amended or rejected. The queen's ministers supported an early address from the national Church asking that Scotland's Presbyterian Kirk be protected in union, stating that 'they did not doubt but what was therein Craven would be obtained'.[94] A sterner stance was taken when addresses from Perthshire, Midlothian and Linlithgowshire, signed by hundreds of inhabitants, came to parliament on 1 November just as parliament began to vote on each article of the treaty of union. The earl of Marchmont tried to stop the reading of these petitions on the grounds that they were seditious, while John Campbell, second Duke of Argyll and later Duke of Greenwich, treated them with

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93 *The Humble Representation of the Commission of the late General Assembly* ([Edinburgh], 1703).

94 NRS, Supplementary Parliamentary Papers PA 7/20/6; NRS, Registers of Acts of the Commission of the General Assembly, CH1/3/8, 14 October 1706.

contempt, saying they were of 'no other use than to make kites'.[95] In response, opponents argued that the Claim of Right protected the petitioners and warned that crowds of angry subscribers would demand that their petitions should be read.[96] When more petitions arrived after parliament had voted to approve the principle of a union of the kingdoms, supporters of the ministry argued that these were redundant. The petitions were allowed nevertheless.[97] In its address, 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 16 other petitions from burghs and parishes.[98] 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'.[99] A clergyman argued that petitions from church courts were justified by 'our claim of Right as free subjects of the kingdom of Scotland and as any other community therein to

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95 Lockhart, *Memoirs*, p. 150.

96 Bowie (ed.), *Addresses*, p. 293; Lockhart, *Memoirs*, pp. 150–1.

97 NRS, Papers of the Dukes of Hamilton and Brandon, GD406/1/6013, 8107, James, duke of Hamilton, to Anne, duchess of Hamilton, 7 November 1706.

98 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, Dalserf, East Monkland, Old Monkland, Lesmahagow, Shotts, Stonehouse and Calder in Bowie (ed.), *Addresses*.

99 Bowie (ed.), *Addresses*, pp. 187–90.

petition for our Rights' and also 'our confession of Faith Ratified in parliament'. The Westminster confession, ratified by the Scottish parliament in 1690, stated that churchmen should not involve themselves in civil affairs except by petitioning in exceptional cases. This was inverted into a positive right 'to intermedle with civil affairs which concern the commonwealth by way of humble petition in cases extraordinary'.[100]

In a pro-union tract, the English pamphleteer Daniel Defoe condemned the assertive tone of these addresses and characterized the anti-union campaign as 'Tumultuous'.[101] His attitude reflected customary standards of deferential language that had been reasserted in England in 1701 when the English House of Commons called a petition from a grand jury in Kent 'scandalous, insolent and seditious'. Though compliant with the 1661 statute, the petition expressed political views in blunt terms and was considered offensive by a majority in the House. The arrest of the Kentish petitioners affirmed an expectation that petitions to the English parliament should use respectful and temperate language.[102] By contrast, no charges of seditious language were brought against any Scottish petitions in 1706–07, though some felt that an address from the

[100] *RPS* 1690/4/33, 29 May 1690; Bowie (ed.), *Addresses*, p. 52.

[101] [D. Defoe], *Two Great Questions Considered* (Edinburgh, 1707), pp. 3, 7.

[102] Knights, *Representation*, pp. 129–35; E. Vallance, 'Daniel Defoe, public opinion and the Anglo-Scottish Union', *The Historian* 124, (2015), pp. 20–4.

presbytery of Hamilton went too far in warning parliament that the people might resist the union.[103] Laws against unauthorized meetings, however, were invoked to reduce crowds in Edinburgh and prevent the organisation of a national address to the queen. An attempt in December 1706 to gather supporters in Edinburgh to sign an address to the queen asking for new parliamentary elections was met with a parliamentary proclamation against tumultuous and seditious meetings. The parliament assured the subjects of Scotland that it had their addresses under consideration and warned that travelling to Edinburgh to hear answers to petitions was 'unwarrantable and contrary to law'.[104] A group of parliamentarians replied with a formal protestation in favour of the lawful rights of the freeholders, but the proclamation had the desired effect.[105]

Conclusions

The struggle over petitioning rights outlined here indicates the rise of assertive and participative petitioning campaigns. In Scotland after the 1603 regal union, groups of dissidents developed forceful forms of petitioning, most notably in 1633 and 1637. Offering sharply critical arguments, these petitioning campaigns

[103] G.H. Healey (ed.), *The Letters of Daniel Defoe* (Oxford, 1955), p. 187.

[104] Lockhart, *Memoirs*, pp. 184–8; *RPS* 1706/10/176, 27 December 1706.

[105] *RPS*, M1706/10/62, 27 December 1706; Bowie, 'Popular resistance and the ratification of the Anglo-Scottish treaty of union', *Scottish Archives* 14, (2008), pp. 22-24.

could include grassroots subscription, enthusiastic crowds and printed polemics. Though a liberty to petition for relief of grievances was a commonplace of late medieval political culture, successive Scottish monarchs sought to restrict these unwanted innovations with prosecutions for seditious speech and unauthorised meetings. These efforts were redoubled in the Restoration era to quash petitionary complaints to the Scottish crown and parliament, though some royalists capitalised on collective addressing to advertise their loyalty. Petitioning in Restoration England, by contrast, continued under new statutory limitations answered by large-scale loyal addressing. When a case of seditious libel against a group of Anglican bishops stimulated a revolutionary Convention to confirm a right to petition the crown in England, the 1689 Scottish Convention followed suit. This right, combined with the abolition of parliamentary scrutiny, allowed oppositional petitioning to crown and parliament to re-emerge in Scotland. In the decade before the Union of 1707, campaigners generated petitions from shires, burghs, parliamentarians and the political nation at large, though the crown sought to discourage challenging petitions and could refuse petitions brought to London during a parliamentary session. This expansion culminated in the presentation of what Lord Advocate Stewart of Goodtrees called an ‘unprecedented’ number of petitions to the Scottish parliament in 1706–07 from shires, burghs and church courts, signed

by over 20,000 individuals.[106] Though these challenged the queen's policy of incorporating union in robust terms that previously might have attracted charges of 'lesing-making', they were allowed by Scotland's Claim of Right. Nevertheless, 'tumultuous' petitioning continued to be unacceptable and laws against unauthorized meetings were deployed to prevent the convergence of petitioners in Edinburgh to sign a national address to the queen.[107] In England, by contrast, statutory regulations restricted disruptive crowds and standards of decorum in petitionary language were reaffirmed in 1701.

Though the 1689 right to petition provided a precedent for later constitutions, it also ensured that Scottish petitioning would join wide-reaching British campaigns. Regulated after the 1707 Union by English statute and custom, these campaigns continued to stimulate debate over the rightful extent and nature of petitioning, reflecting an ongoing period of struggle over appropriate methods of collective protest and resistance.[108]

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[106] Lockhart, *Memoirs*, p. 191; Bowie (ed.), *Addresses*, p. 23.

[107] Had opponents of Anglo-Scottish union succeeded in sending a national address to Anne, the precedent of 1702 probably would have led the queen to refuse it, but internal differences hampered multiple attempts at a national address. Bowie (ed.), *Addresses*, 29-31.

[108] Knights, *Representation*, p. 117, 150; Knights, '"The lowest degree of freedom"'; P.A. Pickering, '"And your petitioners &c": Chartist petitioning in popular politics', *English Historical Review* 116, (2001), pp. 368–87.

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