

The Scottish Constitutional from the Claim of Right

1. The Declaration of the Estates of the Kingdom of Scotland containing the Claim of Right and the offer of the Croune to the King and Queen of England.

Wheras King James the Seventh Being a profest papist did assume the Regall power and acted as King without ever takeing the oath required by law wherby the King at his access to the government is obliged to swear To maintain the protestant religion and to rule the people according to the laudable lawes And Did By the advyce of wicked and evill Counsellers Invade the fundamentall Constitution of this Kingdome And altered it from a legall limited monarchy to ane Arbitrary Despotick power and in a publick proclamation asserted ane absolute power to cass annull and dissable all the lawes particularly arraigning the lawes Establishing the protestant religion By Dissarmeing protestants while at the same tyme he Employed papists in the places of greatest trust civil and military such as Chancellor Secretaries Privie Counsellors and Lords of Sessione thrusting out protestants to make roome for papists and Intrusting the forts and magazins of the Kingdome in ther hands

By Imposeing oathes Contrair to law

By Giveing gifts and grants for exacting money without consent of Parliament of Conventione of Estates

By levying or Keeping on foot a standing army in tyme of Peace without Consent of Parliament which army did exact localitie free and dry quarters

By Employing the officers of the army as Judges through the Kingdome and Imposeing them wher ther were heretale offices and jurisdictions by whom many of the leidges were put to death summarly without legall tryall jury or record

By imposeing exorbitant fines to the value of the pairties Estates exacting extravagant Baile and disposeing fines and forefaultors befor any proces or Conviction By Imprisoning persones without expressing the reasone and delaying to put them to tryall

By Causeing persue and forefault severall persones upon stretches of old and obsolete lawes upon frivilous and weak pretences upon lame and defective probationes as particularly the late Earle of Argyle to the scandal and reproach of the justice of the Natione

By Subverting the right of the Royal Burghs The third Estate of Parliament imposeing upon them not only magistrats But also the wholl toune Councill and Clerks contrary to their liberties and express chartours without the pretence either of sentence surrender or consent so that the Commissioners to Parliaments being chosen by the magistrats and Councill The King might in effect alswell nominat that entire Estate of Parliament and many of the saids magistrats put in by him were avowed papists and the Burghes were forced to pay money for the letters Imposeing these illegall magistrats and Councils upon them

By Sending letters to the chiefe Courts of Justice not only ordaining the Judges to stop and desist sine die to determine causes But also ordering and Commanding them how to proceed in cases depending befor them Contrair to the express lawes and by chainging the nature of the Judges gifts ad vitam aut culpam and giveing them Comissions ad beneplacitum to dispose them to complyance with arbitrary Courses and turneing them out of their offices when they did not comply

By granting personall protectiones for civil Debts contrair to Law All which are utterly and directly contrary to the knoune lawes statutes and freedomes of this realme

26 Therfor the Estates of the kingdom of Scotland Find and Declaire That King James the Seventh being a profest papist Did assume the Regall power and acted as king without ever takeing the oath required by law and hath by the advyce of Evill and wicked Counsellors Invaded the fundamentall Constitution of the Kingdome and altered it from a legall limited monarchy To ane arbitrary despotick power and hath Exercised the same to the subversione of the protestant religion and the violation of the lawes and liberties of the Kingdome inverting all the Ends of Government wherby he hath forfaulted the right to the Croune and the throne is become vacant

And wheras His Royall Highness William then Prince of Orange now King of Ingland whom it hath pleased Almighty God to make the glorious instrument of delyvering these Kingdomes from Popery and arbitrary power did By the advyce of severall Lords and Gentlemen of this Nation at London for the tyme call the Estates of this Kingdome to meet the fourteenth of March last In order to such an Establishment as that their Religion lawes and liberties might not be again in danger of being subverted And the saids Estates being now assembled in a full and free representative of this Nation Takeing to their most serious Consideratione the best meanes for attaining the ends aforesaid Do In the first place as their ancestors in the like cases have usually done for the vindicating and asserting their antient rights and liberties Declare That by the law of this Kingdome no papist can be King or Queen of this realme nor bear any office whatsomever therin nor can any protestant successor exercise the regall power untill he or she swear the Coronation Oath

That all Proclamations asserting ane absolute power to Cass annull and Dissable lawes The Erecting Schools and Colledges for Jesuits The Inverting protestant Chappells and Churches to publick Mass houses and the allowing Mass to be said are Contrair to Law

That the allowing Popish bookes to be printed and Dispersed is Contrairy to law

That the takeing the children of Noblemen Gentlemen and others sending and Keeping them abroad to be bred papists

The makeing fonds and Dotations to popish schooles and Colledges The Bestowing pensiones on preists and the perverting protestants from ther religion by offers of places preferments and pensiones are Contrary to law

That the Dissarming of protestants and Imploying papists in the places of greatest trust both Civil and military the thrusting out protestants to make roome for papists and the intrusting papists with the forts and magazines of the Kingdome are Contrary to Law

That the Imposeing oathes without authority of Parliament is Contrair to law

That the giveing gifts or grants for raiseing of money without the Consent of Parliament or Convention of Estates is Contrary to law

That the Employing the officers of the army as Judges through the Kingdome or imposeing them wher ther were heretale offices and Jurisdictiones and the putting the leidges to death summarly and without legall tryall jury or record are Contrary to Law

That the Imposeing of extraordinary fynes The exacting of exorbitant Baile and the disposeing of fynes and forefaultors befor sentence are Contrary to law

That the Imprisoning persones without expressing the reason therof and delaying to put them to tryall is contrary to law

That the causeing persue and forefault persones upon stretches of old and obsolete lawes upon frivilous and weak pretences upon lame and defective probation as particularly the late Earle of Argylle are Contrary to law

That the nominating and Imposeing the magistrats councils and clerks upon burghes contrary to ther liberties and express Chartors is Contrary to law

27 That the Sending letters to the courts of Justice Ordaining the Judges to stop or desist from determining Causes or ordaining them how to proceed in Causes depending befor them and the changeing the nature of the Judges gifts ad vitam aut culpam Into Commissions durante beneplacito are Contrary to law

That the granting personall protectiones for civil Debts is contrary to law

That the forceing the leidges to Depone against themselves in capitall Crymes however the punishment be restricted is Contrary to law

That the useing torture without evidence or in ordinary Crymes is Contrary to law That the Sending of ane army in ane hostile manner upon any pairt of the Kingdome in a peaceable tyme and Exacting of Locality and any manner of free quarters is Contrary to law

That the chargeing of the leidges with lawborrowes at the Kings instance and the imposeing of bonds without the authority of Parliament and the suspending advocats from their Imployment for not Compearing when such bonds were offered were Contrary to Law

That the putting of Garisones on privat mens houses in tyme of peace without their Consent or the authority of Parliament is Contrary to law

That the opinions of the Lords of Sessione in the two Cases following were Contrary to Law videlicet (1.) That the concealing the Demand of a Supply for a forefaulted persone altho not given is treason (2.) That persones refuseing to discover what are their privat thoughts and judgements in relation to points of treason or others mens actions are guilty of treason That the fyning husbands for ther wives withdrawing from the church was Contrary to law

That Prelacy and the superiority of any office in the Church above presbyters is and hath been a great and insupportable greivance and trouble to this Nation and contrary to the Inclinationes of the generality of the people ever since the reformatioне (they haveing reformed from popery by presbyters) and therfor ought to be abolished

That it is the right and priviledge of the subjects to protest for remeade of law to the King and Parliament against Sentences pronounced by the lords of Sessione Provydeing the samen Do not stop Execution of these sentences

That it is the right of the subjects to petition the King and that all Imprisonments and prosecutions for such petitioning are Contrary to law

That for redress of all greivances and for the amending strenthneing and preserveing of the lawes Parliaments ought to be frequently called and allowed to sit and the freedom of speech and debate secured to the members

And they Doe Claim Demand and insist upon all and sundry the premisses as ther undoubted right and liberties And that no Declarationes Doeings or proceedings to the prejudice of the people in any of the said premisses ought in any wayes to be drawne hereafter in Consequence or Example But that all forefaultors fynes loss of offices Imprisonments Banishments pursuits persecutions tortures and rigorous Executions be Considered and the pairties læsed be redressed To which Demand of ther rights and redressing of their greivances they are particularly Encouraged by his Majesty the King of England his Declaration for the Kingdome of Scotland of the day of October last as being the only means for obtaining a full redress and remedy therin

Haveing therfor ane entire confidence that his said Majesty the King of England will perfect the Delyverance so far advanced by him and will still preserve them from violation of their Rights which they have here asserted and from all other attempts upon their Religion lawes and liberties

The said Estates of the Kingdome of Scotland Doe resolve that William and Mary King and Queen of England France and Ireland Be and be Declared King and Queen of Scotland To hold the Crowne and Royall Dignity of the said Kingdome of Scotland To them the said King and Queen dureing ther lives and the longest liver of them and that the sole and full exercise of the regall power be only in and Exercised by him the said King in the names of the said King and Queen Dureing ther joynyt lives And after ther decease The said Croune and Royall Dignity of the said Kingdome to be to the heirs of the body of the said Queen which failing to the Princess Ann of Denmark and the aires of her body which also failing to the aires of the Body of the said William King of England

And they do Pray the said King and Queen of England to accept the same accordingly And that the Oath hereafter mentioned by taken by all protestants of whom the oath of allegiance and any other oathes and Declarationes might be required by law instead of them And that the said oath of Allegiance and other oaths and Declarationes may be abrogated

Commentary

The communities of Scotland, (represented by election, by hereditary or traditional right), through the Convention of the Estates, declare the existence and force of a fundamental constitution in Scotland which legally limits the monarchy (government), prohibits the abuse of power or the violation of the laws and liberties (rights) of the people and imposes the penalty of forfeiture for breach of these conditions of power.

The Convention asserts that James VII did, ‘Overthrow the fundamental constitution of this kingdom and altered it from a legally limited government to an unaccountable, absolute power and in a public proclamation asserted the right to repeal and disable all laws and (p2) he exercised this power in violation of the laws and civil rights of the kingdom, reversing the whole purpose of government. By these acts, he forfeited the right to the Crown (to rule)’

Principles of the Claim of Right which remain applicable today include the following:

1. The historic right of the people of Scotland to assert their sovereignty and their rights: ‘The said communities (of Scotland) assembled in a full and free representation of this nation do ... as their ancestors in like cases have usually done for the vindicating and asserting of their rights and liberties...’

2. The right of the people of Scotland to declare various acts of government unlawful including but not limited to:

* any claim by government to an absolute power, or sovereignty, in Scotland

* giving gifts or grants for the raising of money without parliamentary (or Convention) oversight (such as lucrative contracts to party donors)

* imprisonment without charge or trial

* granting personal protection (exemption) from civil debts (such as taxes)

* interfering with/directing the legal process in order to attack political opponents

* preventing protest or petition or criminalizing protestors or petitioners

3. The right of the people of Scotland to overturn unjust rulings of the Supreme Court of Scotland (the Court of Session) and to declare the rulings unlawful. This also establishes that is is an unlawful misuse of the law and the Courts, by those in power, to employ the legal system and the Courts to punish political enemies:

That the opinions of the Lords of Sessione in the two Cases following were Contrary to Law videlicet (1.) That the concealing the Demand of a Supply for a forefaulted persone altho not given is treason (2.) That persones refusing to discover what are their privat thoughts and judgements in relation to points of treason or others mens actions are guilty of treason

The prescribed penalty for, “the violation of the lawes and liberties of the Kingdome inverting all the Ends of Government”, that is forfeiture of power, or the right to govern.

The Scottish Constitution and the Constitutional Compact

Derived from the Claim of Right and Other Documents as English Constitutional Principle is
Derived from the English Bill of Rights

1. The source of power in Scotland is vested in the people, or community of the nation, who grant it conditionally to their rulers or government. *This is known as popular sovereignty.*¹
2. The Community of the Nation of Scotland remains the preeminent and final authority from which political and executive power is derived. No political or regulatory power exists apart from or above this authority.
3. Political and regulatory power is subject to a compact between people and government whereby power is devolved by the will of the people, conditional upon:
 - its purpose to protect and promote the common good, that is, the equality, welfare, dignity and liberty of the people
 - its by the preeminent rights and liberties of the people and especially by the established laws or provisions which guarantee those rights and liberties
 - may be forfeited through abuse or misuse of power to the detriment of the common good as in ignoring, altering or repealing laws and provisions which uphold the rights and liberties of the people
4. This compact, represents the fundamental principle of the Scottish constitution which:
 - Preserves and protects the sovereignty of the people over their government wherefore it is unlawful in Scotland for any government to claim or to seek sovereignty over the Scottish people
 - Prescribes the power and scope of government in Scotland wherefore it is unlawful to attempt to alter the constitutional compact which limits and directs political and regulatory power
 - Preserves and protects the legitimate ends and purposes of government in Scotland, (to promote the common good and the interests of the nation), wherefore it is unlawful to act against these interests
 - Preserves and protects the laws and conventions protecting the rights, the good and the freedoms of the people, whereby it is unlawful in Scotland to subvert these laws and conventions.
5. Protected rights and prohibitions, (as established under the Claim Right), include but are not limited to²:
 - The equal right to justice for all people, by which it is unlawful to limit the right and the means to petition for justice

¹ Declaration of the Clergy 1310, Declaration of Arbroath 1320, 1450 Act prohibiting rebellion against the monarch without parliamentary consent (upholding the right of rebellion in Scotland), Claim of Right Act 1689

² See, for example Scotland's Magna Carta <https://www.law.du.edu/documents/judge-david-edward-oral-history/2015-magnacarta.pdf>

- The right to equality under the law by which it is unlawful to subvert the law or the justice system so as to victimise or punish political enemies
- The right of the lenders of power (people) to call the borrowers of power (government, political and regulatory authority), to account, by which it is unlawful to limit the right to peaceful protest
- The right to privacy by which it is unlawful to demand, under penalty, to know the private thoughts of individuals or to attempt to gain this knowledge without consent
- The right to fair and transparent management of the national assets by which it is unlawful to offer grants and financial advantages without parliamentary oversight
- The right to fair and transparent systems of taxation by which it is unlawful to grant exceptional immunity from public debt (such as taxes) without public oversight³

6. The right of the people, Community of the Nation of Scotland, remains inalienable:

- to uphold and defend the provisions of the constitutional compact
- to consider, condemn and reject the misuse of power, (that is, the use of power to the injury of the common good)
- to declare the rights and powers to govern Scotland forfeit and to withdraw the loan of power in consequence

7. And while these rights remain, so also there must be the instruments of those rights such as those which formerly existed in Scotland:

- in free, transparent and unfettered public access to information on all matters concerning the common good and the interests of the nation
- in public oversight and the exercise of veto over parliament and government⁴
- in the final authority of a non-parliamentary, representative body, the Convention of the Estates or its successor to apply sanction, redress or remedy by removal⁵
- and in the independence of the judiciary, especially the Court of Session to whom the resolution of any conflict between the claims of public right and the powers of government should be referred

It is, therefore intrinsic to the Scottish Constitution. that there are guaranteed:

- A. Public access to information, which means the requirement for a truthful, impartial and independent public media and the protection in law of freedom of speech
- B. The creation and maintenance of extra-parliamentary, representative bodies, authorised to apply the constitutionally guaranteed remedies against any abusive, governing power⁶ so that these rights are assured. Such bodies are a fundamental requirement of constitutionally legitimate government in Scotland;
- C. The protected independence of the judiciary and especially of the Court of Session

³ Claim of Right Act 1689

⁴ See the practice of Salvo from 1592, Act of Salvo in 1663

⁵ Convention of the Estates Claim of Right Act 1689

⁶These bodies have included the Guardians of the Realm, the General Council which became Convention of the Estates, the Court of Session and the Convention of the Burghs which drafted statutes, held courts and oversaw and regulated the return of a portion of the national tax to the common good fund of each burgh. They developed and operated in concert with but separately from the Three Estates, or parliament of Scotland which, with the monarch, formed the government.

The Scottis Constitutional Covin

Frae the decree'd practeeses an documents o Scotlan afore the Treaty o Union accordin tae the staundart praisently applee'd tae thae o England.)

1. The soorce o pouer in Scotlan wis an is vestit in the fowk, the community o the kinrick, wha dispone hit condeetionally tae thair rowlers or government. This is kent as faur ben soverainty.^[1]
2. The Community o the naition o Scotlan remeens the weel-forrit an feenal authority frae whit poleetical an executive pouer is drawn frae. Aw poleetical an raad pouer is devolved bi the will o the fowk o Scotlan for the cowmon guid. Nae poleetical nor raad pouer endure't apart frae or abuin the authority o the Community o the naition.
3. The dispone o the pouer tae govern is condeetional on heid o state an government bide-by tae a constitutional covin bi whit pouer is lent fer the cowmon guid an in the interests o the hale kinrick, (aw fowk in e'en degree).
4. The constitutional covin requairs the bowsome o the fowk in maiters o laa, stent an guid conduck. In return, government pouer is leemitit an directit bi its obligation tae uphaud, perfect, an forder the cowmon guid. Thon includes the requirement tae uphaud an perfect the richts an leeerties o the fowk an tae owerwird frae the misuse o pouer or the exerceese o pouer tae the hairm o the cowmon guid as in sling a deifie, chynge or cast laa's an proveesions whit uphaud the richts an leeerties o the fowk.
5. In parteeular it is unlaafu in Scotlan fer ony government:

tae claim, or socht tae exerceese, soveranety ower the Scottis fowk or tae pertend tae the richt tae ack agin the cowmon guid

tae attemptit tae chynge the foondamental constitution whit leemits an direcks the condeetional uise o pouer bi a heid o state or government

tae pit by or cast laa's that endure't fer the pertection, the guid or the freedoms o the fowk

tae demand, unner dronach tae ken the preevat thochts o individuals or ettle tae win this knawledge without consent

tae abuise the laa in rander tae veectimise or puinish poleectical faes

tae offer grants (an financial avantages) withoutt pairlamentary owersicht

tae dispone immunity frae public det (sic as cesses) withoutt public
owersicht

tae leemit the richt tae peacefu ootcry

tae leemit the richt tae peteetion fer juistice^[2]

6. The richt o the fowk tae uphaud the cowmon guid, tae conseeder, condamm, an reject the misuise o pouer, (whit is, the uise o pouer tae the injur o the cowmon guid), an tae resile the len o pouer in eftercast, haes been constitutionally an practically enshuired bi the exerceese o na-say^[3] an bi the authority o aither a feck deceesion bi the pairlament (noo weed awa) or o the Convenerie o the Estaites (Assemmlly o the Communities), tae applee chap, remeed or amends bi remuival^[4], (including bi authoreesed rebellion^[5]).
7. Thir richts hiv been, an remeen, uphaudit bi:

- a. The creaution an mainteenance o extrae-pairlamentary, representative bodies authoreesed tae applee the constitutionally available remeедies agin an abuissive, governing pouer^[6]. Sic bodies is sicweys a foondamental requirement o constitutionally richtous government in Scotlan.
- b. Public aiccess tae a trouthfu accoontin o the actions, an effects o the actions, o thaim in poseetions o pouer. Sicweys a trouthfu, unpairtial an independent public media source an lawfu perfected freedom o speech are intrinsic tae the Scottis Constitution.

	<u>Glossary</u>	
ack = act	eftercast =	raad = regulatory
bide-by = adherence	consequence	rander = order
bowsome = obedience	ettle = attempt	resile = withdraw
cast = repealing	faes = enemies	richtous = legitimate
cesses = taxes	faur ben = popular	scrowe = draft
chap = sanction	feck = majority	sicweys = thus
cheenge = alter	kinrick = realm	sling a deifie =
cowmon = common	laa = law	ignoring
covin = compact	na-say = veto	socht = seek
dispone = grant	ootcry = protest	stent = taxation
dronach = penalty	owerwird = refrain	weed awa = extinct
endure't = exist	pertect = protect	win= gain
e'en = even/equal	pertend = pretend	

[1] Declaration o the Clergy 1310, Declaration o Arbroath 1320, 1450 Act proheebitin rebellion agin the monarch withoutt pairlamentary consent (uphauden the richt o rebellion in Scotlan), Claim o Richt Act 1689

[2] Claim o Richt Act 1689

[3] See the practeese o Salvo frae 1592, Act o Salvo in 1663

[4] Claim o Richt Act 1689

[5] 1450 Act proheebitin rebellion agin the monarch withoutt pairlamentary consent (uphauden the richt o rebellion in Scotlan)

[6] Thay bodies hiv included the Gairdians o the Kinrick, the General Cooncil whit becam Convenerie o the Estaites, the Coort o Session an the Convenerie o the Burghs whit scrowe statutes, haudit coorts an overseen an raad the return o a pairt o the naitional cess tae a cowmon guid fond o ilka burgh. Thay developit an opertatit in concert wi but apaist frae the Chree Estaites, or the pairlament o Scotlan whit, wi the monarch, makkit the government.