

**‘Lele consail for the comoun profite’: Kings, Guardians and Councils in the  
Scottish Kingdom, c.1250-1450**

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In January 1399 David duke of Rothesay, the twenty-year-old eldest son of King Robert III of Scotland, was appointed as lieutenant for his father, ‘hafande fwl powere and commissioun of the kyng to governe the lande in althyng as the kynge sulde do in his persoun’. It was claimed that, due to the sickness of King Robert, ‘it is sene to the consail maste expedient that the duc of Rothesay be the kyngis lieutenande generally throch al the kynrike’, exercising royal justice for a term of three years. The young heir to the throne was required to promise in writing and through a sworn oath that he would ‘governe his person and the office til hym committit with the consail general, and in the absence of thaim with the consail of wyse men and lele’. A list of twenty-one named councillors was appended and it was ordained that both groups, the ‘general’ and the ‘special’ councils, ‘sal be obligit be thair lettres and sworne til gife hym lele consail for the comoun profite nocht hafande ee to fede na freydschyp’.<sup>1</sup>

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<sup>1</sup> *RPS*, 1399/1/2; S. Boardman, *The Early Stewart Kings: Robert II and Robert III, 1371-1406* (East Linton, Tuckwell Press, 1996), pp. 215, 223.

The appointment of the new lieutenant can be read as the application of principles of good counsel widely held in medieval Europe.<sup>2</sup> An adult, infirm king and his young, but also adult, heir were to exercise the rule of their realm with the advice of an appointed council of the wise, sworn to give loyal advice for the good of all. The lieutenant took an oath to exercise his office with either the twenty-one councillors or a wider group of subjects. Such terms indicate Scottish familiarity with ideas of good counsel and raise a question about the place of such an arrangement in longer-term patterns. Does the use of such a council reflect the development of a formal, even institutional, body of councillors acting as a natural and permanent feature of royal government? Alternatively, was the attempt to employ councils a product of an immediate situation and deployed either to bolster the position of the lieutenant who lacked the full authority of an adult ruler or to improve the quality of his rule? In Scotland between 1250 and the early fifteenth century such a distinction between long and short-term approaches is problematic. In this period Scotland experienced repeated and lengthy periods of royal minority, incapacity and absence. It experienced dynastic failure or change and major warfare during which 'normal' government was curtailed or suspended. Breaks in personal kingship accounted for nearly half of these two centuries and created a very varied set of contexts in which counsel was given. Scots could use ideas of counsel as a means of providing or augmenting royal authority during periods in which personal kingship was in partial or full abeyance, as well as regarding it as a mechanism by which adult, ruling kings sought consent and advice for the good governance of their realm.

This chapter will examine the ideas and structures of council and counsel as they were employed in Scotland between the minority of King Alexander III in the 1250s and the

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<sup>2</sup> A. Black, *Political Thought in Europe, 1250-1450* (Cambridge, Cambridge University Press, 1992), ch. 5.

minority of James II in the 1440s. As well as encompassing a variety of political environments, this period begins with the earliest formal royal councils and draws to a close before the increased formalisation of different conciliar bodies linked to the rapid growth of royal ideological and material resources from the 1450s. It will examine the use of bodies of set composition and role employed during periods of royal absence alongside evidence from the fourteenth century for the ways in which counsel was provided to adult kings. By concentrating on periods when the language of counsel was most fully deployed in the royal government, this chapter demonstrates that Scottish use of councils drew on a body of assumptions and expectations which could be adapted or emphasised to meet the specific needs of the realm.

## I

Despite this variation of experience, Scottish writers still saw counsel in terms of the needs of adult rulers. In his *Scotichronicon*, written during the 1440s, Walter Bower inserted a series of chapters about the importance of a king choosing good counsellors. Drawing on Plutarch, Seneca, Avicenna and, at greatest length, on Bridget of Sweden's advice to King Magnus Eriksson, Bower developed his theme that 'in exercising government nothing is more advantageous for a king than to have good counsellors'.<sup>3</sup> In language reminiscent of the 1399 commission, evil counsellors were described as 'zealous only for their personal and private

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<sup>3</sup> Walter Bower, *Scotichronicon*, gen. ed. D. E. R. Watt, 9 vols (Aberdeen, Aberdeen University Press, 1989-98), V, 304-5.

gain, and not for the common good'. 'When their judgement is ruled by love or hate, then by their council they destroy the prince.'<sup>4</sup>

Such views and authorities were commonplace in late medieval Europe. But Bower placed his discussion in relation to the royal minority of Alexander III between 1249 and 1260. This was a telling choice. Bower's principal source for the thirteenth century was an account which was associated with John of Fordun's *Chronica Gentis Scottorum*. This narrative, termed *Gesta Annalia 1*, was probably written later in the century and placed considerable stress on the role played by the councillors of the young Alexander III (who was only eight when his father died).<sup>5</sup> The account provided a negative image of councils. 'Under the rule of a boy king' Scotland was in danger because 'his councillors ... were swayed by the advantages each one had to gain'.<sup>6</sup> 'There were as many kings as there were councillors (*consules*)' and their oppressive behaviour prompted the account to employ the stock quote from Ecclesiastes, 'Woe to the land whose king is a boy'.<sup>7</sup> As well as being the normal clerical criticism of baronial tyranny, this account reflected the central importance of formal councils to the running of the kingdom during the minority. The Scottish political

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<sup>4</sup> *Scotichronicon*, ed. Watt, V, 304-5.

<sup>5</sup> *John of Fordun's Chronicle of the Scottish Nation*, ed. W. F. Skene, 2 vols (Edinburgh, Edmonston and Douglas, 1872; henceforth *Chron. Fordun*), II, 290-4; D. Broun, 'A New Look at *Gesta Annalia* Attributed to John of Fordun', in B. E. Crawford (ed.), *Church, Chronicle and Learning in Medieval and Early Renaissance Scotland* (Edinburgh, Mercat Press, 1999).

<sup>6</sup> *Chron. Fordun*, II, 290-1.

<sup>7</sup> *Chron. Fordun*, II, 292 (quoting Ecclesiastes 10:16).

class had opted to use the convenient fiction that a child under the advice of wise counsellors could provide the basis for the continuation of royal government.

The significance of the king's council in the 1250s was confirmed by arrangements established in 1255 which followed the intervention of Henry III of England. Letters were issued in the name of King Alexander on 20 September 'by the advice of our magnates' named as eight prelates and seventeen lay earls and barons. The letters then specifically removed another group of twenty-five men and one woman 'from their offices on our council because their faults so demand'. They were not to be admitted 'to our counsels, to the conduct of the business of the realm, to our grace or to any source of intimacy' until pardoned by both Alexander and Henry. 'With the counsel of the king (Henry) and of our said magnates', Alexander named two bishops, four earls and nine barons 'who have been appointed to our council, the government of our realm and the guardianship of our body' for the next seven years (until Alexander was twenty-one). These councillors could not be removed from their posts unless 'unworthy', they would control wardships and escheats which pertained to the crown and would appoint sheriffs and castle constables.<sup>8</sup>

The arrangements made in September 1255 provided for a fixed, formal council whose powers and terms of office were defined. Equally, the value of the role for the councillor was expressed via the things forfeited by exclusion from this position. As well as being expressed as a loss of office, it was also the physical issue of a denial of 'intimacy'. In

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<sup>8</sup> E. L. G. Stones, *Anglo-Scottish Relations, 1174-1328* (London, Oxford University Press, 1965), no. 10; D. E. R. Watt, 'The Minority of Alexander III of Scotland', *Transactions of the Royal Historical Society*, 5th ser., 21 (1971), 1-23; A. A. M. Duncan, *Scotland: The Making of the Kingdom* (Edinburgh, Mercat Press, 1975), pp. 564-8; A. Young, *Robert the Bruce's Rivals: The Comyns* (East Linton, Tuckwell Press, 1997), pp. 54-6.

1255 councillors were both running the royal government and the group who controlled physical access to the young king. It was the loss of this physical ‘guardianship’ of the king’s person in November 1257, when their rivals seized custody of Alexander, which ended the authority of this body. In 1258 Henry III accepted a new council for the Scottish king. This contained nine named councillors, four of whom had been amongst those specifically excluded in 1255. These councillors promised that ‘we ... shall freely render our counsel and aid to the king of England’.<sup>9</sup> The stress on a formal council in arrangements established by King Henry points to the influence of English experience. In England ideas about the use of councils as a means of limiting the rule of an adult king had been voiced in Magna Carta and again in the ‘Paper Constitution’.<sup>10</sup> In 1258, three years after his intervention in Scotland, Henry would be subjected to the direction of twelve barons who would negotiate with the king’s own named council.<sup>11</sup> Naming a council for an under-age king was a less ideologically controversial expression of the same attempt to provide for good kingship via the provision of specific councillors.

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<sup>9</sup> Stones, *Anglo-Scottish Relations*, no. 11; Duncan, *Scotland*, pp. 571-3.

<sup>10</sup> J. C. Holt, *Magna Carta* (Cambridge, Cambridge University Press, 1965), pp. 501-11; N. Denholm-Young, ‘The “Paper Constitution” Attributed to 1244’, *English Historical Review*, 58 (1943), 401-23.

<sup>11</sup> R. F. Treharne and I. J. Sanders, *Documents of the Baronial Reform Movement of Reform and Rebellion, 1258-1267* (Oxford, Oxford University Press, 1973), nos 2, 5; D. Carpenter, ‘King, Magnate and Society: The Personal Rule of King Henry III, 1234-1258’, *Speculum*, 60 (1985), 39-70; D. Carpenter, ‘What happened in 1258?’, in J. Gillingham and J. C. Holt (eds), *War and Government in the Middle Ages: Essays in Honour of J. O. Prestwich* (Woodbridge, Boydell, 1986).

The alternative to the use of such a council as a replacement for a lapse in personal monarchy was the appointment of a single regent. In a thirteenth-century context, this had been the choice in minorities in France, Aragon and Hungary as well as at Henry III's own accession in 1216.<sup>12</sup> Scottish chronicle accounts imply that this option was rejected for Alexander III in 1249 due to mistrust of the principal candidate, Alan Durward.<sup>13</sup> A conciliar model was also employed when the death of Alexander III in 1286 left Scotland with an even more serious failure of kingship than it had experienced in 1249. The death of the king leaving as his heiress a grand-daughter in Norway meant that reliance on ideas of counsel as the basis for continued royal government could not be employed. Put simply, in 1286 there was no royal figure in Scotland to be counselled. The response to this situation was influential in later Scottish practice. Six individuals were appointed as '*custodes regni*', guardians of the realm.<sup>14</sup> In the years after 1286 this group essentially functioned as a council. Acts of royal government were issued in their names, rather than that of the absent

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<sup>12</sup> C. Hillen and F. Wiswall, 'The Minority of Henry III in the Context of Europe', in C. Beem (ed.), *The Royal Minorities of Medieval and Early Modern England* (New York, Palgrave, 2008); D. Carpenter, *The Minority of Henry III* (Berkeley, University of California Press, 1990); T. Bisson, *The Medieval Crown of Aragon: A Short History* (Oxford, Oxford University Press, 1986), pp. 60-5; Z. J. Kosztołnyik, *Hungary in the Thirteenth Century* (New York, Columbia University Press, 1996), pp. 29-32; E. Hallam and J. Everard, *Capetian France, 987-1328* (Harlow, Longman, 2001), pp. 267-75.

<sup>13</sup> *Chron. Fordun*, II, 289; *Medieval Chronicles of Scotland: The Chronicle of Melrose*, ed. J. Stevenson (Lampeter, Llanerch Press, 1991), pp. 87-8.

<sup>14</sup> *Chron. Fordun*, II, 305; N. Reid, 'The Kingless Kingdom: The Scottish Guardianships of 1286-1306', *Scottish Historical Review*, 61 (1982), 105-29.

‘lady of Scotland’, followed by the phrase ‘guardians of the realm constituted by common counsel’.<sup>15</sup> While, unlike the example of England in 1258, the guardians were chosen to deal with an absence of personal monarchy rather than to direct the actions of an adult king, there is evidence that the Scots were capable of following the latter course. A number of well-informed and near-contemporary English chronicles describe in similar terms how in 1295 ‘the Scots chose twelve peers, by whose council the king ought to govern the kingdom’.<sup>16</sup> In these English accounts the appointment of a formal council for King John (Balliol) was linked to growing Scottish hostility to the lordship of Edward I over Scotland and, in particular, to the dispatch of envoys to negotiate an alliance with Edward’s enemy, Philip IV of France. According to the northern English *Lanercost Chronicle*, because of the council John ‘was not able to achieve anything of his own’.<sup>17</sup> While these accounts have been regarded with scepticism as an effort to reduce the legitimacy of the subsequent Franco-Scottish alliance, the establishment of a council of twelve ‘elected and constituted’ by a meeting of parliament suggested, not any formal reduction of John’s status, but the use of counsel to direct the king towards the policies supported by his leading subjects. This was

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<sup>15</sup> J. Stevenson, *Documents Illustrative of the History of Scotland*, 2 vols (Edinburgh, H. M. General Register House, 1870), I, nos 14, 15, 22, 23, 44, 69.

<sup>16</sup> William Rishanger, *Chronica et Annales*, Rolls Series (London, Longman, Green [etc], 1865), p. 151; *The Chronicle of Lanercost*, ed. T. Maxwell (Glasgow, Maclehose, 1913); henceforth *Chron. Lanercost*), pp. 161-2; *The Chronicle of Walter of Guisborough*, ed. H. Rothwell, Camden Society, 3rd ser., 89 (London, Royal Historical Society, 1957), p. 264. The same episode also occurs, but dated to 1296, in the Scottish account, *Gesta Annalia* (*Chron. Fordun*, II, 321).

<sup>17</sup> *Chron. Lanercost*, pp. 161-2.

linked in English chronicles to the twelve peers of France, the highest-ranking lay and ecclesiastical princes. However, it seems closer to the use of twelve barons chosen by the community as a means of directing Henry III of England in 1258.<sup>18</sup>

Like his father, Edward I also adopted a conciliar approach to his efforts to govern Scotland. In 1291, when he held custody of the kingdom while he judged the succession dispute, Edward added two of his own men to the depleted group of guardians. This was exactly what Henry III had done in 1251. Fourteen years, and much warfare, later, Edward's final attempt at incorporating Scotland into his dominions also relied heavily on the language and formal institutions of counsel. The Westminster version of *Flores Historiarum* described how in 1305 'a council of the king (Edward I) met at the New Temple' in London composed of two English and two Scottish bishops and earls and 'other barons, Scots as well as English' and 'took counsel about securing the king's peace in Scotland'.<sup>19</sup> The resulting 'Ordinance ... for the good order of Scotland' placed authority in the hands of 'the king's lieutenant', Edward's nephew, John of Brittany. However, in John's absence from Scotland, it was reported that William Lamberton, bishop of St Andrews, was 'head and chief (*primus et maior*) amongst the others of the council of the lord king of England' which met to discuss the 'business of the king'.<sup>20</sup>

On a series of occasions from 1249, Scottish government therefore involved the use of formal councils as a source of advice and decision-making during the suspension of kingship or, as in 1305, in a context where, like the lordship of Ireland, royal authority had

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<sup>18</sup> Treharne, *Documents of the Baronial Reform Movement*, no. 5; R. A. Jackson, 'Peers of France and Princes of the Blood', *French Historical Studies*, 7 (1971), 27-46.

<sup>19</sup> *Flores Historiarum*, ed. H. R. Luard, 3 vols (London, Rolls Series, 1890), III, 124.

<sup>20</sup> Stones, *Anglo-Scottish Relations*, nos 33, 35.

passed to a ruler who normally dwelt elsewhere. If these approaches drew on English strategies, it is striking that, for much of the early fourteenth century, it is hard to find evidence of conciliar structures, or even clearly expressed ideas of counsel, as a major feature of government. This was despite the frequent interruptions in personal monarchy which occurred between 1296 and 1357. The revival of the office of guardian for William Wallace in early 1298 involved a very different type of office. After 1298 guardians were normally individual regents rather than members of a ruling council. Though two, and briefly three, guardians were chosen in the period between late 1298 and 1303, this reflected the political and military divisions in the Scottish cause.<sup>21</sup> By 1304 John Comyn was clearly operating as a sole guardian.<sup>22</sup> Tellingly, in his tailzies (entails) of 1315 and 1318 King Robert I, who had himself acted as joint guardian with Comyn in 1298 to 1300, nominated a single guardian to hold office in the event that Robert's successor was a child.<sup>23</sup> Following Robert's death in 1329 and during the warfare of the 1330s and beyond, the guardians and lieutenants who defended the rights of Robert's son, David II, held office as individual leaders of the kingdom.<sup>24</sup> While, as an isolated reference in 1337 suggests, it is likely that these individual

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<sup>21</sup> Reid, 'Kingless Kingdom', 110-13.

<sup>22</sup> Young, *Comyns*, pp. 171-7.

<sup>23</sup> *Regesta Regum Scotorum* (henceforth, *RRS*), V, ed. A. A. M. Duncan (Edinburgh, Edinburgh University Press, 1987), no. 58; *RPS* 1318/30.

<sup>24</sup> *RRS*, VI, ed. A. B. Webster (Edinburgh, Edinburgh University Press, 1982), nos 14, 16, 17, 133, 137-8; M. Penman, *David II* (East Linton, Tuckwell Press, 2004), pp. 31-2, 37-40, 49, 60-1, 66-7, 140-56. There was one, politically-inspired, exception to this in 1334-5 when Robert the Stewart and John Randolph earl of Moray both acted as guardians (Penman, *David II*, pp. 55-62).

guardians had their own councils, authority rested with a single vice-regal figure rather than with any conciliar body.<sup>25</sup>

## II

In contrast to the later thirteenth century, after 1300 evidence for the language of counsel and the summoning of groups identified as councillors occurs much more readily in conjunction with periods of rule by an adult king than in periods of royal absence. The reign of David II between 1329 and 1371 was divided between periods of royal youth and exile, from 1329 to 1341, and English captivity, from 1346 to 1357. His two periods of personal kingship between 1341 and 1346 and after 1357 contain much evidence of the way kings could seek counsel. In the early 1340s King David held at least four gatherings which he termed ‘our council’ or ‘full council’.<sup>26</sup> After 1357 this latter term was also used to describe meetings of the king and a significant group of his subjects alongside the phrase ‘general council’.<sup>27</sup> Historians have tended to approach such full or general councils and other gatherings which were simply termed ‘our council’ as less formal meetings of the three estates, essentially as parliaments assembled without the same notice of forty days and lacking some judicial powers. All such meetings were councils, providing opportunities and occasions for the provision of advice and consent to the king. However, parliaments and general councils have

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<sup>25</sup> *Exchequer Rolls of Scotland* (henceforth, *ER*), 23 vols (Edinburgh, General Register House, 1878-1906), I, 452.

<sup>26</sup> *RPS*, 1342/2/12; 1345/1; 1346/1; *RRS*, VI, nos 44-7, 267; *NRS*, B6/31/9.

<sup>27</sup> One meeting used both ‘general’ and ‘full’ (*RPS*, 1365/1/1, 10).

tended to be discussed in a different manner, as public and representative rather than private and selected.

This distinction can be unhelpful. In fourteenth-century Scotland there was no hard division between these bodies in terms of the way counsel was provided. During the period between his return from England in 1357 and his death in 1371, David II used meetings termed councils with varied composition and business. In January and March 1358 the king issued charters in meetings which are recorded as councils but whose business is otherwise unknown.<sup>28</sup> In July 1365 David discussed negotiations with the English king with a named group who were present ‘for the part of the prelates, nobles and others of the community of the kingdom of Scotland, having been gathered in the presence of our lord king’. Though those present debated the negotiations and swore an oath to obey the judgement of this meeting, the record gives it no specific title.<sup>29</sup> In terms of business and formality it is hard to distinguish this assembly in July from that which had met in the Perth Blackfriars six months earlier and which was named a general council.<sup>30</sup> A distinction might be made in terms of size and composition. The January general council was attended by eleven prelates, sixteen knights and twelve others, many of them burgesses, while the July meeting included five bishops and eleven nobles. The lack of representatives from beyond the bishops and higher nobility may be a key issue but, instead of seeking definitions, it is probably more important

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<sup>28</sup> *RRS*, VI, nos 168-9, 172, 176.

<sup>29</sup> *RPS*, 1365/7/1-3.

<sup>30</sup> *RPS*, 1365/1/1-10; M. Penman, ‘Parliament Lost – Parliament Regained? The Three Estates in the Reign of David II, 1329-1371’, in K. M. Brown and R. J. Tanner (eds), *The History of the Scottish Parliament, Volume 1, Parliament and Politics in Scotland, 1235-1560* (Edinburgh, Edinburgh University Press, 2004), pp. 74-101, 92-3.

to recognise the priority accorded to the delivery of counsel to the king in different forums. In 1360, for example, it was stated that ‘discussions have frequently been held on these matters [the rights of the church of Aberdeen] both in our parliament and elsewhere with our council’.<sup>31</sup> Concern with the way counsel was delivered by parliament was also evident in the meetings in the last years of the king’s reign. In 1367, 1369 and 1370 bodies were chosen from the assembled communities to ‘hold the said parliament’, dealing with specific business.<sup>32</sup> In 1369 and 1370 a group of clergy and knights was chosen to deal with matters of justice, but a body of greater size and higher status was appointed to deal with ‘general’ or ‘secret’ ‘business of king and kingdom’.<sup>33</sup> This body appeared as ‘the king’s council’, ‘the council of the kingdom’ or as ‘the council in our parliament’.<sup>34</sup> Its formal composition was stressed by a statute forbidding any councillor from bringing anyone else ‘on the king’s council as his companion or counsellor, except in so far as those who were chosen by the communities’.<sup>35</sup>

The phrase ‘chosen by the communities’ confirms that these councils were presented as the means by which the king could access and draw support from the advice of his subjects. However, formal meetings of parliament and general or full, and other named councils only account for one or two gatherings of, at most, a few weeks per year. Though these gatherings dealt with key issues of royal government, the provision of counsel in the long gaps between them presents a harder problem. In Scotland, there was no sense that the

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<sup>31</sup> *RPS*, 1360/4/1.

<sup>32</sup> *RPS*, 1367/9/8; Penman, ‘Parliament Lost – Parliament Regained?’, pp. 99-100.

<sup>33</sup> *RPS*, 1369/3/2, 4; 1370/2/4.

<sup>34</sup> *RPS*, 1367/9/2; 1369/3/8, 12; 1370/3/8.

<sup>35</sup> *RPS*, 1370/2/5.

king's access to counsel only worked via large, formal bodies. For example, within an 'ordinance concerning the king's means of living' it was stated that if the king 'should wish to reward anyone for their merits, this shall be done ... with the good determination of council'.<sup>36</sup> That this indicates an expectation that the king would be guided by the counsel of 'wise men' on a daily basis is hardly surprising, but it is less easy to find evidence of this process in practice. Writing his epic poem *The Bruce* in the mid-1370s, John Barbour included references to both 'consaill planer', full council, and 'consaile prevé', privy or secret council, in his narrative.<sup>37</sup> The distinction between these bodies was clearly recognisable to Scots but of greater significance is an isolated reference copied from a lost register. This records a decret from the 'secret council' of the new king, Robert II, in May 1371. This body comprised the chancellor, the chamberlain (the chief financial official of the king), the keeper of the privy seal and four others. The council dealt with the king's household, living and status, hardly routine matters so soon after his accession.<sup>38</sup> The reference proves the existence of such a body on one specific occasion but its isolation leaves major questions about the nature of any 'secret' or daily council.

The obvious means of identifying who might have provided more routine forms of counsel is to examine the witness lists to royal charters. The lists of those named as present when the king made grants of land or rights in charter form may provide evidence of those around him on a frequent basis, perhaps comprising a regular group of councillors. Such a view is supported by the witnesses to a royal charter to Perth in 1365 being described as 'the

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<sup>36</sup> *RPS*, 1367/9/4.

<sup>37</sup> John Barbour, *The Bruce*, ed. A. A. M. Duncan (Edinburgh, Canongate, 1997), pp. 72-3, 76-7.

<sup>38</sup> *RPS*, A1371/3.

king's councillors'.<sup>39</sup> However such lists may represent a more formulaic approach, attaching a standard record of key figures who may not have been in attendance on the date given on the charter. Analysis of the witness lists of English kings in the thirteenth and fourteenth centuries has found shifts over time between these two approaches with lists becoming more formulaic and less valuable as evidence of proximity after 1300.<sup>40</sup> An examination of the witness lists of Scottish royal acts during the 1360s and 1370s suggests a picture of stability in the group around the king remarkable in a period of significant political and dynastic change. While this might point to the formulaic nature of witness lists, closer analysis suggests that they could reflect the attendance of those named. For example, the rebellion of three earls against David II in spring 1363 is reflected in royal witness lists. Of the rebel earls, William of Douglas and Patrick of March and Moray, who had been regular witnesses during 1361 and early 1362, disappeared from royal documents in May 1362, only reappearing the following summer.<sup>41</sup> Robert Stewart, earl of Strathearn, the king's nephew and heir, was an even more frequent witness and was named on acts issued in mid-February, on 7 March and on 24 April.<sup>42</sup> However, the gap of over six weeks between early March and late April corresponded with the period of the rebellion. Stewart, who, according to the

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<sup>39</sup> NRS, B59/23/2. The five named councillors were all regular witnesses to David II's charters.

<sup>40</sup> R. Huscroft, *The Royal Charter Witness Lists of Edward I (1272-1307)*, List and Index Society, 279 (2001), ix-xvii; J. S. Hamilton, *The Royal Charter Witness Lists of Edward II*, List and Index Society, 288 (2001), viii-xi; C. Given-Wilson, 'Royal Charter Witness Lists, 1327-1399', *Medieval Prosopography*, 12 (1991), 35-93.

<sup>41</sup> *RRS*, VI, nos 272, 274, 296-9, 301, 303.

<sup>42</sup> *RRS*, VI, nos 287, 289, 291.

fullest account of the rebellion, was the first earl to submit, renewed his homage to King David under strict terms in May.<sup>43</sup> Beyond these earls, in 1362-3 the king's charters were witnessed by a consistent group which included Bishop William Landellis of St Andrews, the chancellor; the chamberlain, Robert Erskine; the hereditary Marischal, William Keith; and other barons and royal officials like Archibald Douglas (Earl William's cousin).<sup>44</sup> It is striking that all those named as witnesses on a royal charter at Dundee on 12 May were also in a wider group present at Stewart's oath two days later at Inchmurdoch south of St Andrews, while Keith was absent from both.<sup>45</sup>

The change of dynasty following David II's death on 22 February 1371 shows similar significant shifts in those witnessing royal charters. David's last acts were witnessed by the same kind of group found in the previous decade; a combination of prelates, William Landellis bishop of St Andrews still at their head, earls, overwhelmingly Stewart and Douglas, and the king's officials and political associates.<sup>46</sup> The accession of Stewart as King Robert II marked a major political change in terms of the distribution of influence in different parts of the kingdom.<sup>47</sup> However, just as the main officers of state remained in place, there was also continuity between those who appeared as witnesses to the kings' acts. Bishop

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<sup>43</sup> *Scalachronica*, ed. A. King, Surtees Society (Woodbridge, Boydell, 2005), 203-5;

*Scotichronicon*, ed. Watt, VII, 330-3.

<sup>44</sup> *RRS*, VI, nos 274-315.

<sup>45</sup> *RRS*, VI, no. 292; *Scotichronicon*, ed. Watt, VII, 330-1.

<sup>46</sup> *RRS*, VI, nos 461, 463, 464, 466-7, 469, 472-6, 477; Penman, *David II*, pp. 399-403.

Significantly the new chancellor, John of Carrick, did not witness as frequently as his predecessor, Patrick bishop of Brechin had done (Brechin continued to appear as a witness).

<sup>47</sup> Boardman, *Early Stewart Kings*, pp. 19-23, 39-62, 71-9.

Landellis, the earl of Douglas and barons such as Robert Erskine, Alexander Lindsay and Archibald Douglas continued to appear for Robert as they had done in David's last years. The major change was the appearance of the new king's sons, John earl of Carrick and Robert earl of Menteith (and, from 1372, Fife).<sup>48</sup> To explain this continuity as simply formulaic seems unlikely through a change of king and dynasty and, as in 1362-3, the lists reflected short-term changes, such as the departure of Archibald Douglas as envoy to France in early June.<sup>49</sup> The witnesses to the charters issued by King Robert in the first months of his reign also coincide closely with the members of his 'secret council' named in May 1371. All eight members of this council witnessed royal acts during 1371 and most, headed by Landellis, the earl of Douglas and Erskine, were named on almost all charters. Though the king's sons were absent, the coincidence between this named council and royal witness lists is strong support for using these lists as evidence of conciliar practice in the later fourteenth century.<sup>50</sup>

What does this evidence reveal about the process of advising the king? Above all, the attendance of great magnates like Robert Stewart on David II, and of William Douglas on both kings indicates the importance of regular contact between the king and his greatest lords. Though this contact could be disrupted, as in 1362-3, it was quickly resumed. The

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<sup>48</sup> *Registrum Magni Sigillii Regum Scotorum* (henceforth, *RMS*), ed. J. M. Thomson *et al.*, 11 vols (Edinburgh, H. M. General Register House, 1882-1914), I, nos 373, 381, 399, 431, 529, 558, 559; NRS, GD3/1/30/1; GD25/1/10; GD39/1/8; GD124/1/521, 1053.

<sup>49</sup> *RMS*, I, no. 381; *Scotichronicon*, ed. Watt, VII, 382-9; Boardman, *Early Stewart Kings*, pp. 109-10; A. Macdonald, *Border Bloodshed: Scotland, England and France at War, 1369-1403* (East Linton, Tuckwell Press, 2000), pp. 25-8.

<sup>50</sup> *RPS*, A1371/3.

appearance of William earl of Douglas as a witness to David's last charters and to Robert's earliest ones is telling in this respect. It occurred despite tensions between the earl and his new king. Near contemporary Scottish accounts present Douglas as challenging Stewart's accession in a council at Linlithgow, perhaps in early March 1371.<sup>51</sup> Though absent from the list of witnesses to a royal charter granted in April, after his appearance as a member of the secret council in early May Douglas was a regular witness to the new king's acts.<sup>52</sup> Given Robert's frequently tense relations with his predecessor, the inclusion on this council of men linked closely to the policies and patronage of King David is also revealing of the nature of this body. The participation of Earl William, Robert Erskine and others has been credibly linked to the vulnerability of a new king seeking to establish his dynasty. However the regular attendance of Stewart and Douglas on David II's council would suggest that a king regarded as an assertive and effective ruler also took counsel from lords with whom he enjoyed difficult relations.

The composition of these two kings' councils have been interpreted in terms of their different reputations and reigns. Thus, while the apparently ascendant David II compelled magnates to attend, his more conciliatory successor, Robert II, was forced to accept their presence.<sup>53</sup> Instead, the regularity with which both kings sought advice from great magnates

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<sup>51</sup> *Scotichronicon*, ed. Watt, VII, 364-6; *The Original Chronicle of Andrew of Wyntoun*, ed. F. J. Amours, 6 vols, Scottish Text Society, 1st ser., 63, 50, 53-4, 56-7 (Edinburgh, Blackwood, 1903-14), VI, 264-7; Boardman, *Early Stewart Kings*, pp. 39-46.

<sup>52</sup> NRS, GD124/1/521, 1053. He was ranked as the first layman after the king's sons, John earl of Carrick and Robert earl of Fife.

<sup>53</sup> For example Michael Penman, whilst presenting the council as a forum in which opposition to David II did occur and revealing David's relations with these magnates as based

and others who were not close to them politically may reflect something about underlying expectations of the conciliar process. Through the 1380s and 1390s royal witness lists continued to display similar patterns. This has broad implications. That the greatest magnates were either required or wished to attend the king's council on a regular basis raises questions about the conventional view of Scotland as a decentralised polity. Magnates like Stewart and Douglas were lords whose interests were concentrated in particular regions of the kingdom and who enjoyed considerable powers of leadership and justice within them. However, the witness lists of the 1360s and 1370s suggest that they spent much time with the king. In 1371, for example, Douglas was at Edinburgh with King David in January, at Scone for Robert II's coronation in late March and between May and July travelled between Edinburgh, Scone, St Andrews and Perth with the new king.<sup>54</sup> In early December he was at the Stewart family castle of Dundonald in Ayrshire, a long way from the normal centres of royal government.<sup>55</sup> Though this itinerary leaves gaps when the earl could have been in his own lands, especially in late summer and autumn, in this, as in subsequent years, Earl William appeared as an almost constant witness to royal acts. Apart from Robert II's sons, this level of attendance was far beyond that of the other earls. Douglas's presence may

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on shifting grounds, often shows Robert Stewart and William Douglas as isolated figures amidst royal officials (Penman, *David II*, pp. 355, 380). Steve Boardman, particularly with regard to the events of 1371, shows Robert II conceding the presence of David II's servants like Robert Erskine to secure his succession (Boardman, *Early Stewart Kings*, pp. 39-49). The contrast between the two kings is drawn most sharply by Ranald Nicholson in his *Scotland: The Later Middle Ages* (Edinburgh, Mercat Press, 1974), pp. 174-90.

<sup>54</sup> *RRS*, VI, no. 478; *RPS*, A1371/3; *NRS*, GD25/1/10; *RMS*, I, nos 381, 399, 431, 559.

<sup>55</sup> *Registrum Episcopatus Glasguensis*, 2 vols (Edinburgh, Maitland Club, 1843), I, no. 314.

indicate the king's desire for counsel from such a lord or the earl's insistence on access to the king as recognition of his exceptional status. In this respect, it is interesting that in 1368 it was urged by the estates that 'our lord king should immediately have counsel with the Earls of March and Douglas ... although they may not be now well disposed to the work'.<sup>56</sup> On matters relating to the marches towards England, the counsel of the leading regional magnates was understood as essential, but it could be withheld by lords who felt their advice was rejected. This, and the actual appearance of Douglas as a frequent councillor, would suggest a view of the king's secret council as a group which should represent interests beyond the immediate circle of royal officers. One account of the rebellion of Douglas, March and Stewart in 1363 identified 'bad counsel' which had led the king to squander money raised for his ransom as the stated cause of the rising.<sup>57</sup> Though the rebel earls had all attended the king in the eighteen months before their revolt, this did not guarantee that their counsel was effective. It is possible, however, to be reasonably confident about asserting that fourteenth-century kings of Scots were expected to take advice from regular meetings of bodies which reflected important interests beyond their own circle of family and friends. In a small kingdom with a few great nobles, Scotland's rulers may have had limited choice about their councillors. In turn, magnates like Douglas could regard the role of royal councillor as a valuable point of contact with the king, but, if their advice was ignored, they could refuse to attend.

### III

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<sup>56</sup> *RPS*, 1368/6/14.

<sup>57</sup> *Scalachronica*, ed. King, p. 203.

While this interpretation may be conventional in many respects, the secret council of 1371 demonstrates, admittedly in the circumstances of a new dynasty, that a small body drawn from different political groupings could be employed to consider matters of royal finance and status. After 1380 the Scottish political class showed a readiness to use the idea of counsel more overtly as a source of direction for their rulers. This readiness developed from political circumstances. In the 1380s first Robert II and then his son John, earl of Carrick (the future Robert III) were perceived to have failed in the exercise of government.<sup>58</sup> Their failure led to the execution of royal justice being placed in the hands of a named lieutenant, reviving the idea of guardianship to stand in for an adult, if elderly, king. Though the use of lieutenancy was at the heart of these measures, they also had a very strong conciliar character. In November 1384, in a meeting of the three communities ‘as if in general council’, it was stated that the king wished to rule ‘by the advice of council’ and that ‘it is wished, granted and ordained from the counsel and ordinance of his council’ that his son, John earl of Carrick, should exercise justice through the kingdom. In his office Carrick ‘shall be held to answer to the king and council’ and complaints against royal officials were to be judged by ‘the king, or the person having his power, and the council’.<sup>59</sup> Finally, the king and the earl both took oaths to uphold the agreement in council, as did all those present in the council.

Four years later, in December 1388, Carrick was replaced by his younger brother, Robert earl of Fife. The stated reasons were ‘defects’ in the government and ‘the infirmity’ of Carrick. This act also occurred ‘in the council of the king’ where Robert II submitted

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<sup>58</sup> Boardman, *Early Stewart Kings*, pp. 124-5, 130-3; S. Boardman, ‘Coronation, Kings and Guardians: Politics, Parliaments and General Councils, 1371-1406’, in Brown and Tanner (eds), *History of the Scottish Parliament*, pp. 106-11.

<sup>59</sup> *RPS*, 1384/11/14.

himself 'to the ordinance of his general council'. Following this the king 'admitted into his council with joy the aforementioned earl of Fife, his son, thus chosen as guardian of his kingdom in this way and presented to him by the council'. The phrase used for the appointment (*per consilio in suo consilio*) placed the heaviest stress on this as a conciliar action to which the king consented and the term of Fife's office was similarly set 'by determination of the council of the kingdom'.<sup>60</sup> The events of both 1384 and 1388 demonstrated the use of councils as bodies capable of directing, regulating, even transferring the exercise of royal authority. These councils have been examined as meetings of the communities in general council, the language suggests that no firm distinction was being made between councils as large, occasional gatherings and the smaller, more frequent gatherings of councillors which have been identified in the preceding decades.<sup>61</sup> Similarly, the way in which the word '*consilium*' was used shifted between the act of giving advice and the body or setting in which this occurred. The effect of this was to increase the significance of the conciliar process as the link between a ruler, 'the person having ... power', and those with the right and duty to direct him.

In 1399, when David duke of Rothesay was given his commission as lieutenant, the relationship between king, lieutenant, general council and the special council of loyal and wise men was made much more explicit. The role of this special council of the duke's uncles, six clerics, four earls and nine barons and knights was to advise the lieutenant when the general council was absent. In a council which Rothesay held in November 1399, twelve of these special councillors were present from a total of sixteen who attended.<sup>62</sup> The special

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<sup>60</sup> RPS, 1388/12/1; Boardman, *Early Stewart Kings*, pp. 152-3.

<sup>61</sup> Boardman, *Early Stewart Kings*, pp. 130, 152; Nicholson, *Scotland*, pp. 189-90, 199-200.

<sup>62</sup> RPS, 1399/11/1.

councillors were required to put their names to his acts ‘so that the council being with him shall answer for his deed and be punished through the sight of the general council for this’.<sup>63</sup> It was also the responsibility of the ‘greater and larger part’ of this council to take counsel themselves ‘about things which need to be done’ with others in the kingdom.<sup>64</sup> The way in which the duties and responsibilities of individual councillors was specified reflected how, because of the youth of the lieutenant, the onus was placed upon his councillors to govern his actions and to present the wider concerns of the kingdom to him. If such arrangements represent an attempt to provide good counsel, the end of Rothesay’s lieutenancy was presented as a lesson about the perils of ignoring good advisors and falling victim to evil counsellors. According to the contemporary if partisan account of Walter Bower’s *Scotichronicon*, in 1401 Rothesay ‘hoped to free himself’ from the restraints of his position and spurned ‘his council of honourable men. As a result the council of nobles resigned to the king’.<sup>65</sup> Rothesay was then betrayed by one of his own councillors.<sup>66</sup> He was arrested by his uncle, Robert duke of Albany, and died in custody at Falkland in early 1402. His arrest had also, it was later claimed, followed ‘mature and prior deliberation of our (the king’s) council’.<sup>67</sup>

The use of lieutenants to replace adult kings can be regarded as drawing on the use of guardians through the preceding century. While the holding of parliament or meetings of full or general councils assumed recognised roles during the same timespan, the statutes of the

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<sup>63</sup> *RPS*, 1399/1/4.

<sup>64</sup> *RPS*, 1399/1/5.

<sup>65</sup> *Scotichronicon*, ed. Watt, VIII, 38-9.

<sup>66</sup> *Scotichronicon*, ed. Watt, VIII, 40-1.

<sup>67</sup> *RPS*, 1402/5/1.

1380s and 1390s do not confine issues of conciliar direction to these bodies. It is harder to trace the same development of the smaller council nominated in 1399 and implied a decade earlier. The presence of magnates like Douglas and Stewart as councillors of the king may indicate the significance of such bodies before 1384, perhaps particularly with regard to royal justice, the issue at the heart of the complaints about the effectiveness of Robert II and III. However, Scottish efforts to improve their government may well have drawn on the approaches in neighbouring realms. In the 1380s and 1390s both England and France employed conciliar bodies to deal with the youth or incapacity of their kings. In England the accession of the eleven-year-old Richard II left government in the hands of different councils. As well as full meetings of parliament, there were less formally-composed ‘great’ councils and the ‘continual council’.<sup>68</sup> The latter was made up of a small group appointed and sworn before parliament. In France too, a land familiar to Scots in the 1380s, the minority and then mental collapse of Charles VI left royal government in the hands of a royal council. In 1374 Charles V had issued complex instructions for a possible regency which balanced power between his brother, the duke of Anjou, and a council of princes and royal officials.<sup>69</sup>

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<sup>68</sup> G. Dodd, ‘Richard II, Fiction of Majority Rule’, in Beem (ed.), *Royal Minorities*; A. Tuck, *Richard II and the English Nobility* (London, Arnold, 1973), pp. 33-57; N. Saul, *Richard II* (New Haven, Yale University Press, 1997), pp. 24-55; N.B. Lewis, ‘The ‘Continual Council’ in the early years of Richard II, 1377-80’, *English Historical Review*, 41 (1926), 246-51.

<sup>69</sup> F. Autrand, ‘La Succession à la Couronne de France et les ordonnances de 1374’, in J. Blanchard (ed.), *Représentation, Pouvoir et Royauté à la fin du Moyen Âge*, (Paris, Picard, 1995), pp. 25-32; T. Adams, ‘Feuding, Factionalism and Fictions of National Identity: Reconsidering Charles VII’s Armagnacs’, *Digital Philology*, 1 (2012), 5-31, at 26-7.

English and French models may have influenced contemporary Scottish practice and all clearly worked from the possibilities inherent in ideas about medieval government.

It is hard to identify any sustained legacy arising from the experiences of the late fourteenth century. This was partly due to the failure of the Rothesay lieutenancy and the experience of his successor, Robert duke of Albany.<sup>70</sup> Instead the ways in which ideas of counsel were deployed in the early fifteenth century appear as entirely rooted in the needs of specific conditions and regimes. This is very striking during the personal rule of James I between 1424 and 1437. During this transformative period for Scotland there are very few direct references to the council as a body or to the issue of giving counsel to this active and assertive ruler.<sup>71</sup> By contrast, in the minority of his son, James II, a much higher profile was given to conciliar bodies. These initially met in conjunction with a lieutenant but after summer 1439 ‘the king’s council’ was treated as a recognised corporation with the authority to govern in the name of James II.<sup>72</sup> In 1440 the king’s business was specifically delegated to

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<sup>70</sup> There is one reference by Albany as lieutenant to ‘the lords of the council assigned to him *pro utilitate republicae*’ (ER, III, 589; K. J. Hunt, ‘The Governorship of the First Duke of Albany 1406-1420’, Ph.D. thesis (Edinburgh, 1998), pp. 44-5).

<sup>71</sup> The only records of significant named councils which were not meetings of the three estates occurred in the opening year of James I’s personal rule (NRS, GD119/67; P. F. Tytler, *The History of Scotland*, 9 vols (Edinburgh, William Tait, 1828-43), III, 218). Criticism of James I focused on his own policies and style of kingship, not on the issue of ‘evil counsel’ (M. Brown, *James I* (Edinburgh, Canongate, 1994), pp. 201-8).

<sup>72</sup> For references to the council as an active focus for government see NRS, GD124/1/151, RH6/311; A. Borthwick, ‘The King, Council and Councillors in Scotland, 1430-1460’, Ph.D. thesis (Edinburgh, 1989), pp. 85-6.

a specially-appointed council by a general council.<sup>73</sup> The direction and composition of the council were contested matters, but throughout the decade from 1439 it was dominated by the lesser barons whose influence derived from royal office. Similar groups of councillors would dominate the regimes which opened the reigns of James III and James IV later in the century.<sup>74</sup>

#### IV

The uneven nature of royal authority as a result of repeated minorities and interruptions in personal monarchy provided the principal influence on the development of Scottish government between the later thirteenth and early fifteenth centuries. Minorities like those of Alexander III and James II led to the elevation of councils with the status to act in the king's name. By contrast a defined council in regular contact with the king is much harder to find during periods of 'normal' rule by an adult king. Contemporaries clearly thought of government as operating in terms of kings receiving counsel and those named on royal charters hint at the identities of those in attendance. However, clear mentions of councils are mostly reserved for larger gatherings meeting irregularly and representing different groups in the kingdom. It was out of these bodies that efforts to reconfigure and shape royal authority with reference to a set council emerged in the later fourteenth century. Such efforts might

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<sup>73</sup> *RPS*, 1440/8/5; NRS GD124/1/127; M. Brown, 'Public Authority and Factional Conflict: Crown, Parliament and Polity, 1424-1460', in Brown and Tanner (eds), *History of the Scottish Parliament*, pp. 123-44, 132-3.

<sup>74</sup> N. Macdougall, *James III* (Edinburgh, John Donald, 2009), pp. 40-80; N. Macdougall, *James IV* (Edinburgh, John Donald, 1989), pp. 49-72.

appear to provide a link to the council of twelve supposedly foisted on King John in 1295 or to the short-lived 1440 council, but it is probably unhelpful to search for a Scottish tradition of conciliar direction. Instead the Scots, like other communities in later medieval Europe, looked to an ideology of good counsel to inform their responses to crises of kingship.