

Local Administration in Ayrshire

1750-1800.

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Local government, according to modern standards, by elected councils, is a development of comparatively recent date. County Councils, for instance, were not set up until 1889 ; and, during the present century, local government has further developed into a most complicated organisation in each county where the local authorities, guided by highly qualified officials, employ many persons in a vast range of occupations. But, at the time of Robert Burns, local affairs were managed according to a much less definite pattern than is the case to-day ; and we should remember, too, that the field of administration was very limited, and that there was no system of local taxation as at present.

In considering local affairs of two hundred years ago, it is essential that we should retain prominently in our minds the outstanding fact of the contrast in population between 1750 and 1959, the primitive methods of transport, and the undeveloped nature of the educational system which meant that very few people were then competent, either by knowledge or experience, to make any salient contribution to local affairs. The proprietors of landed property undoubtedly played the predominant part in central and local government during the period covered by this volume. One writer summarises the position thus, "Both local government and parliamentary representation were attached to this species of property and governing was part of the traditional duty of proprietors."¹ Landowners were certainly the accepted leaders in parochial and county affairs, and it was quite feasible that the same landowner might share responsibility in church affairs as a member of a kirk session, in education as a heritor, and in certain county matters as a Justice of the Peace, or as a Commissioner of Supply. Without doubt, a simple administrative system which could operate in 1750 would be totally inadequate to-day, with its changed conditions.

With these general thoughts for our background, let us now consider how local affairs were administered between 1750 and 1800.

1. J. L. Saunders, *Scottish Democracy, 1815 - 1840*, (1950), p. 18.

Commissioners of Supply² played the major part in the administration of a certain limited number of affairs affecting the county as a whole. Commissioners of Supply had been appointed prior to 1667, but it was in that year that they received statutory recognition when thirteen Commissioners were appointed for the County of Ayr. The number of Commissioners increased, however, until, during the time of Robert Burns, as many as seventy were present at the main annual meeting of the Commissioners. This meeting was held in Ayr, usually in April each year, when a Convener, a Clerk, and a collector of the land tax were appointed. The most important original function of the Commissioners was the collection of the land tax which "was a grant to the Crown of so many month's cess or stent—one month's cess yielding a fixed sum of £6,000 sterling."³ By the Treaty of Union, 1707, Scotland's contribution was fixed at £48,000, so that, even by 18th century standards, the sum involved was not large. An Act of 1798 made the land tax perpetual, but this Act made provision for the voluntary redemption of the tax. However, the collection of the land tax remained one of the chief functions of the Commissioners of Supply until 1836, after which date the collector of the tax was appointed by the Lords of the Treasury.

The ingathering of certain other taxes, like the window tax, was the responsibility of the collector appointed by the Commissioners of Supply, but the income from these taxes was inconsiderable, for their collection did not prove a very practicable proposition. Regarding the window tax, for instance, in an amending Act of 1753 it was stated "that hardly anything had been produced from Scotland."⁴

Various Acts of Parliament had delegated certain duties affecting the repair of highways and bridges to Commissioners of Supply and to Justices of the Peace acting in unison; but no evidence is found in the records of the Ayrshire Commissioners of Supply of any co-operation. The Commissioners, however, acted in conjunction with the freeholders⁵ regarding the construction and repair of bridges at an annual meeting when applications for grants for bridge building from individuals or from road trustees were considered. Expenditure was then estimated,

and a tax termed "bridge money" was levied on the same valuation roll as that applicable to the land tax. This system remained in operation until 1831, when the County Road Trustees undertook this aspect of the Commissioners' duties.

The wider question of the provision of roads was being tackled in different ways, but with little success. The system of statute labour, required by an act of 1669, by which "tenants, cottars, and other labouring men" should work six days annually on the roads did not function with success;⁶ so that in Ayrshire, as elsewhere, the inadequacies of the roads were becoming more and more obvious. In the later 18th century two Turnpike Acts affecting Ayrshire were passed by which Turnpike Trusts were established, which arranged for the levy of tolls, the proceeds from which would be utilised for road improvements. Further, the inauguration of County Road Trustees brought about a certain useful co-ordination of effort to all County road work. Thus, while Burns lived, a more realistic approach was being made to the urgent problem of improved road transport.⁷

The Justices of the Peace,⁸ meeting in Quarter Sessions, acted in some ways as a 'County' organisation, for they did formulate regulations affecting the County as a whole relating to problems like road improvement, the suppression of begging, the provision of relief to the poor and the preservation of the peace. Unfortunately the records of the Ayrshire Justices of the Peace are not extant prior to 1895, so that we have no clear picture of the extent to which they implemented their responsibilities. According to Acts of Parliament a variety of duties had been assigned to Justices of the Peace before 1750 and, with the abolition of heritable jurisdictions in 1748, a more unrestricted field was available to them. Thus, during the time of Burns, one may conjecture that the Justices were playing quite an important part in county affairs. There is no reason to suppose that the Ayrshire Justices did not discharge their duties, for we do find indirect evidence, although fragmentary, of their work in the minute books of kirk sessions and of presbyteries, and in those of the Ayrshire Commissioners of Supply. We do know, for instance, that the Ayrshire Justices of the Peace issued an instruction in 1752 requiring

6. *Ayrshire Collections*, Vol. IV, p. 195.

7. For details of road improvements, see p. 152, foll.

8. An Act of 1578 provided for the appointment of a certain number of Commissioners and Justices for each County who were to meet four times annually in the Tolbooth of the head Burgh of the Shire, but this effort to establish Justices of the Peace is usually viewed as an experiment. Commencing with a further Act in 1609, various statutes were passed during the 17th century which are believed to have established Justices of the Peace in Scotland; but it was not until the 18th century that they secured a firm place in local administration. Until 1707 they were appointed by the Privy Council to whom they were responsible, but, on the abolition of the Privy Council in that year, they became officers of the United Kingdom responsible to the Crown.

2. Landowners who acted as Commissioners of Supply did so in virtue of having their names inserted in the annual Act of Supply, and this practice continued until an Act of 1798 stated that the Commissioners of 1797 should remain in office, "additions being made from time to time to fill vacancies." According to the Act of 1798, no person could be a Commissioner who was not "enfeoff of £100 Scots per annum of real rent in the County where he lives." This remained the rule until 1856, when certain modifications were made.

3. Rait & Pryde, *Scotland*, 1954, p. 166.

4. C. A. Malcolm (editor), *The Minutes of the Justices of the Peace for Lanarkshire*, 1707-1723, p. lx.

5. For freeholders, see page 101.

the heritors and kirk session in each parish to meet together in order to make adequate regulations to curtail begging. Later, in the same year, the Justices decreed that all beggars who did not have a settlement in Ayrshire should, before 1st June, 1752, leave the County "under pain of being apprehended by constables and incarcerated in the prison of Ayr and fed on bread and water for ten days." The reference to constables is especially interesting, for it was one of the functions of Justices of the Peace to appoint for each parish two constables who should act for six months. And there is other evidence of the existence of constables in Ayrshire recorded when the kirk session of Straiton in 1759, in considering the case of two troublesome paupers, resolved to urge the Justice of the Peace "to grant warrant to constables to carry the said Campbell and McClelland forth from the parish of Straiton to the parish of Carsphairn." In considering the appointment of constables, we should remember that it was not until 1841 that Ayrshire had the beginnings of a police force when a superintendent and 14 constables were appointed who were to hold office on permanent basis.

Efforts to restrain vagrancy and to co-operate with kirk session and presbytery in the administration of help to the needy were very important aspects of the work of the Justices of the Peace, but their field of activity was very wide indeed. Their other duties related to the care of highways, bridges and ferries, to the regulation of the prices of labour and of contracts between masters and servants and to the inspection of the standard of weights and measures. Finally, the preservation of the peace, which involved the trial and punishment of offenders, held a very important place in the work of the Justices.

While the Justices administered Court work, the freeholders,⁹ with whom were associated the Commissioners of Supply, were authorised by the Disarming Act of 1725 to levy an assessment "for the amount required to defray the cost of apprehending criminals and of subsisting them in prison until prosecution." The money so collected came to be known as "rogue money." The Ayrshire freeholders met annually to determine the rate of assessment, and from 1750 to 1800 the assessment was annually "3/- Scots to be uplifted in December and in March out of each £100 Scots of valuation in the shire to be applied towards defraying the expenses of prosecuting criminals as the law directs." While the freeholders determined the rate of assessment, the Commissioners of Supply organised the actual collection and administered the sum collected, and it was from the money available in this way that the expenses of the courts of the Justices of the Peace were defrayed.

9. For freeholders, see p. 101.

Transcending the status of the courts of the Justices of the Peace there was the sheriff court. The institution of the office of sheriff dates from the 12th century, and the office was one of great importance to the sovereign for, through the sheriff, he hoped to strengthen the royal power in the country; but the reverse sometimes occurred when powerful hereditary sheriffs rivalled the royal authority. Nevertheless, the sheriff played, in theory, if not always in fact, an essential part in local administration, for he came to be responsible for justice, both civil and criminal, for the oversight of the military forces of the Crown, and for the maintenance of peace and for finance.¹⁰ But his jurisdiction was not always co-extensive with the shire for, as one historian informs us, "Lords of regality possessed jurisdiction equal to, and in some cases greater than, that of the sheriff . . . while the burgesses of the royal burghs claimed the right to be heard only before their own courts or that of the Chamberlain."¹¹ Thus, the way was paved for conflicts between the sheriff and other local jurisdictions or with the privileges of royal burghs; and there is evidence that these did occur during the Middle Ages. In the royal burgh of Ayr, for instance, disputes arose between sheriff and the burgh regarding the right of the sheriff to interfere when the special burgh fairs were held.¹²

With the abolition of heritable jurisdiction in 1748, there is no doubt but that the sheriff courts, as one historian informs us, "began to advance in power and prestige"¹³, so that, at the beginning of the period covered by this volume, the sheriff court must have become established in its new-found freedom. The years from 1750 to 1800 we can consider a period when the sheriff in Ayrshire was developing into a recognised force in the county. In addition to his civil and criminal jurisdiction, his field of work covered various administrative duties. It was from him, for example, that the Commissioners of Supply received notification of the Act of Supply which dealt with the land tax; the Justices of the Peace themselves would frequently receive communications from the sheriff; and, further, he discharged duties in connection with parliamentary elections. He was still expected to play an active part in arrangements for defence, for the Ayrshire freeholders, in their address of 1759 to the sovereign, asked that "His Majesty be graciously pleased to order the sheriff, according to the old laws of North Britain, still in force, to appoint officers to train fencible men in each parish, and to order 1,000 stand of arms to be delivered over to the sheriff to be distributed by him among the officers to be appointed which are to be accountable to him for same."¹⁴

10. Mackie & Pryde, *Local Government in Scotland*, p. 6.

11. W. C. Dickinson, *The Sheriff Court Book of Fife*, 1515-1522.

12. A. I. Dunlop (editor), *The Royal Burgh of Ayr*, p. 25-26.

13. Rait & Pryde, *Scotland*, p. 176.

14. *Muniments of the Royal Burgh of Irvine*, Vol. II, p. 142.

Commissioners of Supply, Justices of the Peace and freeholders had for their sphere of administration the whole county; but parochial affairs were, on the whole, the province of heritors and kirk sessions. One must, however, guard against assuming that there was any very definite delimitation of duties, for much overlapping and co-operation of effort existed.

It has been correctly recorded of the kirk session that it was, during the 18th century, one of the most active agents of local government.¹⁵ The administration of poor relief, the oversight of the conduct of its parishioners, and the provision of education were functions in which it played an outstanding part. In implementing these duties, however, the kirk session was actively associated with the heritors and the Justices of the Peace of the parish, as well as with its own superior court—the presbytery.

The basis on which poor relief was administered until 1845 was set out in Acts passed in 1574 and in 1579 which dealt with the method of assessment, the regulation of begging and the problem of settlement and removal. During the period of our study the main responsibility for administration rested with the kirk sessions who meticulously kept a roll of the poor persons in their parishes and granted to them a small allowance from the very limited funds available which were, in the main, the collections at church door, augmented, perhaps, by fines from those guilty of offences which came within the cognisance of the kirk session, and from interest on mortifications; but collections were certainly the chief source of the session's revenue. Towards the end of the 18th century, however, kirk sessions found themselves confronted with a serious problem for their income—tiny at the best of times—did not nearly keep pace with the rising prices of that period, so that the small allowances disbursed could not be augmented from existing sources of income. The increasing absence of heritors from their parishes added further to the sessions' difficulties, and in south Ayrshire, at least, the kirk sessions were emphatic in their criticism of the absence of the heritors, and the consequent loss of financial help from them. By 1800 kirk sessions were facing a financial crisis which was only partly resolved at the beginning of the 19th century when the heritors, in many parishes, voluntarily assessed themselves so that the funds available for charitable purposes might be increased.

But problems in addition to the actual disbursement of relief confronted kirk sessions. They had to ensure that aid was given to the needy only, and to those qualified to receive it by having satisfied the necessary residential qualification of having had

three years' residence in their parish. Should the residential qualification not be fulfilled, paupers were sometimes removed to their parish of settlement. When such circumstances arose kirk sessions sought the assistance of the Justices of the Peace to have their orders enforced, just as they did in troublesome cases of begging. Occasionally the need for removal was obviated by financial arrangements made between parishes.

Kirk session records, during the 18th century, abound with evidence of the efforts made by the church to uplift the moral tone of their parishes. Page after page, in most minute books, is devoted to enquiries into cases of immoral conduct; cognisance was also taken of offences like drunkenness, swearing and profanation of the Sabbath. It was not unusual, when difficulty arose, for the session to seek the assistance of the Justices of the Peace in country parishes, and of the magistrates in the towns.

In the field of education, responsibilities were shared by the church and the heritors, with the Commissioners of Supply in the background as the enforcing authority if an appointment were not made. The well-known Act of 1696 required that a school should be established in every parish with a house for the schoolmaster, and the financial burden, and the responsibility for making the appointment, rested with the heritors, but the suitability of the candidate was decided upon by the minister and kirk session or presbytery. Thus, during the last half of the 18th century, in Ayrshire as elsewhere in Scotland, heritors, kirk session and presbytery played an active part in the provision of education. It was only if the heritors failed in the duty assigned to them that the Commissioners of Supply were authorised to make the appointment and fix the salary; but in the minute books of the Ayrshire Commissioners for the period 1750 to 1800 there is no evidence that they were called upon to act in this way.

The system of local government which has been described took a more complex shape in these communities which were burghs. In the two royal burghs of Ayr and Irvine and in the dozen other functioning burghs of barony¹⁶ the town councils not only performed their primary function of organising markets and fairs and supervising manufactures, but also the incidental though important duties of preserving the peace, maintaining the thoroughfares and fostering the welfare of the community in various ways. The burghs were not really democratic for it was only a minority of the populace who held burgess tickets, and vacancies in the council were usually filled by persons chosen by councillors themselves, rather than by open election.¹⁷ The

15. Mackie & Pryde, *Local Government in Scotland*, p. 9.

16. See p. 130 for details.

17. For the method of election, see p. 81.

councils chose from their own number bailies who acted as magistrates in the burgh courts, and they co-operated with other administrative authorities as necessary.

They acted, for instance, with the church and the heritors in the provision of education, and the magistrates of Ayr identified themselves with the kirk session of the Parish Church in the establishment of Ayr Poorhouse in 1756, and again in 1776 they worked with the session in an effort to restrict the prevalence of begging. Finally, when the Ayrshire freeholders met in 1759 to prepare an address to the King regarding defence, the burghs of Ayr and Irvine, at the request of the freeholders, presented similar addresses to the sovereign.¹⁸ Thus there existed a very praiseworthy community of effort between the burghs and other organisations during the years 1750-1800.

We can suitably conclude this brief description of local administration during the period 1750-1800 by detailing an example which further emphasises the co-operation that existed between one organisation and another when a problem of urgency arose. It was on such occasions that the Lord Lieutenant, who was the sovereign's personal representative in each shire, played the predominant part. During the period 1714-1794 there were no Lord Lieutenants in any of the counties of Scotland, but on the revival of the office in 1794, however, no time was lost in setting machinery in motion to bring together the various organisations into effective co-operation. Towards the end of the 18th century the Lord Lieutenant of the County of Ayr, on whom fell certain responsibilities regarding defence, on more than one occasion convened meetings of Justices of the Peace, Freeholders, Heritors and Commissioners of Supply, all of whom assisted in raising forces to defend their county against the possibility of invasion. In 1794 and again in 1797 such meetings were held when arrangements were made for raising troops of fencible cavalry. At the second meeting, it was decided to solicit offers for the use of horses and carts to facilitate the movement of the troops. Many offers of assistance were received and a form of obligation signed by those agreeing to help. The agreement reads: "Whereas it has been signified to us that there is a probability of some troops being encamped in the neighbourhood of the town of Ayr for the protection of that part of the coast; and that it would be of great importance that these troops might be speedily conveyed upon any emergency to whatever point it might be necessary to order them:—We, the undersigned, oblige ourselves, upon any alarm regarding immediate transportation of troops, to furnish for that purpose the number of Men, Horses and Carts

annexed to our several subscriptions without any charge to the government when required by the Lord Lieutenant or his Deputies to do so, it being understood that this obligation for furnishing Men, Horses and Carts is limited to the County of Ayr; at most to a stage beyond it." Thus our forebears faced a problem which was to confront our country in a much more serious and urgent form almost two hundred years after the birth of Robert Burns.¹⁹

19. In the preparation of this article the writer has made use of his earlier article in *Ayrshire Collections*, Vol. I, p. 151-176, and his book, *Poor Relief in South Ayrshire, 1700-1845* (1942), in addition to the other authorities already noted.

18. *Muniments of the Royal Burgh of Irvine*, Vol. II, p. 141-143.