



Constitutions of the Kirk

Why is it that in almost every town and village in Scotland there is a proliferation of church buildings?

Congregational and Constitutional Origins

You might be tempted to think that once upon a time all of these great buildings were required because the mission of the Church was so successful that one place of worship would never have been enough. Sadly, this is not the case.



The Post-Reformation Auld Kirk

One of these buildings might, at one time, have represented the original post-reformation parish church. If so, it would have been established some time after the Scottish Reformation (1560) and its Kirk Session would have had both civil and ecclesiastical responsibilities. Its constitution would have been *quoad omnia* (for all purposes), because it dealt with matters in both of these jurisdictions (civil and ecclesiastical). Beside and nearby the church building, there might be an old house, which was once the manse, a school and school house. These were all part of the fabric of Scottish life.

The Kirk Sessions of such *quoad omnia* parishes were responsible at that time for many aspects of public life, which have long since been passed to civil authorities. The constitutional pattern of the *quoad omnia* parish, however, is still common today, and the 'Unitary Constitution'¹ exists as a written



form of this constitution. This allows the single body of the Kirk Session and its constituent committees to oversee everything from property to pastoral care and from finance to vision for the future.

Another possibility for one of these buildings is that it was originally built as a gathering place of a daughter church or a 'chapel of ease', where the parish remained under the civil jurisdiction of the *quoad omnia* mother church; the new

¹ http://www.churchofscotland.org.uk/__data/assets/pdf_file/0017/2816/Unitary_Constitution-Sample.pdf.



congregation was allowed, under Church Law,² to manage its own ecclesiastical affairs. In such cases, trustees were appointed to oversee the financial and property concerns of the congregation. Constitutionally, these were known as *quoad sacra* (for ecclesiastical purposes) parishes.

This was because they had no civil functions to perform; their duties were entirely church related. Here, we encounter the first real separation of things temporal and things spiritual, although the constitutional context was quite different from the variations that have come to the fore in more recent times. The 'Model Deed of Constitution'³ is the present day written form of the old *quoad sacra* constitution, where matters such as property and finance are taken care of by the Congregational Board, while the Kirk Session is left to oversee the spiritual life of the congregation.

The Emergence of the United Presbyterian Church

The funding for these original congregations mostly came from wealthy landowners otherwise known as heritors; their patronage was the customary way, in which the church and its ministry were funded. Patronage, however, was deeply unpopular especially when the patron tried to bring influence to bear on the calling of a new minister. As a result of patronage, deep divisions appeared in the post-reformation Church of Scotland.

From 1733⁴ onwards, many ministers and members broke away from the established church to form independent or voluntary congregations. These voluntary congregations spread across the whole of the Scottish landscape, eventually forming the United Presbyterian Church of Scotland in 1847. Thus, in most parishes across the country, a second church building had been erected, not because of any great missionary need, but because Christian brothers and sisters (but mostly brothers) disagreed on a principle of Church governance about which they felt there could be no compromise.

The mark of most of these congregations was that they were ruled by both a Kirk Session and a Board or Committee of Management. These managers, as they were known, had the express role of ensuring that matters temporal did not have to trouble the minister or the Kirk Session; they would be free to take care of all things spiritual. So, if your congregation has or has had a Board or Committee of Management, it is sure to have its roots in the United Presbyterian Church of Scotland and it may have or have had its own unique constitution.

1843, the Disruption, the Free Church and the Deacons' Court

Meanwhile, those who had stayed within the Church of Scotland were dealing with their own internal conflict over Patronage and, in 1843, this led to a huge split in the established Church. Under the leadership of Thomas Chalmers, a third of its ministers left the Church of Scotland to form the Free Church of Scotland. Within a year of this traumatic split - known as the Disruption - 470 new

² The Church of Scotland, Chapels Act of 1834 was disputed and was later declared *ultra vires* by the Court of Session in 1839. This was one of the issues between Church and State which led to the Disruption in 1843.

³ http://www.churchofscotland.org.uk/__data/assets/pdf_file/0019/1828/1994_Act_02_II_revised_2008.pdf.

⁴ This is the date of the First Secession.



church buildings had been erected and more were under construction.⁵ So, on account of further schism, rather than mission, yet another set of buildings and yet another denomination took root in the parishes of Scotland. This newly formed denomination was known as the Free Church of Scotland and it invented the 'Deacons' Court' as the constitutional body responsible for the management of matters temporal, while the Kirk Session got on with the business of overseeing matters spiritual. If your congregation, or one near you, has or has had a Deacon's Court, then, its roots will have been in the Free Church of Scotland.

Both the United Presbyterian and Free Church constitutions mirror the *quoad sacra* image of separate jurisdictions for the spiritual and temporal affairs of a congregation. There has been no shortage of "bonnie fechtors" in our Scottish Church tradition and it's these different traditions which emerged from our schismatic history that have left the Church of Scotland with congregations that are managed in quite different ways.

If you want to read more about the history of the Church of Scotland, you will find some of it in the books listed at the end of this article. But, it may be even more interesting for you to visit your local library and learn the story of your own congregation from local newspapers and pamphlets, which will map some of the significant changes in church life over the last two hundred years. Sometimes, if you want to know where you want to go, you need to know where you have been!

The Birth of the Modern Day Church of Scotland



Thankfully, schism is not the whole story. In 1900, the United Presbyterian Church of Scotland and the Free Church of Scotland (with the exception of around 150 Free Church congregations who continued the line of the Free Church of Scotland) came together to form the United Free Church of Scotland. Then, 29 years later, the Auld Kirk (those congregations which had never left the Church of Scotland) and the United Free Church (formed in 1900) were brought together on 2nd October 1929, when, in the presence of His Royal Highness

Prince Albert, Duke of York, the modern day Church of Scotland was born.

Healing of division is hard work and a church with division on its mind should always remember that it is easier to disjoin than to repair. It is hard to believe that the mission of the Church in Scotland has been much impaired by the way in which the energy of ministers and members has been absorbed, first in the setting up of rival denominations and then in the years of work involved in bringing about the reunion. More than 80 years on, the work of rationalising the number of buildings and

⁵ J. H. S. Burleigh, *A Church History of Scotland*, (Oxford: Oxford University Press, 1960), 355.



congregations is not yet complete and, with the gift of hindsight, it is obvious that the energy of those who engineered division would have been better spent in working with every fibre of their being on the peace and unity of the church.

A National Constitution for Everyone

The great union of the United Free and the Auld Kirk in 1929, which finally brought to birth the modern day Church of Scotland, did so under an 'Act of Parliament' (The Church of Scotland Act, 1921),⁶ which acknowledged that the Church was not 'established by law' by the Lord Jesus Christ. This finally purged the Church of any interference by the State in all spiritual matters. The Schedule to the 1921 Act, the *Articles Declaratory of the Constitution of the Church of Scotland in Matters Spiritual*, spelt out the basis of the Church's independence in 'matters of doctrine, worship, government and discipline'. The Articles Declaratory, however, did more than that - they also ensured that no one party or group or point of view could claim a monopoly of the truth. As a former Principal Clerk, James Weatherhead points out,

A member or office-bearer of the Church is free to believe that all the words in the Bible are together literally the Word of God, but that is not required of all members and office-bearers. Likewise a member or office-bearer is free to believe that all the doctrines in the Confession are fundamental, but again that is not required. The constitutional possibility of different beliefs is what allows the Church to be described as a 'broad-Church'.⁷

A Local Constitution for Everyone?

The union of the Churches may have brought us together under an Act of Parliament and a nationally recognised constitution, but it glossed over the question of unifying the way we work at congregational level. Adoption of the Model Deed of Constitution was certainly encouraged in the early years of the union, but it was never compulsory. As recently as 2008, the General Assembly urged congregations, which were not already using the Model or Unitary Constitution, to review their practice and consider adopting one or the other. This was prompted by the need for local congregations to comply with the Charities and Trustee Investment (Scotland) Act 2005, which placed upon members of Kirk Sessions, Congregational Boards, Deacons' Courts and Committees of Management the additional responsibility of Charity Trusteeship. With this comes a far greater need for transparency and simplicity in governance. In that context, the provision of a written constitution for the congregation and a single agency responsible for governance is greatly to be desired.

In order to comply fully with this burden of charity trusteeship, there has been a healthy trend towards the adoption of the 'Unitary Constitution'. This arrangement provides the necessary written constitution, but at the same time eliminates the possibility of Charity Trustees being constituted in separate meetings and coming to different views on matters of common interest. There may now be

⁶ <http://www.legislation.gov.uk/ukpga/Geo5/11-12/29>.

⁷ James L Weatherhead (ed.), *The Constitution and Laws of the Church of Scotland*, (Edinburgh: Board of Practice and Procedure, 1997), 26.



a compelling case for the adoption of the Unitary Constitution across the whole Church of Scotland - this is certainly a matter for discussion in both congregations and in the General Assembly. And, as a bonus, it may be the road to fewer meetings and more time spent on mission.

As an endnote to this article, the General Assembly of 2016, while not compelling every congregation to adopt the Unitary Constitution, decided that from 1st January 2017 the Delegation of Assembly would, in cases where a new constitution was requested, only issue constitutions in the Unitary form. So, it is that 2016 saw the very last issue of the Model Deed of Constitution.

Further reading and resources

James L Weatherhead (ed.), *The Constitution and Laws of the Church of Scotland*, (Edinburgh: Board of Practice and Procedure, 1997), especially chapters II, III, VI and XVII.

The Church of Scotland, Deed of Constitution (Unitary Form) –

www.churchofscotland.org.uk/__data/assets/pdf_file/0017/2816/Unitary_Constitution-Sample.pdf

Model Deeds of Constitution Act II, 1994 -

www.churchofscotland.org.uk/__data/assets/pdf_file/0019/1828/1994_Act_2.pdf

The Church of Scotland Law Department Circular on Charity Law -

www.churchofscotland.org.uk/__data/assets/pdf_file/0013/24520/Charity-Law-Overview-for-Church-of-Scotland-Congregational-Office-bearers.pdf