

THE SCOTTISH PARLIAMENT IN THE
RESTORATION ERA, 1660-1681

Gillian H. MacIntosh

A Thesis Submitted for the Degree of PhD
at the
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Restoration Era, 1660-1681'**

**Submitted by Gillian H. MacIntosh
for the Degree of Ph.D.
in the University of St Andrews
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Abstract

One issue has dominated the majority of historical studies of Restoration Scotland, that of religious dissent. Robert Wodrow's The Sufferings of the Church of Scotland from the Restoration to the Revolution portrayed an age of brutality in which the people were involved in a godly struggle in defence of Presbyterianism with an administration intent on maintaining Episcopal Church government. Wodrow's version of events has come to dominate the bulk of previous research, and few political studies of the period have been attempted. The Scottish Parliament, its role and function during the reign of Charles II has been particularly neglected. This thesis attempts to redress this state of affairs and provide a detailed account of Parliament during the period.

The thesis proceeds chronologically, with an initial chapter on the first session of the Restoration Parliament. The transition from the republican regime to restored monarchy is examined, and the Restoration settlement, the constitutional basis of government during the period, is studied in detail. The second chapter on the parliamentary sessions of 1662 and 1663 begins to examine the personalities of the administration, and discusses the factional divisions that play out in the theatre of Parliament. Following chapters on the Conventions of Estates of 1665, 1667 and 1678 study the effect of religious dissent on the fiscal fortunes of the crown. The growth of an increasingly effective parliamentary opposition is considered in a series of chapters on the Parliament of 1669-1674 and on the session of 1681, the last of Charles II's reign.

This thesis attempts to challenge the notion that Parliament in the Restoration era was merely a submissive body, easily moulded to the royal will. Instead, it is argued that the restrictions on parliamentary freedoms in the settlement of 1661 combined with the increasingly authoritarian administration of John Maitland, second Earl (later first Duke) of Lauderdale, created a body of opposition that believed Parliament had a substantial role to play. That such opposition existed sheds new lights on later events, particularly the deposition of the Stewart monarchy.

Abbreviations and Conventions

APS	Acts of the Parliament of Scotland
CSPD	Calendar of State Papers, Domestic Series
GUL	Glasgow University Library
HMC	Historical Manuscripts Commission
LP	Lauderdale Papers
NAS	National Archives of Scotland
NLS	National Library of Scotland
RPCS	Records of the Privy Council of Scotland
SHR	Scottish Historical Review
SHS	Scottish History Society

All monetary values are in sterling unless otherwise specified. In the seventeenth-century the rate of exchange was approximately £12 Scots to £1 sterling. A merk was approximately two thirds of £1 Scots.

The year is taken to begin on 1 January, not 25 March, as is sometimes the case in English usage.

Introduction

During the last decade there has been a renewed interest in the Scottish Parliament and a number of studies have furthered our knowledge of the institution from that first described in R.S Rait's The Parliaments of Scotland.¹ Yet the Restoration era remains one period in which there is an obvious gap in historical knowledge. This is largely because the religious conflict between Presbyterian dissenters and a government-supported Episcopal Church has dominated previous work, to the detriment of the history of the period as a whole.²

There are few studies focusing on the Scottish Parliament, a surprising omission considering the substantial amount of original evidence that survives. Both the manuscript and printed collection of the Lauderdale correspondence is ample basis for a study of government during the period.³ The enormous collections of Yester (Tweeddale) and Hamilton papers benefit from both writers' obvious reluctance to throw anything away. There are also significant deposits in local archives, many of which would merit a thesis in their own right. Parliament's own record is also admirably complete. Not only do we possess the proceedings of the 1660 Committee of Estates, but also later papers of the key parliamentary committee, the Lords of the Articles. Recently come to light are the minutes and proceedings of the 1678 Convention of Estates,

¹ R.S.Rait, The Parliaments of Scotland, (Glasgow, 1924).

² This situation is beginning to be redressed. A good general introduction to the Restoration era in a British context is C. Jackson, "Restoration to Revolution: 1660-1690" in Glenn Burgess (ed.), The New British History. Founding a Modern State, 1603-1715, (London, 1999), pp.92-114.

³ See, for example, the most recent study of Scottish government during the reign of Charles II, R.A.Lee, "Government and Politics in Scotland, 1661-1681" (University of Glasgow, Ph.D., 1995).

collected by Sir John Nisbet, King's Advocate. With details of voting lists, debates and speeches not recorded in the official record, there is probably no other session of Parliament in this period for which we know as much.

Due to the sheer volume of sources, it is therefore necessary to set out the limitations of this thesis. It concentrates primarily on sessions of parliament, although the proceedings of the 1660 Committee of Estates, a Parliament in all but name, receives due attention. The religious issues that so dominate earlier historical works are not given centre stage, although they are discussed where relevant. The history of the Privy Council during the Restoration deserves to be the focus of future inquiry, and, while the printed records of the Privy Council have been consulted, a thorough investigation of the manuscript registers lies beyond the scope of this present research. In general, council proceedings are only discussed in relation to parliamentary events.

As mentioned previously, there are numerous collections of correspondence that survive for the period. This thesis concentrates on the following in order to provide a balanced perspective. The large collection of Lauderdale correspondence provides a comprehensive account of government actions during the period of his administration. The Yester papers, the collected correspondence of John Hay, second Earl of Tweeddale, illustrate the changing fortunes of a prominent government minister, latterly driven into opposition. Both the Hamilton and Queensberry archives serve to portray two fairly consistent opponents of Lauderdale's administration, and the Stirling-Maxwell of Pollok collection provides a rare insight into a relatively minor, but significant local activist against the crown.

Note on structure and themes

The first chapter considers the transitional period from republican regime to restored monarchy. The nobility successfully ensured that they took the lead in negotiations for a new Scottish government to recover power lost first to the Covenanters, and then to Cromwell. The nobility's dominance of the meetings with General Monck and then of the recalled Committee of Estates enabled the royalist regime to gain a secure foothold. By the time the first session of the Scottish Parliament met in January 1661, the majority of opposition groups had effectively been sidelined. Parliament continued in this vein, utilising the covenanting traditions of oaths in order to purge opposing views from public offices. The chamber itself had a carefully managed membership, enabling the revival of pre-covenant institutions such as the Lords of the Articles and, in the third session, the return of Episcopal Church government. The Act Recissory, with a few exceptions, effectively turned back the clock to 1633. All such measures were granted with the minimum of protest.

Once more, Scotland was ruled by an absentee monarchy. The resulting problems this created are relatively well known, but are explored in closer detail in the second chapter. John Middleton, first Earl of Middleton, rewarded for his military exploits on behalf of the exiled King with the post of Commissioner to the Scottish Parliament, competed for the King's approval with the Scottish Secretary, John Maitland, second Earl of Lauderdale. The bitterness of this rivalry spilled over into Parliament. Indicating the overwhelming strength of crown control over the chamber Middleton, pretending to act on the King's wishes, successfully managed to get the estates to agree to an act removing Lauderdale, the King's chief minister from power. Needless to say, Charles

himself was not enamoured with such a scheme. Middleton's disastrous miscalculation cost him his job, paving the way for Lauderdale's dominance of the Scottish administration.

Scotland's relations with her southern neighbour dominated throughout the period and a number of issues stemming from this are discussed in the third and fourth chapters. Dragged into two Dutch wars fought primarily for English interests, the resulting downturn in trade was compounded by a series of restrictive acts passed by the House of Commons preventing Scottish access to the lucrative markets of the colonies. Two Conventions of Estates summoned in the mid-1660s for taxation purposes failed to have the desired effect on the economy. To solve these fiscal difficulties, the King initiated negotiations for a closer economic union with England. The subsequent failure of these discussions prompted further negotiations for a full political union between the two kingdoms. However, this was doomed to fail, simply because both parliaments refused to entertain any proposal that would mean a loss of power or status for either of the two institutions.

Lauderdale, the central personality of the period, saw himself chiefly as an English politician, albeit with Scottish responsibilities. When appointed Commissioner to Parliament in 1669, he left Court and journeyed north with little enthusiasm. His arrogant, abrasive and often contemptuous conduct in debates bred discontent among many of the estates, and this coupled with increasingly arbitrary restrictions on the freedoms of parliament, induced once loyal groups into supporting a long-time opponent of Lauderdale, William Hamilton, third Duke of Hamilton. Hamilton provided necessary leadership for an opposition group, and this was never more evident than in the parliamentary

session of 1673, discussed in the fifth chapter. The largest body of discontent seen since the Restoration was united by a common antagonism towards Lauderdale and a belief that Parliament had the right to play a suitably important role in policy. Yet Lauderdale survived all such threats to his supremacy because he alone controlled the flow of information to the monarch. Thus when opposition threatened his position he could simply obtain from the King an order to adjourn Parliament, thereby removing the opportunity for the opposition to express its discontent.

Throughout the Restoration there remained a consistently large body loyal to the crown, whatever the request the King made of it (as Middleton had shown in his attempt to remove Lauderdale). Yet the increasingly sophisticated and organised nature of the opposition necessitated an intensified level of crown control over the membership of the Convention of Estates of 1678, discussed in the sixth chapter. Despite the traditional restrictions of a Convention of Estates – summoned only for a grant of taxation, and prevented from considering all other matters – the opposition turned the discussions on controverted elections into a two-week struggle for supremacy. Lauderdale's power to adjourn any meeting of the estates that became insurgent always ensured that he would emerge victorious, but also under attack by the House of Commons in England, such discontent made his position increasingly untenable.

The thesis ends with a final chapter on the session of 1681, the last Parliament to be held in Charles II's reign. The end of the administration of the Duke of Lauderdale also makes this a natural cut-off point. The post of Commissioner was given to James, Duke of York, giving him an excuse to leave England while the debates over his rights as a Catholic to succeed to the throne

were at their most virulent. The existing parliamentary opposition was largely quietened by the appointment of the Duke of York, because few dared to voice discontent when the heir to the throne was present. Hamilton, along with many other opposition nobles, was appeased with positions in the new administration, and, without effective leadership, the parliamentary opposition did little to threaten the crown's legislative programme. Mirroring anxieties in England, however, there were grave concerns about James' faith, and the imposition of legislation such as the Test Act – requiring recognition of the King as head of the church – ultimately created a broader opposition united in defence of Protestantism. As a result, James' first Parliament as monarch, the session of 1685, was altogether more difficult for the crown.

Tracing the path from remarkable loyalty and compliance shown in the first Parliament of Charles II to the open hostility and rebellion that plagued the end of his reign, this thesis attempts to provide a much needed account of the proceedings of the Scottish Parliament during the Restoration era. The lack of such a study has made it impossible to accurately determine the continued evolution of the institution. However, by no means can this thesis alone provide a definitive account of an era that has been so long neglected by historians. Instead, it aims to provide a basis for future research into Scottish government, in the reign of Charles II in particular.

Chapter One

Turning Back the Clock: The Restoration Settlement and the Parliament of 1661

By the time Charles II was recalled as King of Scotland in May 1660, his royalist supporters had already begun to assert their dominance over Scottish politics, so much so that when the first session of Parliament met in January 1661, the majority of the opposition had already been silenced. However, it is not the case, as is sometimes supposed, that the members of the nobility were able to step back into their traditional roles without any challenge from other groups in society. From the time of General Monck's exit in January 1660 a power struggle erupted between Scottish politicians, with the royalist nobility eventually securing victory. In the meeting of Parliament that was to follow, opponents to the crown found themselves excluded from public affairs by a variety of methods that will be explored in this chapter. The significance of this lies in the explanation it provides for what happens later in the period; the restoration of episcopacy and the abuse of military power can be more readily understood by recognising that the attempts of the church and the people to resist the nobility were defeated.

* * * *

Charles II was proclaimed King of Great Britain, Ireland and France on 5 February 1649, some two years before he was actually crowned at Scone. In that period, negotiations took place between church and state to determine the terms of his office. It was agreed that Charles II was to be a 'covenanted king', subscribing the National Covenant and thereby swearing to uphold a

Presbyterian Church. The Act anent the securing of Religion and Peace of the Kingdom, passed by Parliament on 7 February 1649, resolved that a personal reformation of family and household of the monarchy was required, this part of a drive by the church to rid the land of sin. This situation, however, had drastically changed by the end of Interregnum: the King himself now dictated the conditions of settlement.

The majority of Scottish people greeted the Restoration of Charles II with considerable enthusiasm and celebration. Contemporary accounts tell of the Declaration of Breda being proclaimed at the Mercat Cross in Edinburgh,

with all solemniteis requisite, by ringing of belles, settling out of bailfyres, sounding of trumpetis, roring of cannounes, touking of drumes, dancing about the fyres, and using all uther tokens of joy for the advancement and preference of thair native King to his crown and native inheritance.

It was the occasion for much celebration, albeit largely orchestrated by the government itself. In Edinburgh “the spoutes of the Cross [were] rying and venting out abundance of wyne, placed thair for that end; and the magistrates and counsell of the toun being present, [were] drinking the Kinges health, and breaking numberis of glasses.”¹ Naturally, provision of free alcohol was an ideal way to procure enthusiastic public support. Yet away from the public celebrations, the political elites had for some months been making preparations for the return of monarchical government after nearly 20 years of internal upheaval. Eager to be rid of the large numbers of English soldiers garrisoned throughout the nation, the King was welcomed back unconditionally, for there

¹ John Nicoll, Diary of Public transactions and other occurrences chiefly in Scotland, 1650-1667, (ed. by D. Laing, Edinburgh, 1830), p.283.

was no Scottish equivalent of the Declaration of Breda. However, the fundamental questions regarding the respective powers of crown and Parliament remained unanswered.

The collapse of the Protectorate in April 1659 meant that the administration of Scotland was in turmoil. Within the political community, there were considerable numbers who had aligned themselves with the occupying forces and whose interests lay in preventing the restoration of the monarchy. However, the largest group, the Protesters, lacked capable leadership. Archibald Campbell, ninth Earl and first Marquis of Argyll, the famous covenanting leader, was never able to demonstrate the same ruthless capabilities during the Interregnum as he had during the 1640s. Despite being the most prominent Scot in London, another possible candidate for leader of the movement, Archibald Johnston of Wariston was in conflict with a significant group of his Protester colleagues. As the main opponents to the Protesters, the Resolutioners too were busy organising themselves. This group of Edinburgh ministers, dominated by Robert Douglas and James Sharp, were determined to ensure that if the King was to return, he did so under the terms set out in the Solemn League and Covenant.²

On 27 October 1659, the Cromwellian leader, General Monck, sent letters to the sheriffs of the shires, asking them to assemble the leading noblemen and gentlemen of their region. Letters were also addressed to the magistrates of the burghs. Monck invited both groups to send one of their number to attend a meeting in Edinburgh on 15 November, to “speak with them about some affaires

² J. Buckroyd, “Bridging the Gap: Scotland 1659-1660” in *SHR*, 66 (1987), p.2 and p.8.

that concerne the countries att that time.”³ One of the first measures undertaken when the meeting convened was the election of two presiding representatives from both the shire and burgh membership. Reflecting the different political factions involved, the burghs elected as their leader Sir James Stewart, the lord provost of Edinburgh (a known Protester, who was soon to be imprisoned on a charge of countenancing the execution of Montrose and who was to be fined heavily under the Indemnity). The shires conversely elected as their head William Cunningham, ninth Earl of Glencairn, a staunch supporter of the King who had gained royal favour through his involvement in an abortive royalist rising in January 1653. It was a visible indication of the strange mixture of sympathies that had come to endorse Monck’s authority.⁴

Following the election of the two shire and burgh representatives, Monck made a short speech and declared that each representative present had a duty to help preserve the peace of the commonwealth, to suppress all signs of disturbances and, significantly, to curb any correspondence with Charles Stewart. The commissioners agreed to these initial demands, but requested more concrete proposals on how to prevent disorders in the localities. Monck’s reply was highly unsatisfactory; he had no time to consider specific measures, but would welcome suggestions by the next meeting.⁵

Before the conference was adjourned, the commissioners were asked to

³ C.H.Firth (ed.), *The Clarke Papers*, 4 vols., IV, (London, 1901), pp.78-9.

⁴ *The Clarke Papers*, IV, pp.78-9; F.D.Dow, *Cromwellian Scotland*, (Edinburgh, 1979), pp.255-6. Dow’s study is the most comprehensive account of events in Scotland from Monck’s exit from Scotland in January 1660 to the sitting of Parliament in January 1661. For a similarly extensive account of the situation in Ireland, see A. Clarke, *Prelude to Restoration in Ireland: The End of the Commonwealth, 1659-1660* (Cambridge, 1999).

⁵ *The Clarke Papers*, IV, pp.113-5 and pp.120-1. For an example of the response to Monck’s request, see Glasgow City Archives, Stirling-Maxwell of Pollok Collection, T-PM 108/40, Reply by the Nobility and Gentry of Lanarkshire to General Monck’s letter to the shires and burghs, November 1659.

hold new elections for representatives to meet in Berwick in December. The resulting election contests provided the first indications that the initial consensus between the three estates was beginning to break down. Some shires were beginning to complain about the actions of their chosen representatives, for, as Robert Baillie, a Resolutioner minister noted, “after Monck’s march [into England in late 1659], some stickling there was in the west to have had meetings in shyres for new Commissioners.”⁶ Although the exact objections are unknown, it is possible that certain shires disliked the dominance of the nobility, who had, in effect, hijacked almost every shire seat. There had been criticism from individuals in the localities who felt that they were given no further consultation as to what had been decided at the first meeting with Monck. Sir Andrew Bruce of Earlshall, a resident of Fife, wrote to the General, bitterly complaining that he had been summoned to Cupar by Sir Alexander Gibson of Durie to approve a series of proposals that Durie and his followers had already written, “as if the gentlemen in this Shyre had been meer dolts.” Bruce was also indignant that Durie had been chosen as one of the Commissioners: “I was of lait desyred by your Lordship to discover the practises of malignants, and now they seem to be the men on whom your Lordship doeth repose and mainlie trust.”⁷ It was becoming increasingly evident that the coalition of widely differing viewpoints that the first meeting successfully united was but a temporary state of affairs.

At the meeting in December, the nobility began to increase their control over Scottish politics. Unlike the Protesters, the Royalists had capitalised on

⁶ R. Baillie, Letters and Journals, 3 vols., III, (Edinburgh, 1822), p.446.

⁷ The Clarke Papers, IV, p.223.

their support in the localities and for the gathering in December, the shires returned commissioners who were overwhelmingly royalist. Prior to the meeting, it had been decided that, owing to their poverty, each burgh was to send any comments on the particulars decided at the November conference to the Provost and Baillies of Edinburgh. They alone would be responsible for bringing the letters to Berwick. However, before the estates met it was decided that the burghs of Linlithgow and Haddington were to be added to the burgh representation.⁸ Thus, at the new election the burghs returned only four representatives, with Sir James Stewart, president of the estate in November, notably absent.

When the meeting at Berwick convened, the shires elected five of their number to personally attend the General. The five chosen to negotiate with Monck - the Earl of Glencairn, John Leslie, seventh Earl of Rothes, David Wemyss, second Earl of Wemyss, Alexander Montgomerie, sixth Earl of Eglinton and Alexander Bruce of Broomhall - had all been opponents to the Cromwellian regime and were all members of prominent noble families.⁹ In response to Monck's request for suggestions on how to ensure the peace of the country, the five representatives submitted a number of proposals. Their primary request was for the shires to be permitted to regulate their own affairs and to raise a force for their defence. Monck, however, only authorised the basic arming of a few key personnel, much to the chagrin of Glencairn and others. Thus, the meeting broke up on a sour note.¹⁰

⁸ 44 replies were eventually received from the burghs around the country. Dow, Cromwellian Scotland, p.255.

⁹ Dow, Cromwellian Scotland, pp.255-6. Bruce was brother to Alexander Bruce, second Earl of Kincardine.

¹⁰ *Ibid.*, p.256; The Clarke Papers, IV, pp.190-1.

Both the conferences at Edinburgh and Berwick revealed that, despite such minor disagreements, General Monck did plan to involve the chief men of Scotland in his plans to march south. Furthermore, Monck was prepared to offer the nobility the opportunity to return to their traditional position of political dominance. It is clear that the nobility dominated the shire membership of both meetings, and it was they who personally met with the General to offer proposals. Yet, Monck was careful to ensure that the nobles did not act too independently. His refusal to allow the Scots to take up arms either for his own assistance or in defence indicated that he was wary of allowing them such autonomy.¹¹

The royalist nobility's increasing determination to seize power was demonstrated when the shires and burghs met again in early 1660. Only 50% of shires and burghs sent representatives to the meeting on 2 February 1660, but the election process (in which shires elected one noble or laird while each burgh elected one burgess) indicated that the nobility was in the process of reasserting its political power. From October 1659, General Monck had permitted the nobility to take part in the elections, and this influence is reflected in the noble domination of shire representation at the meetings.¹² To illustrate this point the first business dealt with by the meeting was the issue of a disputed election in Midlothian. James Richardson of Smeaton was in competition with Lord Ramsay for the commission, but Richardson's was refused. Perhaps the most significant reason was that "Ramsay's commission is subscribed by the most

¹¹ Dow, Cromwellian Scotland, pp.256-7.

¹² The address to the localities giving permission to elect shire commissioners was addressed to the "noblemen, gentillmen and burgesses," despite the nobility being excluded from elections under the terms of the constitution of the Scottish Parliament. NAS GD 97/3/150. See also Dow, Cromwellian Scotland, p.259.

considerable noblemen and gentlemen of the shires, and Smeaton's is subscribed only by a few considerable gentlemen and by no noblemen."¹³ Noble representatives were returned for all but four shires.¹⁴

Correspondence from the Scottish nobility in London reveals this cooperation between the nobility and gentlemen from the shires. It was recommended that "some of the greatest interest" (presumably members of the nobility) "meet ... to keep correspondence with meetings of honest men in every shire." This was vital, since "the great means of preserving the liberty and restitution of Scotland" lay in achieving "hearty concurrences in such friendly and necessary meetings."¹⁵ Yet relations between the nobles and shires was less of an alliance than was perhaps as first intended, certainly from the shires' point of view. Indeed, the almost total noble dominance of the shire representatives was possibly one of the reasons why there had been demands in November for new elections to be held.

The main issue under discussion at the February meeting was the English Parliament and the fact that it had no Scottish representation. As it was likely that decisions made by the House of Commons would affect Scotland, the commissioners were eager to draw up a variety of demands that would be sent with a delegation to London. Various measures were agreed, such as encouraging trade, protecting shipping, releasing prisoners of war, and the establishment of a stable currency. However, soon a number of serious

¹³ NLS Lauderdale Ms 3423, 'Sederunt with an abstract of the proceedings of the noblemen and gentlemen, 2 February 1660,' f. 25.

¹⁴ *Ibid.*, f.25.

¹⁵ NLS Lauderdale Ms 3423, 'Lords Crawford, Lauderdale and Sinclair to their friends in Scotland,' April 1660, f.33. The letter asked all individuals to "banish all designs for places of employments." Instead, it recommended that "all honest men first labour to save the ship before any passenger locks his private concerns."

differences emerged between the shires and the burghs. The burghs were anxious to enforce the law of debtor and creditor and by implication collect what was owed to them by the nobility. The shires, however, wanted to continue the system of deferment sanctioned by the Cromwellians.¹⁶ Shire opposition was voiced at the burghs' proposal for the speedy setting up of law courts (and thus, by implication, the legal enforcement of the laws of debt). In reaction, the burghs complained of the shires' proposal for the revocation of gifts and annuities.¹⁷ Squabbling over the financial reparations to be offered to those who had suffered in the last 20 years turned out to be the main item on the agenda.¹⁸ The financial implications of the Scots initial demands were of obvious importance to each of the gathered estates. The burghs desired that the union with England be maintained, probably because they wished to extend or improve the mercantile relations between the two countries. The shires, evidently influenced by the nobility, were eager to return to the system of old where the nobility assumed their traditional political dominance. In the end, both parties decided to send separate messengers to London with their individual requirements.¹⁹ Such a move only served to weaken Scotland's voice.

¹⁶ The shire of Renfrew was in fact supportive of the burgh stance, and in their instructions to their representative the Earl of Glencairn, ordered him to ensure that Renfrew's economic grievances received a speedy redress. Glencairn, however, gave notice that he would refuse to carry out the instructions, and faced complaints from the signatories of his commission. In a letter to Sir George Maxwell of Nether Pollok, he informed him that "though I needed the act of debtor and creditor als much as other, yet I thought it mor suitable ... [to act] in the guid of the publick." Such blatant disregard of shire demands by the nobles that represented them gives further credence to the notion that the nobility had, in effect, hijacked the shire membership. Glasgow City Archives, Stirling-Maxwell of Pollok collection, T-PM 108/41 Instructions from the Noblemen and Gentlemen of the Shire of Renfrew to William, Earl of Glencairn; T-PM 113/872 Glencairn to Sir George Maxwell of Pollok, 28 January 1660.

¹⁷ Buckroyd, "Bridging the Gap," p.13; NLS Lauderdale Ms 3423, 'Proceedings of noblemen and gentlemen,' ff.25-26; Dow, *Cromwellian Scotland*, p.259.

¹⁸ Monck also used the occasion to remind the shires that significant arrears of cess were still owed to the government. Swift re-payment of this debt would, he argued, mean that their grievances may meet with a sympathetic ear. Dow, *Cromwellian Scotland*, p.259.

¹⁹ NLS Lauderdale Ms 3423, 'Proceedings of noblemen and gentlemen,' ff.25-6.

The nobility's dominance was again apparent when shires chose their commissioners to be sent to London to meet with the English Parliament.²⁰ Their instructions outlined a number of mainly economic and political grievances: trade and fishing were to be promoted, public judicatories were to be reconvened and the assessment and excise was to be made proportional to England. The Earl of Glencairn was again chosen as part of the membership, and Sir James Home, third Earl of Home, Sir Alexander Gibson of Durie, Archibald Stirling of Carden and Mungo Murray, brother to the Earl of Atholl, completed those appointed.²¹ The burghs sent only one representative, William Thomson, clerk of Edinburgh council.

Yet, by the time the messengers reached London, the Republican regime was crumbling. General Monck therefore had little time to consider the particulars of a Scottish government, and so in March 1660, five commissioners for managing the affairs of Scotland were appointed. Monck chose to completely ignore those who had been elected as commissioners to the two meetings in late 1659, preferring instead to appoint trusted military colleagues. General Morgan and Colonels Twistleton, Daniel, and Molyneux Disney (replacing the initial members Whetham and Markham) arrived in Edinburgh in May 1660, and with the King's approval, acted as the government of Scotland until August 1660. Ten judges were also appointed in March – four Englishmen and six Scots.²² The appointments were not well received. Monck had

²⁰ For the instructions given to the Commissioners, see 'Instructions for the Commissioners in London,' NLS Lauderdale Ms 597, ff.50. See also NLS Lauderdale Ms 597, 'Instructions to the Commissioners of the Shires in London,' ff.21 which directed the Commissioners to seek redress from the English Parliament of the sufferings the nation had so long endured under the Cromwellian regime.

²¹ All the Commissioners chosen were part of the core royalist group who dominated proceedings at both this meeting and the subsequent diets of the Committee of Estates. Except Glencairn, all were subsequently appointed to the Lords of the Articles.

²² Dow, *Cromwellian Scotland*, pp.260.

promised to treat Scotland on an equal footing with England, but the appointment of this influential group looked instead like an attempt at subjection. Insult was only added to injury when it became apparent that for the first time since the 1653 Barebones Parliament, there would be no Scottish representation at the English Convention Parliament.²³

The Scottish nobles were worried by the turn of events. Anxious to play an important part in the English negotiations that were ongoing, it was at first suggested that John Maitland, second Earl (and later Duke) of Lauderdale and John Lindsay, seventeenth Earl of Crawford-Lindsay should act on the nobility's behalf since they were presently in London. However, this was rejected, and on 5 April 1660, the noble members, along with some of the gentry, assembled to choose representatives to send to London without the permission of Monck.²⁴ Claiming the right to convene by virtue of the warrant granted to the shire commissioners in February, the meeting was attended by 13 noblemen and ten shire representatives. Under the presidency of John Leslie, Earl of Rothes, the commissioners drafted correspondence to the King indicating that they were waiting for instructions on how they could serve him. The commissioners appointed in February to travel to London were again re-appointed, this time with the addition of two burgesses, Robert Murray and James Borthwick of Edinburgh.²⁵ The commissioners left Edinburgh on 20 April with a draft letter

²³ *Ibid.*, pp.260-1. On 22 March 1660, two of the commissioners sent to London, the Earl of Glencairn and Archibald Stirling of Carden, drafted a letter to Monck asking him to summon a new series of meetings in which the shires and burghs could address the "manie and daylie growing troubles this Nation has long and still does lye under." The request was ignored. NLS Lauderdale Ms 597, f.22.

²⁴ *Ibid.*, p.262; For the minutes of this meeting, see NLS Lauderdale Ms 3423, 'Proceedings of the noblemen and gentlemen, 6 April 1660,' f.28.

²⁵ *Ibid.*, f.28; The noble members of the meeting had probably vetted both men. Robert Murray was to become a key figure in the Committee of Estates, a Privy Councillor and a prominent member of the ensuing session of Parliament.

for the King, but once again they reached London too late to influence English opinion.²⁶ The elections to the Convention Parliament were already under way and were producing results in favour of the Restoration of the monarchy. Nevertheless, summoning their own meeting without Monck's approval indicated that the Royalists in Scotland were exercising significant power even before the King returned from the Continent.²⁷

In England, the Convention Parliament convened on 25 April 1660 to try to agree the basis of a Restoration settlement. The bitterness of civil war and regicide, however, had left serious political divisions, which hampered the attempt to come to a unanimous agreement on the role of the monarchy and its relationship to Parliament. As in Scotland, in England there was a split between those who had remained committed royalists since Charles I's reign, and those who had sided with Parliament or who had collaborated with the Republican regimes. Charles II recognised this when he included both groups in his reconvened Privy Council. Nevertheless, despite the divide, the Convention Parliament soon agreed that the monarchy should return unconditionally, apparently disregarding the Nineteen Propositions, the Newcastle Propositions and the Treaties of Oxford, Uxbridge and Newport. The Declaration of Breda was accepted instead, a package which contained something for every political faction in England. As a result, the Convention proceeded to reconstitute the King, Lords and Bishops, and disbanded the armed forces, while the attempts that Parliament had made in the 1640s to curtail the King's rights were seriously curtailed. In a reaction that was to be also the case in Scotland, the upheaval of

²⁶ NLS Ms 2263, 'A History of Events 1635-1661,' f.239.

²⁷ Dow, Cromwellian Scotland, pp.262-3.

the Civil War period drove many towards supporting a strong monarchy.²⁸

Until an English settlement had been successfully thought out and implemented, Charles and his chief ministers refused to call a Scottish Parliament. Instead, the newly restored monarch asked for proposals for the administration of Scotland in the interim. Since March, the government of Scotland had lain in the hands of the four commissioners appointed to that task by the Republican regime. Thus, the majority of the nobility and gentry advocated the recall of the 1651 Committee of Estates, which would sit until a full session of Parliament could meet.²⁹ Such a proposal from the Scottish estates recognised that the power of summoning Parliament rested solely with the King, therefore ignoring the constitutional legislation of 1639-41, despite the fact that this legislation was still legally viable. Thus the Committee of Estates was scheduled to meet on 23 August and act as a provisional government until the holding of Parliament on 23 October 1660.

In August 1660, Charles began to appoint his chief officials in Scotland. John Middleton, first Earl of Middleton, a professional soldier who had gained the King's favour in the 1650s with a futile royalist rising, had latterly been employed by the exiled King in various schemes to raise money and troops. As his reward, he was given the post of King's Commissioner for the Scottish

²⁸ B. Coward, *The Stuart Age: England 1603-1714*, (London, 1994), pp. 282-5.

²⁹ The decision to reconvene the 1651 Committee of Estates would seem to have been taken by the Commissioners in London with the advice of the nobility and gentry meeting in Edinburgh. See NLS Ms 2263, 'A History of Events 1635-1661,' f.240 and the 'Petition of the Nobility and Gentry of Scotland then at London, July 1660,' NLS Lauderdale Ms 3423, f.52. At a meeting of the nobility held at the Earl of Crawford's house to discuss the proposal, Sir George Mackenzie of Tarbat was the only dissenting voice. He protested "that the Parliament 1650 from which that committee derived their authority, was no free and legal parliament," it was "in effect a continuation of the late rebellion" and therefore "none authorised by them should be entrusted with the government. This notion, however, only "displeased many of the grandees, who had been involved in that rebellion themselves." Sir George Mackenzie of Rosehaugh, *Memoirs of the Affairs of Scotland*, (ed. T.Thomson, Edinburgh, 1821), pp.11-12.

Parliament. Believing that the Covenanters and Presbyterians had been traitors to Charles I, Middleton's close association with Charles II's chief English minister and fervent Episcopalian, Edward Hyde, the Earl of Clarendon, only served to fuel his anti-Presbyterian views.³⁰ It is clear from contemporary evidence that Middleton was not a popular choice, especially amongst those who were hoping for a Presbyterian Church settlement.³¹ John Maitland, second Earl of Lauderdale, was appointed Secretary of State, despite political manoeuvrings by the Earl of Clarendon to remove Lauderdale's influence at Court in London by ensuring that he was given instead the post of Chancellor (which eventually went to Glencairn).³² Lauderdale had been imprisoned for the last nine years and, on his release, was understandably eager for political power and favour. Despite evidence which suggests that Lauderdale was by conviction a Presbyterian, he was prepared to sacrifice the implementation of, for example, the Solemn League and Covenant, in order to safeguard his political career. Although he would continue to press the King for a Presbyterian settlement, Lauderdale was shrewdly aware of Charles' dislike for such church government, and, as a political realist, was ready and prepared to modify his religious conviction in response to the current political situation.³³

Among other appointments made were Alexander Leslie, first Earl of Leven as Governor of Edinburgh Castle and the Earl of Crawford-Lindsay who was retained in his post of Treasurer. Sir John Fletcher as King's Advocate, Sir

³⁰ J. Buckroyd, Church and State in Scotland, 1660-81, (Edinburgh, 1980), pp.20-1 and p.27.

³¹ The Resolutioner minister, Robert Baillie of Kilwinning notes in his journal of the period: "For a Commissioner, by our Nobles consent, least strife should be for it, the Lord Middleton, Earl of Fettercairn was nominat; who was not very acceptable to many." Letters and Journals, III, p.443.

³² Lauderdale shrewdly understood that "he who was possess of his Majesty's ear would govern all" and was determined to remain close to the King in London. See Mackenzie, Memoirs of the Affairs of Scotland, p.8.

³³ Buckroyd, Church and State, p.23.

Archibald Primrose as Clerk Register, Sir William Bellenden as Treasurer Depute, and William Keith, seventh Earl Marischal, as Lord Privy Seal completed the list. The majority of Officers of State had demonstrated their royalist credentials at some point in the past. However, Charles tried to ensure that the ministry appointed was both amenable to the royal interest, while maintaining a balance between the various factions of the 1640s and the collaborators.³⁴ Nevertheless, the appointments made could not please everyone, and it was impossible for the King to satisfy all those who felt they had remained loyal to the King's family and deserved public office.³⁵ In May 1660, the competition between James Carnegie, second Earl of Southesk and the Master of Gray for the Sheriffship of Forfar was so extreme as to lead Southesk to kill Gray in a duel. Moreover, the most notable factional divide, that between Middleton as King's Commissioner, and Lauderdale as Secretary of State for Scotland, was to become a major issue in Scottish politics in the years to come.³⁶ At this early stage, tensions existed, with both men becoming increasingly competitive in their desire to show their loyalty to the newly restored King.

³⁴ J.R Young, The Scottish Parliament, 1639-1661, (Edinburgh, 1996), p.304. Crawford-Lindsay is a good example of such an appointment. As Lord High Treasurer and President of Parliament under the Covenanters, Crawford had redeemed himself by protesting against the surrender of the King to the English and by becoming part of the Engagement. He was reinstated as Treasurer in 1660 and sat in the first session of Parliament, but resigned his office soon after rather than accept episcopacy. Despite being a supporter of the monarchy, he was also a strong Presbyterian who still demonstrated many of the beliefs of the Covenanting age.

³⁵ See Mackenzie who tells of how "people of all ranks, especially the nobility ... their expectations were so raised by the number of employments then vacant, and the selfish opinion of having deserved all at their prince's hands, to whom and to whose glorious father almost every considerable family pretended to have done some service, that most thought themselves disoblig'd by these appointments, than happy in the general revolution; whilst those who were advanced thought they were rather payed than gratified, and having missed greater employments, undervalued those they possess, or became dissatisfied by seeing their enemies prefer'd as well as themselves." Mackenzie, Memoirs of the Affairs of Scotland, p.5.

³⁶ Nicoll, Diary, p.300.

* * * *

The Committee of Estates, which was to provisionally govern the country until Parliament convened, sat from August to December 1660, sitting for 50 diets in total. Although technically based on the Committee of Estates from 1651, large numbers of members of the 1651 Committee did not attend, either because of death, withdrawal from politics to concentrate on personal affairs, or fear among former radicals of political retribution from the new royalist regime. To replace those absent members, a number of individuals gained admittance to the Committee despite holding no official commission: six nobles, 14 shire and nine burgh commissioners who attended were not official members of the 1651 Committee.³⁷

Sessions were relatively well attended over all three of the estates, as can be seen from the attendance tables in Appendix I. Five of 29 nobles attended between 25 and 40 diets: the Earl of Glencairn (who took on role of President in the first session, replacing Loudoun who had been President of the 1651 Committee of Estates), John Fleming, third Earl of Wigton, John Leslie, Earl of Rothes, James Murray, second Earl of Tullibardine, and William Crichton, second Earl of Dumfries. Of the remaining nobles from 1651, 24 did not attend at all. Some of these absences can be explained: ten had died, seven were heavily in debt and one, the Marquis of Argyll was in prison. Two notable radicals stayed away: Crawford-Lindsay, and William Kerr, third Earl of Lothian, a lifelong supporter of Argyll who resigned his office as Secretary of

³⁷ See also Young, *The Scottish Parliament*, p.307. Sederunts from NAS PA 11/12, Register of the Committee of Estate, 23 August-13 October 1660. Membership of 1651 Commission from PA 11/12, ff.1-4.

State at the Restoration and who was to incapacitate himself from sitting in Parliament by refusing the abjuration oath.³⁸ There was a similar level of absence from the other two estates. 19 shire and 14 burgh commissioners that were members of the 1651 Committee of Estates were absent. Again, many of these vacancies were caused by the death of the original committee member. The King ordered the committee to fill any vacancies with “persons ... who have not by Remonstrance or any public act” disclaimed royal authority.³⁹

The political intentions of the newly reconvened Committee of Estates were soon made clear to those who were in opposition to the restored monarchy. On 23 August 1660, a rival gathering of Protesters to the Committee convened in Edinburgh, and issued a declaration emphasising the obligation of Charles II to the Covenant throughout the British Isles and detailing their hostility towards the restoration of episcopacy in England.⁴⁰ The Committee of Estates, in response to the Protesters’ “papers and letters” that were “tending to sedition and in danger of kindling a civill warre amongst his Maties good subjects,” established a sub-committee for the “discharging of all ... extra judiciall meetings in any plaies of his Maties Kingdome of Scotland not being authorised by his Maties Commission and warrand.”⁴¹ Following the above order, the

³⁸ Of the radical nobility who had been named on the 1651 Commission, some did attend (for example, John Kennedy, sixth Earl of Cassillis) but Burleigh was the only radical in frequent attendance at the committee. Among the shires, Sir James McDowall of Garthland, active in both the Covenanting and Cromwellian regimes, and David Bethune of Creiche who had advanced £500 to the government in 1646 to help with the war effort, were the most conspicuous absentees.

³⁹ NLS Lauderdale Ms 3423, f.53.

⁴⁰ In the supplication, the Protesters condemned the late “vast toleration” which was still active “under the specious pretence of liberty for tender consciences.” Informing the King that the “remnant of the popish, prelatical, and malignant party” was still trying to overthrow “religion, and the work of reformation,” and reminding the King of his obligation to the Covenant, the Protesters hoped to secure legislation guaranteeing a Presbyterian church. See Robert Wodrow, *The History of the Sufferings of the Church of Scotland* (ed. by Robert Burns, Glasgow, 1829), I, pp.71-72.

⁴¹ NAS PA 11/12, Register of the Committee of Estates, 23 August-13 October 1660, f.4.

arrest was ordered of all those ministers who were found to be present at the rival assembly.

The Committee had certainly made its presence felt, and its reaction to the Protester meeting only heightened for some the fear of retribution by the royalist regime. George Maule, Lord Brechin (later, second Earl of Panmure), writing to his father, Patrick Maule, first Earl of Panmure, informed him that the committee had been given “such a large power that thei mey doe what they will with any and so bring under lesh all thei please to pick at.” Even those who were “forced to give passive obedience” to the English purely for “selfe preservation” may “expect little favor of them.” Brechin was undoubtedly concerned, for despite his family’s support of the royalists in the past, they had made their peace with Monck soon after the battle of Dunbar. “If I see business like to goe wrong” wrote Brechin, “I mind to see what I may doe.” With arrangements for Scots affairs still relatively unresolved, it seems that many that had co-operated with the English were waiting until their particular position became clear before declaring their loyalties.⁴²

Throughout August to December 1660, the Committee of Estates established a number of influential sub-committees to deal with a wide scope of business. The most significant dealt with the punishment and imprisonment of Protesters, the banning of unapproved political and religious meetings, and the levying of the excise and the cess.⁴³ Appointments to these committees were mainly distributed to a number of key personnel, all of whom were among the

⁴² NAS GD 45/14/110 (2) Dalhousie Muniments, Letter from Lord Brechin to his father concerning news of arrangements for Scotland after the Restoration, 6 July 1660.

⁴³ NAS PA 11/12, Register of the Committee of Estates, 23 August-13 October 1660; NAS PA 11/13 Minutes of the Committee of Estates, 9 October-8 December 1660. See also Young, *The Scottish Parliament*, p.309 for a fuller explanation of the sub-committees set up by the Committee of Estates in 1660.

top attendees at the diets. Of the nobility, Wigton, Rothes, and Tullibardine, were given the highest number of appointments. Sir Archibald Stirling of Carden, James Foulis of Colinton, Robert Hepburn of Keith, Robert Innes younger and Robert Nairn of Strathurd dominated the shire membership. Of the burgesses, Sir Robert Murray, Sir Andrew Ramsay of Abbotshall, John Bell and perhaps surprisingly, the prominent Covenanter, Archibald Sydsarf, were given the most nominations. By studying the overall attendance and membership, it becomes readily apparent that a relatively small clique of trusted personnel dominated the Committee of Estates. Non-commissioned membership (John Bell of Glasgow and Sir George Mackenzie of Tarbat) also secured admittance to this group. In the sessions of Parliament that were to follow, these individuals again rose to significant positions of power and were to be vitally important in securing royalist dominance.⁴⁴

The majority of the Committee's time was spent in ensuring that those who opposed the restored monarchy and the likely outcome of the parliamentary settlement were unable to gain public office, or to hold unauthorised meetings. On 24 August, a proclamation was issued to sheriffs of the shires and magistrates of the burghs to ensure that no "dangerous meetings be permitted." A further subcommittee was established on 28 August for "making a list of persons to be cited" who were "remonstrators or hath bin compliers with the enemies of his Maties and this ancient Kingdome" to be "summoned to appear at such diets as the Committee shall appoynt." In a similar vein, on 18 September a Proclamation was issued against Samuel Rutherford's Lex Rex and

⁴⁴ The key members of the Committee of Estates were all amongst the highest attendees at the diets. See Appendix I for more information and Young, The Scottish Parliament, p.310.

James Guthrie's The Causes of God's Wrath, popular Covenanter texts whose purpose, the Committee claimed, was to "corrupt the minds of his Maties loyall subjects ... laying the foundation and seeds of rebellion for the past and future generation." It required that the two books "ought not to be read, possessed, nor kept in the houses or custode of any of his Maties subjects." An additional Proclamation on 20 September was made against "seditious ralliers and slanderers whither civill or ecclesiastick of the Kings Maties and government." Any found guilty of such crimes, the Committee warned, were to be punished according to the relevant Acts of Parliament, or imprisoned until the authorities saw fit.⁴⁵

It is implied that the Committee was acting on the wishes of Glencairn, the Chancellor, who had sent a letter to the meeting of the burghs ordaining that

in the inshewing election of magistratis, counsellours, and all office bearers within burgh ... no persone or persones who contryvved or subscriyvet the remonstrance or associatiounes, or concured in the prosecutione of ony cours for promoving the ends therof, or protested against any publicat judicatories their determinatioune, or ony wtherwayes disaffected to his Majesties government, or indeavoured by factione or seditiounes to the disturbance of his Majesties peace ... be admittit to any place of magistracy, counsell, or ony office of any deaconrie within any burgh.⁴⁶

A letter from Glencairn to the town councils had previously ordered that magistrates who had held office in 1648 and who had since been dismissed were to be restored to their original position.⁴⁷ In accordance with these instructions, in Glasgow the magistrates who were in 1648 "thrust from their charge" were to

⁴⁵ NAS PA 11/12, Register of the Committee of Estates, 23 August-13 October 1660, ff.5, 8, 28-9, 32-4.

⁴⁶ Renwick and Marwick (eds.), Extracts from the Records of the Burgh of Glasgow, II, (Edinburgh, 1882), p.449-50.

⁴⁷ *Ibid.*, p.450.

be re-appointed. However, of the three baillies who had served in 1648, one was now deceased and one was excused from his office because of his great age and infirmity. The remaining official, in accordance with an act of the council in 1642, was unable to serve as he had held office for more than two years. Colin Campbell, Provost in 1648, had at first “declared his loathsumnes to receive the said charge in respect of his age, yit was persuadid therto to be the earnest requeist of all theis present,” thereby allowing Glasgow to claim accordance with the Chancellor’s demands.⁴⁸ The Chancellor's instructions to the shires and burghs suggest that the crown was taking steps to ensure a proven royalist presence in the localities. Combined with the recent action taken by the Committee to exclude opposition from offices of public trust, a secure royalist personnel was established in both local and national politics even before Parliament had first convened.

The Committee of Estates, acting before an indemnity had been issued, was faced with the problem that the majority of the Scottish elites, and indeed many of its own present membership, had been guilty of being “complyers with the enemies of his Majesties and this ancient kingdome.” To avoid this issue, the Committee indicated to the King in a letter to London on 30 August its desire to “abstaine from meddling with the shyres estates or fining any persons ... and lylkwayes abstain from citing those persons yo Maties hath been graciously pleased to pardon.” The Estates resolved to not admit “any of those to sitt [on the Committee] whom his Maties hath not pardoned, or any such as ... exercised that office under the late usurpers ... Nor do we intend any shall sit who hath by

⁴⁸ *Ibid.*, pp.450-52.

remonstrance or any public act disclaime his Maties authority.”⁴⁹ Thus only those individuals who had received a special dispensation from the King could take up office. The remainder would be dealt with under the forthcoming Indemnity act.

* * * *

The popular enthusiasm for the restoration of the monarchy demonstrated in May 1660 only temporarily concealed the serious divisions between the Resolutioners and the Protesters, the two principal parties in both church and state. The Resolutioners had up until this point been solely concerned with establishing their own supremacy over the Protesters. However, when it became clear that Charles might return on Presbyterian terms, the Resolutioners turned their attention to ensuring that their desires were made known to the King. The Edinburgh ministers who had assumed the leadership of the Resolutioner cause initially hoped that the King would return on terms set out in the Covenant. To achieve this end, the minister, James Sharp, an experienced negotiator who had previously represented the Resolutioners in negotiations with Cromwell in 1656, was entrusted with submitting the Resolutioner case to the Court in London, and then to the King himself in Breda.⁵⁰

Central to the Resolutioner cause was the implementation of the Solemn League and Covenant in all three kingdoms. As “the nations therein covenanted” (since signatories were committed to the defence of royalism and Presbyterianism) many of the ministers thought this ideal as the basis of a

⁴⁹ NAS PA 11/12, Register of the Committee of Estates, 23 August-13 October 1660, ff.11-12.

⁵⁰ G. Davies and P. Hardacre, “The Restoration of the Scottish Episcopacy” in *Journal of British Studies*, 1, 1962, p.33; Buckroyd, *Church and State*, pp.14-15.

Restoration settlement.⁵¹ When in early March 1660 the English Parliament ordered the reprinting of the Covenant, hopes were raised that finally Presbyterianism was to be established in both England and Ireland.⁵² However, Sharp soon communicated the disturbing news that although “rigid presbyterie is talked of much by all parties here ... I apprehend no ground for it, I am afrayed that some thing else is like to place in the Church than rigid presbyterie.” Sharp's worries were well grounded, for within three weeks it had been decided that in England the “busines of Religion” would be “settled by a Synod.”⁵³ The Edinburgh ministers understandably reacted with grief to this news. Although they continued to press for a Presbyterian settlement in Scotland, the implementation of the Solemn League and Covenant in the three kingdoms was discarded as an impossible dream.⁵⁴

Charles II, for the majority of 1660, was primarily concerned with affairs in his kingdom of England. Nevertheless, the Resolutioners, unbowed by their failure to establish Presbyterianism in the other nations, recognised that it was crucial to ensure that the Resolutioner cause was presented to the King personally. Therefore, James Sharp was induced to travel to Breda for a personal audience with Charles II, to present the King with a letter from the ministers. The letter explained Sharp had been sent to “inform your Majesty more fully of the true state of this Church,” and, audaciously, went on to inform the King that by signing the covenant he had sworn to maintain a “constant

⁵¹ GUL Ms Gen 210, f.19. This manuscript is Wodrow's transcription of correspondence principally between James Sharp and Robert Douglas, minister of Edinburgh, 1659-1661 from the original copies in the NAS.

⁵² *Ibid.*, f.17. In addition, Sharp, writing to Douglas from London on March 10 1660 remained hopeful that the King would uphold the oaths he swore in 1650: “He did by Covenant and treatie engage to us, by all lawfull and peaceable wayst to endeavour uniformity, in Doctrine, Discipline &c in the 3 nations,” f.21.

⁵³ *Ibid.*, f.57 and f.85.

⁵⁴ Buckroyd, Church and State, pp.15-17.

resolution to protect this Church in her established priviledges,” not only in Scotland, but hopefully in “all your dominions,” a thinly veiled reference to a Presbyterian religious settlement in England.⁵⁵ Despite abandoning hope of the implementation of the Covenant in the three kingdoms, the ministers, somewhat optimistically, still desired to see the settlement of religion in the other kingdoms to be based on the Scottish system. Sharp's instructions, however, recognised that no matter what was to eventually transpire in England, it was to be emphasised that in Scotland it would be detrimental to “alter anything of the settled government of the Kirk.”⁵⁶

As the Committee of Estates continued to sit, it gradually became apparent to the supporters of a Presbyterian religious settlement that the established church government that had been secured by the Covenanters in the 1640s was under threat. James Sharp, trusted with presenting the case of the Resolutioner ministers in London, warned Lauderdale in December 1660 that no “considerable party amongst the ministers will appear for episcopacy.”⁵⁷ Robert Douglas, a prominent Resolutioner who had preached at the coronation of Charles II at Scone and corresponded closely with James Sharp, wrote in his treatise ‘A Brief Narration of the Coming-In of Prelacie’ that Sharp had reassured him that “we needed not doubt the King's favour to our established Presbyterial Government ... Bishops would be kept in England, but we need not fear Episcopall government in Scotland for the King had given assurance to the contrare.”⁵⁸ A letter had been received from Charles II addressed to the

⁵⁵ GUL Ms Gen 210, f.96.

⁵⁶ *Ibid.*, f.97.

⁵⁷ O. Airy (ed.), *The Lauderdale Papers*, 3 vols., I, (London, 1884-85), 13 December 1660, p.44.

⁵⁸ Robert Douglas, ‘A Brief Narration of the Coming-In of Prelacie’ in NLS Wodrow Quarto LXIII, f.110.

Presbytery of Edinburgh which was intended to reassure the Kirk of the King's commitment to preserve the government of the Church of Scotland, but Douglas hinted at division within the ministry over the perceived meaning of the letter.⁵⁹ Some argued that the letter indicated that Episcopal government "was to be the settled government by Law" while others argued that "it could have no other meaning yt the present presbyteriall government because it makes mention of good services done to his Majestie, and makes mention of the Generall Assemblie at St Andrews contravened by His Majesties Commissioners and afterwards by himself."⁶⁰ The letter was probably designed to allay suspicion,⁶¹ but the actions of the Committee of Estates over the previous three months had already indicated the nature of the parliamentary settlement that was to come.

* * * *

The first meeting of Scottish Parliament for ten years began on 1 January 1661. Five Officers of State, 72 nobles, 56 commissioners representing 31 shires, and 61 representing 60 burghs (194 members in total) were to sit in session for over six months due to the large amount of governmental and private business which the re-establishment of a monarchical constitution entailed. A numerical analysis of the membership indicates that 45% of nobles, 25% of gentry and 20% of burgesses had served in previous parliamentary sessions from 1639-51. More significant, however, are the vast majority of commissions given to individuals who had no previous experience of serving in Parliament.

⁵⁹ For a copy of the letter, see Nicoll, *Diary*, p.299.

⁶⁰ 'A Brief Narration of the Coming-In of Prelacie' in NLS Wodrow Quarto LXIII, f.111.

⁶¹ See Wodrow, *Sufferings of the Church of Scotland I*, p.80 who tells of how the letter was designed to "dull all asleep till matters were ripe for a thorough change."

1.1 Previous Parliamentary Experience of Shire and Burgh Members Present at the First Session of the Restoration Parliament, 1 January 1661.

	NO. OF COMMISSIONERS	TOTAL NO. OF COMMISSIONERS PRESENT ⁶²	PERCENTAGE %
Pre 1633	3	117	2.5
1633 Parliament	4	117	3.4
Covenanting Parliaments 1639-47	22	117	18.8
Engagement Parliament, 1648	17	117	14.5
Radical Parliament, 1649-51	12	117	10.2
No previous experience	85	117	72.6

The elections had taken place during late November and December 1660, and a scrutiny of parliamentary commissions reveals that 47 of the 56 shire (83%) and 59 of the 61 burgh candidates (97%) commissioned to sit at the Restoration Parliament actually took their places. The strong correlation in election to and membership of Parliament indicates either the effective royalist management of elections, or is evidence of a genuine royalist reaction.⁶³ A study of disputed elections, however, seem to suggest that the crown was

⁶² Total number excludes joint commissioners from Aberdeen, Dundee, Dunbar, Cullen and Perth (x2) who are not recorded in the Rolls of 1 January 1661. Also does not include Thomas Watson, commissioner for Anstruther Wester, who never took his seat, or the commissioner for Cromartyshire who was present at Parliament but whose identity cannot be determined.

⁶³ Young, *The Scottish Parliament*, p.310.

controlling the elections in certain burghs and shires to ensure that the commissioners who were sent to Parliament were amiable to a strengthening of royal authority. On 4 January four cases of disputed elections in the shires of Peebles, Dumfries, Elgin, and Inverness were considered, all of which were settled in favour of the crown.

In the instance of Dumfries it is apparent that the crown intervened in the election of commissioners to ensure a royalist victory. After the election of James Crichton of St Leonards and Robert Ferguson of Craigdarroch as commissioners to represent the shire in Parliament, Sir William Douglas of Kilhead, the convenor for summoning the heritors of the shire to the election, summoned another meeting to choose rival commissioners. Along with a number of "dissatisfied Barrons and some others" who after a disagreement had "removed themselves from without voycing" in the first election, Alexander Jardine of Appilgarth and Robert Dalzell younger of Glenae were chosen.⁶⁴ The procedure followed in these cases allowed each side in the dispute to present reasons to the Parliament why their commissioner should be preferred. From these papers it becomes apparent that the main contest was between James Crichton and Alexander Jardine. Objections were made that, in accordance to "the clause in the Commission relating to royal deportment in all the last troubles," Jardine had been "ane officer in armes in open hostilitie within the kingdom of England in assistance of rebellious subjects against his native King

⁶⁴ NAS PA 7/25/11/5/4, 'Protestation of the freeholders of Nithsdale and Annandale, 20 November 1660.' In this case there seems to be two different versions of events. Crichton's defence claimed that the supporters of Jardine removed themselves from the meeting, whereas these heritors claim instead to have been refused admittance to the first election. Those who were refused a chance to vote at the first arranged a second election held a week later. See NAS PA 7/25/11/5/10, 'Encryptions against James Crichton why he ought not to be commissioner to the Parliament for the shire of Dumfries.'

and sovereigne Lord.”⁶⁵ Legally Jardine’s commission should have been preferred as James Crichton was elected despite being a non-resident who possessed no land in the shire, both of which made him incapable of holding office. Parliamentary papers, however, show he had been vetted by the Royalists, and had been granted a pardon and remission by the King despite his “compliance with the Late Usurpers.”⁶⁶

When Parliament pronounced its verdict on 4 January, James Crichton was confirmed as one of the commissioners for Dumfries. Later events explain this decision, as Crichton was chosen as one of five trusted royalist agents employed by Middleton, the King’s Commissioner, to browbeat other parliamentary commissioners into voting against Lauderdale in the Billeting affair.⁶⁷ Unofficial candidates involved in disputed elections who had not been approved by the crown were an obvious risk to the Royalists in Parliament. Thus, it is unsurprising that all the cases of disputed elections in this crucial session were settled in their favour.

According to Sir George Mackenzie, effective royal management of elections was secured by the use of gentry in each shire who were favourable to the royalist cause:

Letters were directed to such a gentleman in every shire as stood best affected to his Majesty's service, and whom they wished should be elected as one of the members to serve; and order was given to him for convening the shire, to the end they might choose their commissioners.⁶⁸

⁶⁵ NAS PA 7/25/11/5/8, ‘Reasons humbly offered ... against a pretendit commission alleged granted in favours of Robert Dalzell younger of Glenae and Alexander Jardin of Apilgarth.’

⁶⁶ NAS Supplementary Parliamentary Papers, PA 7 Volume IX, Part I, (items 2-6) f.5.

⁶⁷ LP, I, William Sharp to Lauderdale, 10 September 1662, p.111.

⁶⁸ Mackenzie, Memoirs of the Affairs of Scotland, p.12.

Baillie likewise notes that “the chancellor so guided it, that the shyres and burroughs should chose none but those that were absolutely for the king. Divers were cited to the Parliament, that they might not be members.”⁶⁹ Throughout November 1660. Rothes had been courting the burghs to secure political support for Lauderdale and had secured the services of Sir Alexander Wedderburne of Dundee, prominent in burghal circles 1639-51, to promote that cause.⁷⁰ Rait, in his history of the parliament, argues that “the delay in the summons of a new Parliament was connected with a desire to obtain royal control over the elections.”⁷¹

The study of disputed elections in Scotland indicates similarities with the English situation. Half of the commissioners who took their seat in the Commons had impeccable royalist credentials, and nearly a quarter had been punished for their previous loyalty to the crown. Commissions to the 1660 Convention Parliament were distributed according to candidates’ previous record of allegiance. Borough patrons aggressively controlled corporate seats and the result was, as in Scotland, a relatively young and inexperienced chamber.⁷²

When the Scottish Parliament first assembled, the prominent Resolutioner, Robert Douglas was given leave to preach to the gathered commissioners. In his sermon, Douglas reiterated many of those demands that had troubled the Edinburgh ministry in the previous year. “Let the rubbish of seditions and rebellions, wherewith the Covenant hath been covered, if not buried, be thrown away,” Douglas argued, “but the Covenant be preserved ... take heed what ye do

⁶⁹ Baillie, *Letters and Journals III*, p.463.

⁷⁰ Young, *The Scottish Parliament*, p.310.

⁷¹ Rait, *The Parliaments of Scotland*, p.76.

⁷² Ronald Hutton, *Charles II*, (Oxford, 1989), pp.111-113.

with the Oath of God.” Recognising that many of those in Parliament blamed the Covenanting revolution on insurgent Presbyterian ministers, Douglas appealed for Parliament to “distinguish the time of war, from the time of Peace, [for] in every civil war there are parties who speak and do things for mutual defence and justification, which would seem very irrational in time of Peace.”⁷³ In his conclusion, by calling for those present to uphold the work of the Reformation and maintain a Presbyterian Church, Douglas presented to Parliament the true demands of the Resolutioners. The result, however, was all too familiar, as Parliament during the subsequent session went on to disregard Douglas's supplication.

It is interesting to note that not all petitions presented to Parliament on behalf of the ministry echoed Douglas's opinions. Petitions from Aberdeen, an area that had been extremely hostile to the Covenant, considered the uprising against the monarchy an unjust war. John Paterson, in a sermon which was sufficiently to the government's liking to be published, stated that the restrictions placed on the King before he was allowed to exercise his royal power had been unlawful and a “principle and practice inconsistent with the safety of any nation.”⁷⁴ The address of the Synod of Aberdeen, signed by the ministers of the region, advised that subjects should “engage ourselves never to be accessory to any disloyal practice or principle, but declare utter abhorrence thereof ... obliging our selves to subjection, obedience and submission to the

⁷³ ‘A Sermon Preached at the down-sitting of the Parliament of Scotland, January 1 1661,’ (Edinburgh, 1661), GUL Sp Coll Ogilvie 897, pp.20-24.

⁷⁴ ‘Tandem Bona Causa Triumphat or Scotland's Late Misery Bevailed, and the Honour and Loyalty of this Kingdom asserted in a sermon, preached before His Majesties High Commissioner, and the Honourable Parliament of the Kingdom of Scotland. At Edinburgh the 17 day of February 1661. By John Paterson, Minister of the Gospel at Aberdeen,’ (Edinburgh, 1661), GUL Sp Coll Bh4-h. 1, p.19.

Royal Authority and Commands.” The government of the Church, therefore, should be settled in accordance with “the practice of the ancient primitive church in such a way as may be most consistent with Royal Authority.”⁷⁵ The episcopal sympathies of the north-east were to be later confirmed when two ministers, including John Paterson, were given bishoprics.

On 1 January 1661, the first day of Parliament, the King's letter and Middleton's commission were read. The act constituting the Chancellor President of the Parliament in all time coming restored the Chancellor to his original position as what may be termed a Speaker of the chamber.⁷⁶ In the absence of the King's Commissioner in the 1640s, the post had been seized by the Covenanters as a means of ensuring that the estates controlled the House in debate. An elected President did not, however, survive the Restoration, and as Robert Baillie observed “the Parliament's pulse was quickly felt, for when [John Kennedy, sixth Earl of] Cassillis moved that the election of a President should be by vote of Parliament. the Commissioner obtained that the Chancellor should preside by virtue of his office, as before it wont to be.”⁷⁷

The first measure that would test the mood of Parliament came on 4 January 1661 when the Oath of Allegiance was to be taken. Supported by a number of other members,⁷⁸ the Earl of Cassillis, a prominent Covenanter in the 1640s who had since refused to submit to the crown, immediately asked for an official

⁷⁵ ‘To His Grace His Majestie's High Commissioner and the High Court of Parliament, the humble address of the synod of Aberdeen,’ (Aberdeen, 1661), GUL Sp Coll Mu8 - x.1-11, pp.2-3.

⁷⁶ NAS PA 2/26, f.6.

⁷⁷ Baillie, *Letters and Journals*, III, p.463.

⁷⁸ The Earls of Crawford-Lindsay and Leven, William Cranston, third Lord Cranston, James Elphinstone, first Lord Coupar and John Elphinstone, third Lord Balmerino, son of the prominent Covenanter joined Cassillis in his protest. The exact number who dissented is unknown, but of the group named, all were former radicals. Balmerino and Coupar left Parliament later on in the month. See page 47.

interpretation of the wording of the clause "I acknowledge my said Sovereane only Supream Governour of this Kingdome over all persons and in all causes."⁷⁹ The King's Advocate, Sir John Fletcher, assured him that the supremacy applied only to civil proceedings, but refused, as Cassillis suggested, to attach this provision to the oath. As a result, Cassillis and a small, but vocal, group of opponents refused to take the oath and walked out of Parliament, thus sidelining themselves from future proceedings.⁸⁰ Refusal to sign the Oath not only excluded Cassillis from Parliament, but from all public offices.⁸¹

Cassillis wrote to Lauderdale of his dismay at withdrawing from his official positions, but he remained steadfastly determined in his refusal to subscribe the oath, even though he would be forced to "leave his Maties counsellis and dominion." This, he noted, was "as ill as any thing Oliver [Cromwell] ever threatened me with tho he knew I abhorred him and his way."⁸² Perhaps Cassillis was attempting to take a heroic stand against Middleton's control of Parliament, but the actions of the small opposition had actually made life easier for the Commissioner. Those most likely to vote against controversial legislation aimed at reasserting royal authority had now removed themselves

⁷⁹ NAS PA 2/26, f.6.

⁸⁰ Buckroyd, Church and State, p.29.

⁸¹ Cassillis was removed from his positions of Justice-General, Lord of Council, Session and Exchequer. Baillie, Letters and Journals, III, pp.463-4.

⁸² NLS Lauderdale Ms 3423, Earl of Cassillis to Lauderdale, January 1660. f.112. There was more opposition to the oath in the localities when it came to be subscribed by the local councils. In Dumfries, the majority first refused to sign the oath, although some eventually relented. New elections had to be held because "two baillies and many councilloris" resigned, rather than submit. J.Marwick (ed.), Extracts from the Records of the Convention of the Royal Burghs of Scotland, 1615-1676 (Edinburgh, 1878), p.545.

from the chamber.⁸³

The Royalists were utilising the Covenanting tradition of oaths to ensure that those who refused to pledge their allegiance to the government were removed from, or were unable to take up, public office. Further legislation throughout February, which incorporated the constitutional enactments of the past month, stated that all those who refused the oath “shall not only thereby render themselves incapable of any public Trust, but shall be looked upon as persons disaffected to his Majesties Authority and Government.”⁸⁴ In addition, statutes in the second session of Parliament concerning a Declaration to be signed by all persons in positions of public office, stated that employing persons of “sound principles and entire loyalty” in all offices of trust and places of public administration would be conducive to the peace of the Kingdom.⁸⁵ With legislation requiring all of those who had supported the Western Remonstrance to remain ten miles outside Edinburgh for the duration of Parliament, along with the ruling that no subjects could convene to determine any matter of state, civil or ecclesiastic, any opposition to the Royalists, both in Parliament and in the localities, had been severely curtailed. Much of the legislation was clearly a reaction against the precedent of the Tables in 1638, and, despite hazarding a number of votes against these measures, it was crucial that the crown should take steps to ensure such an event would never be allowed to happen again.⁸⁶

⁸³ Perhaps one of the reasons that this session of Parliament was “so obsequious to all that was propos’d to them” was, as Mackenzie noted, because an Act of Indemnity had not yet been passed. Thus “because of great expectations and promises” among the gathered estates “many would not oppose any thing that was craved.” Mackenzie also makes the much less convincing assertion that “all ranks and degrees of people had been so lately tam’d into a slavish subjection by the usurpers that they were ashamed to allow less power to their own King, than to an usurper and mere stranger.” Mackenzie, Memoirs of the Affairs of Scotland, p.19.

⁸⁴ NAS PA 2/26, f.62.

⁸⁵ NAS PA 2/28, ff.36-7.

⁸⁶ Young, The Scottish Parliament, p.314.

On 5 January 1661, the Lords of the Articles were officially revived. Although the format of the Committee differed from that which sat under Charles I, its function was the same: to ensure royal control over debate in Parliament. The membership of the Articles consisted of Middleton, who as King's Commissioner was to preside, the Officers of State, and 12 from each of the three estates. The method of nomination also differed from previous parliaments. Each estate separately elected its own commissioners, who were then approved by Middleton. This ensured that the Articles were only staffed with approved royalist personnel. Furthermore, an analysis of the membership of the Articles (see Appendix II) indicates, that with the exception of the Earl of Dumfries (who was later added to the Council), all noble members, including Officers of State, were also Privy Councillors, as were eight of the 12 gentry. This clearly signifies that the membership of the Parliament and its committees were to be managed so as to concentrate royalist support in key areas.

The Lords of the Articles did not adhere to the conventional tradition of presenting legislation en bloc to the parliament, which then traditionally was to be enacted in that one day. Instead, the new Committee was to receive all papers, overtures, processes and indictments for weekly preparation to the full Parliament and King's Commissioner. If the Articles did not present an overture, proposal or petition to Parliament which had been requested by a member, it could then be presented to the Commissioner and the Estates, who met twice per week during the sitting of the Articles (or oftener if the Commissioner required), for consideration. Nevertheless, preparation of parliamentary business firmly lay with the Articles who dictated the content of

proposed legislation that came before the full Parliament.⁸⁷

The restoration of the royal prerogative began with the Act anent the Kings Majesty Prerogative in choosing and appointing the Officers of State, Lords of Privy Council and Session, passed on 11 January. The legislation argued that before the Covenanters had unlawfully taken power, it was an "inherent privilege of the crown" to have sole right in choosing personnel. In addition, the Act anent his Majesty's Prerogative in calling and dissolving of Parliaments and making of laws argued that no Parliament could lawfully sit without the express warrant of the King, who could summon, prorogue and dissolve a session at will. In a precursor to the Act Recissory, no act, sentence, or statute passed in an unlawful Parliament could thus be binding on the people. The Act anent his Majesties Prerogative in the Militia and in making of Peace and War or Treaties and Leagues with foreign Princes or Estates completed the reassertion of the prerogative. Under the pain of treason, it was forbidden for subjects to rise in arms or make any treaties among themselves, or with foreign powers, without his Majesties special authority.⁸⁸ As a guarantor of stability and order, the complete restoration of monarchical authority was as good as achieved with the passing of this legislation.

As a supplement to these acts, on 22 January steps were taken to revoke all enactments from the "pretendit" Conventions and Parliaments that met under the Covenanters, the Act annulling the Convention of Estates 1643 and rescinding any acts ratifying the same. This meeting had passed the Solemn League and Covenant, but this document was not explicitly named in the act.⁸⁹ The

⁸⁷ Young, *The Scottish Parliament*, p.310; NAS PA 2/26, ff.8-9.

⁸⁸ NAS PA 2/26, ff.10-11, 14.

⁸⁹ *Ibid.*, f.18.

importance of the Solemn League and Covenant warranted the establishment of a separate enactment. Thus on 25 January, the Act concerning the League and Covenant and discharging the renewing thereof without his Majesties warrant and approbation stated that the future renewal of the covenant required the King's approval. The legislation stipulated that there was no obligation on the Kingdom to endeavour by arms, or any other means, a reformation of religion either in England or Ireland.⁹⁰ This proved to be a controversial measure, and to "shun voting in this many absented themselves" with a number, including John Elphinstone, third Lord Balmerino and James Elphinstone, first Lord Coupar, absolutely retiring from Parliament.⁹¹

In February 1661, the commission of the Privy Council was issued. The Council was to sit as two different sections. Lauderdale was to be joined in London by three English and one Irish politician: Edward Hyde, Earl of Clarendon, General Monck, now Duke of Albemarle, the Earl of Manchester and the Marquis of Ormond. The council sitting in London was to act as an advisory committee on the affairs of Scotland, whilst the Privy Councillors in Edinburgh dealt with the routine matters of administration. The Commission lists 37 nobles and 12 lairds, virtually all of whom were Royalists and, with the exception of the Earl of Cassillis (who never sat on the council because of his refusal to take the oath), had participated in the fight against Cromwell.⁹² The

⁹⁰ *Ibid.*, f.21.

⁹¹ Mackenzie, *Memoirs of the Affairs of Scotland*, p.23. As a further example of the central administration taking steps to ensure that dissent was suppressed in the localities, Mackenzie notes that any provincial assemblies that had received protests from angry ministers were to be immediately dissolved. To prevent any disorder, "Rothes was sent to the province of Fife, Atholl to Perth, and some [others] ... to these other provincial meetings, with power to dissolve them if any such thing had been proposed: and by their preference, all disturbances were then quieted."

⁹² R.A.Lee, "Government and Politics in Scotland, 1661-1681" (University of Glasgow, Ph.D., 1995), pp.54-55; *RPCS*, I, pp.i-xx.

majority had sided with the radical regime in the 1640s, but none of the most influential Covenanters were included. All of the nobility, four of the shire representatives and one burgh commissioner were also on the Lords of the Articles. This indicates a relatively small clique of the politically favoured. In July, the Privy Council finally convened with a membership of 36 nobles, 14 shire, and one burgh commissioner. A number of influential radical nobles, including Lothian and Loudoun, were excluded.

In Parliament, proceedings were still taken up by the technicalities of rescinding and approving legislation passed during the 1640s. On 9 February, an act approved the Engagement of 1648 as a "most noble and pious testimony of the loyalty of his Majesties good subjects of his ancient Kingdom." On 20 February 1661, an act condemning the delivery of the King to the English in 1647 was put before the chamber. In this, Parliament acknowledged that there had been a loyal opposition to the sale of the king, while many others were "in the simplicity of their hearts, drawn along for the tyme." A minority faction, and not the kingdom of Scotland as a whole, carried out the incident.⁹³ The act approving the Engagement simultaneously annulled the Parliament and Committees of 1649. All legislation passed by the radical regime was declared unlawful, and the measure was passed successfully because it was established that all those who had sat in the 1649 Parliament and any of its committees were not to be proceeded against, except those who were to be specified in a future Act of Indemnity.⁹⁴ As much of the legislation from 1649 had dealt with the ministry, it was ordained that no minister or parish who had benefited, for

⁹³ NAS PA 2/26, ff.38-42 and f.46.

⁹⁴ *Ibid.*, f.40.

example, from the increase in stipends, or from the sale of church land, was to be punished. This seems to have been a hasty addition to the act, as James Sharp told of how initially “the augmentations granted by that Parliament were the other day in the meeting of the articles voted down, but the commissioner by his negative interposed, and so far the time the ministers may scape that blow.” Noting that “generally all joyn in bringing contempt upon the ministry,” Sharp no doubt had guessed at the hostility of the administration towards his brethren, ironically noting that “if church government did depend upon the vote of this Parliament it would undoubtedly be overturned.” For the time being, however, Middleton had decided to take a more cautious approach in Parliament, thus avoiding an open demonstration of his dislike of the clergy.⁹⁵

In order to secure the prerogative powers of the crown, it was necessary to ensure adequate financial backing. This was achieved on 22 March with the Act and offer of £40,000 to be paid to the King's Majesty yearly during his lifetime by this kingdom. The Committee of Estates had previously agreed this sum in 1660, and the amount was to be raised by a customs duty and excise on domestic and imported alcohol.⁹⁶ Middleton had urged Parliament to grant provision for the maintenance of a standing military force to secure the monarchy in the event of a rebellion. Nevertheless, it seems that within a month, any perceived threat to the crown had been soundly dismissed. The restoration of unfettered royal power was finally completed with the passing of

⁹⁵ LP, I, James Sharp to Patrick Drummond, 7 February 1661, p.72; Buckroyd, Church and State, pp.30-55.

⁹⁶ NAS PA 2/26, f.112; Young, The Scottish Parliament, p.316. Shortly after the Restoration, William Cochrane, Lord Cochrane (later first Earl of Dundonald) obtained an audience with the King, and suggested that the government was in a position to acquire an annuity of £40,000. The Committee of Estates was given permission to commence collection until Parliament met. Mackenzie, Memoirs of the Affairs of Scotland, p.18.

the Act Recissory on 28 March. Parliament was to abolish the very legislation that guaranteed not only the legal basis of the Presbyterian Church system in Scotland, but also that which determined its own standing in the constitution.

The momentous act rescinded en bloc the parliaments of 1640, 1641, 1644, 1645, 1646, 1647 and 1649. Passed after earlier legislation in the session had sorted out the technical points of the Engagement, the Rescissory Act rescinded all legislation from the 1630s and 1640s that protected the Presbyterian Church. Another enactment of the same day, the Act concerning Religion and Church Government, suspended temporarily the effect of the Rescissory Act, but promised that the King would settle the government of the Church so as to make it "most agreeable to the word of God, most suitable to monarchicall government and most complying with the publict peace and quiet of the Kingdom."⁹⁷ Sessions, presbyteries, and synods, were only allowed to meet, if "they keeping within bounds and behaving themselffs."⁹⁸

Certainly the act had caught the majority of the ministers off guard. As James Sharp relates, the Act Rescissory had perhaps first been suggested in the Articles as a joke:

The account I had was this: that at first it moved by way of ralliery with Craford, but after they came to earnest, and, though they raved the determining of it for the time, yet by vote of all the Committee saif four it was marked to be takin into consideration before the rysing of this parliament.⁹⁹

⁹⁷ NAS PA 2/26, ff.124-6 and ff.126-7. For correspondence relating to the Act, see NLS Wodrow Octavo XI, f.42. In this letter to Primrose, Middleton admits that the crown needs the legislation to be pushed through without debate: "The Act that is now before you is of the greatest consequence imaginable; and is like to meet with many difficulties if not speedily gone about. Petitions are preparing and if the thing were done, it would dash all these bustling oppositions."

⁹⁸ *The Records of Elgin 1234-1800*, cited in Davies and Hardacre, "The Restoration of the Scottish Episcopacy, 1660-1661," p.47.

⁹⁹ *LP*, I, pp.76-77.

Sharp's account is confirmed by Burnet, who tells of how Archibald Primrose, Clerk Register, suggested a general Act Rescissory "half in jest," although he was perhaps under pressure from Middleton. The Commissioner was determined to outdo Lauderdale, who had insisted that the King should proceed with caution over religious matters. The passage of the Act would ensure a considerable victory over his rival if the legislation guaranteeing Presbyterianism could be repealed without protest. After some discussion, this idea was at first abandoned. "Yet within a day or two," Burnet continues, "when they had drunk higher, they resolved to venture on it." Primrose's draft bill, so badly written it was originally laid aside, was later copied out and introduced to Parliament without alteration.¹⁰⁰

The storm of opposition that greeted the passing of the two acts proved that Middleton had misjudged the mood of the Parliament. 40 individuals, including such prominent figures as Crawford-Lindsay and William Hamilton, third Duke of Hamilton, are said to have voted against the Rescissory Act, the largest minority recorded.¹⁰¹ It was thought that the act itself was a dangerous precedent, rescinding all that had past "in a time when the people were made to believe, that those Parliaments were warranted" by the King.¹⁰² Also, the act displeased not only the radical minority in Parliament, but also those who had taken part in the Engagement, for that Parliament also fell under the same condemnation. Among the Hamilton papers, survives a 'memorandum' of the events of 28 March, written by the Duke of Hamilton. It records that in the debate surrounding the passage of the legislation, Hamilton voiced concerns that

¹⁰⁰ G. Burnet, *History of His Own Time*, (ed. by O. Airy, 2 vols., Oxford, 1897, 1900) 1, pp.213-15; Buckroyd, *Church and State*, p.34.

¹⁰¹ The exact identities of who voted against the act are unfortunately unknown.

¹⁰² Mackenzie, *Memoirs of the Affairs of Scotland*, pp.28-9.

the Act Recissory implicitly condemned all those who had been members of the 1648 Parliament. Rather than being an unlawful session, the Parliament, Hamilton argued, "had done as much as they could to relieve his late Majesty and to establish him upon his throne." Middleton insisted that the session of 1648 had acted against the King, and he was seconded by the Lord Justice, who told Parliament that he had been present at the disputed session, and had personally witnessed the passage of the Engagement Declaration in support of the covenant. He saw "nothing they went in for but to set up a covenanted religion." This argument won the day, and the act passed by a majority. Privately, however, there were concerns that those present members of Parliament who had attended the Engagement Parliament were assigned the blame for past actions. Hamilton, in a private conversation with Glencairn, insisted that the majority of those present in 1648 had only attempted to "relieve their King and to restore the kingdom."¹⁰³ Considering Hamilton's father-in-law's role in the 1648 Parliament, he thought it vital to ensure that his family did not shoulder some of the personal responsibility for the actions of an entire Parliament. Prior to the passage of the Indemnity act, the apportioning of blame was a subject that concerned many such prominent individuals.

In the church, it became necessary for government interference in meetings of synods to prevent them from making their discontent public.¹⁰⁴ The Presbytery of Edinburgh and the Synods of Lothian, Fife, and Glasgow who were preparing petitions to submit to Middleton were allegedly "threatened." "My heart is broken with grief," Baillie wrote to Lauderdale, "and the burthen of

¹⁰³ NAS Hamilton Papers, GD 406/2/M9/148, 'Memorandum concerning the Parliament 1661.'

¹⁰⁴ Buckroyd, *Church and State*, p.34; Davies and Hardacre, "The Restoration of the Scottish Episcopacy, 1660-1661," p.45.

the publict I find it weightie and hastening me to my grave."¹⁰⁵ Baillie's fears of a possible restoration of bishops in Scotland were well founded. In England, the episcopal party was in ascendancy, and by May 1661 the government of the Church of England by bishops was restored. The triumph of episcopacy in England encouraged the government to take action in Scotland.

Now that the time was ripe to undertake an ecclesiastical settlement according to Middleton's plans, on 18 June the Proclamation anent Church affairs praised Parliament for its work over the session, declaring the King's desire to "make good what our Parliament have declared in our name as matters of religion." In the next session the King would "imploy our Royall Authority for settling and securing the Government and administration thereof in such a way as may be best conducive to the glorie of God." The King declared he would encourage "the exercise of religion" and protect all ministers who refrained from meddling with the government of the church and submitted to royal authority.¹⁰⁶ The extensive prerogative powers that had been restored to the monarchy during the session meant that, without fear of insurrection, it could now be openly stated that episcopacy was to be reintroduced. The parliamentary legislation of the past six months had all but silenced the critics of the crown. Any remaining opposition could safely be disregarded and episcopacy imposed on the nation.

The first session of the Restoration Parliament adjourned on 12 July. Among the closing acts was the King's proclamation anent the Indemnity,

¹⁰⁵ Baillie, *Letters and Journals*, III, pp.484-60. Many contemporaries attributed Baillie's subsequent death in 1663 to the incoming of episcopacy. For examples of this see F.McCoy, *Robert Baillie and the Second Scots Reformation* (University of California Press, 1974).

¹⁰⁶ NAS PA 2/27, ff.37-8.

which stated that an act of Indemnity was to be passed at the close of the next parliamentary session. With an Indemnity act not being drafted until then, it seems that many in Parliament had taken it upon themselves to mete out punishment to those guilty of involvement in the late troubles, undoubtedly for their own financial gains. So much so that on 22 March 1661, Charles, possibly prompted by Lauderdale, was driven to write a letter of complaint to Middleton, protesting about the

strange course [which is] taken there with many of those who were appointed to be cited to the Parliament: Privat barganes I heare are driven and money receaved from too many who are represented to have been abominable complyers... The sole power of pardoning resides in me, and that fines and forfeitures are wholly at my disposall ... I am cleirly of opinion that pardoning and punishing is to be caryed above boord, and that no privat bargaines are to be driven.¹⁰⁷

Fear of royal reprisals for past crimes had undoubtedly made Parliament more yielding than it would otherwise have been, but the act of adjournment, declared that there were to be no new elections in shires or burghs except in cases of death. This was possibly to ensure that the commissioners who had proved amenable to the strengthening of the royal prerogative in the first session were present in the second.¹⁰⁸ Measures passed during the first session had indicated that loyal Royalists were to be rewarded, in particular those whose estates had been confiscated. From February to May 1661 a number of forfeitures enacted in 1640s were rescinded, the most notable being that of James Graham, first Marquis of Montrose, and his successors. In addition, on 5 July 1661 a committee was appointed to consider the losses and debts of those

¹⁰⁷ LP, I, pp.92-3.

¹⁰⁸ NAS PA 2/27, f.116; Young, The Scottish Parliament, p.318.

who had been loyal to the Royal cause.¹⁰⁹

Before an Indemnity Act was drafted, a number of prominent Covenanters were to be proceeded against. It soon became apparent that Argyll was to be made an example of, and he was subsequently charged with high treason on 31 January. Johnston of Wariston, now declared a fugitive and a rebel, Swinton of that Ilk, arraigned for his collaboration with Cromwell in 1651, and James Guthrie, minister of Stirling, who had been in prison since his attendance at the meeting of Protesters in Edinburgh in 1660, were all found guilty of high treason. As an indication of the royalist temperament of the nation, the most able advocates could not be induced to represent Argyll, and there was no support in the chamber for a stay in his execution.¹¹⁰ Argyll was eventually executed on 27 May 1661, but the others had not yet been caught. The blame for the Covenanting revolution was directed at a relatively small number of individuals, and most elites were relieved that the bloodletting was to be kept to a minimum.¹¹¹

* * * *

From the time of King Charles II's restoration to the Scottish throne in May 1660, the Scottish political nation had undergone massive and drastic upheaval. The nobility resumed their traditional role in society, and this dominance was achieved through a variety of means. Since General Monck's departure to England, marking the end of the Interregnum, the nobility in co-operation with sympathisers from the shires had sought to control affairs, first by ensuring that

¹⁰⁹ Buckroyd, *Church and State*, p.40; Young, *The Scottish Parliament*, p.316.

¹¹⁰ *LP*, I, James Sharp to Patrick Drummond, 7 February 1661, p.72.

¹¹¹ R.A Lee, "Government and Politics in Scotland," p.17.

the King knew of their demands by sending Commissioners to London. The nobility largely dominated the membership of the meetings called by Monck to discuss the future government of the country, and they were granted, as they had wished, the recall of the Committee of Estates from 1651. Acting as a provisional government before the recall of the Scottish Parliament, this meeting was used as a launchpad for an offensive against their main opponents, the Protesters. By ensuring that the Protesters were given no forum to express their opposition to the crown, when Parliament met in January 1661, any opposition to the re-assertion of royal authority had already been silenced. A co-operative chamber was guaranteed through careful control of elections and through the imposition of oaths that removed those who would not pledge allegiance to the monarchy.

Apart from a small rump of mainly old Covenanters who opposed crown control over Parliament, the King's Commissioner, the Earl of Middleton was faced with very few obstacles to block his radical legislative programme. All innovations introduced during the Covenanting era of the 1640s were swept away within a matter of days, and the stage was set for the reintroduction of episcopacy in the ensuing parliamentary sessions, something that looked impossible at the beginning of the Restoration. The Restoration settlement returned to the King the power to make war and peace, complete authority over central government patronage, and, crucially, the prerogative powers used to manage Parliament. This was achieved with only a whimper of protest. Thus, it seems fair to say that Parliament, staffed mainly with 'new men' who had little previous experience of serving in office, overwhelmingly rejected the radical innovations of the Civil War period in favour of stability and order under a

strong monarchy.

Chapter Two

The Second and Third Sessions Of the First Restoration Parliament

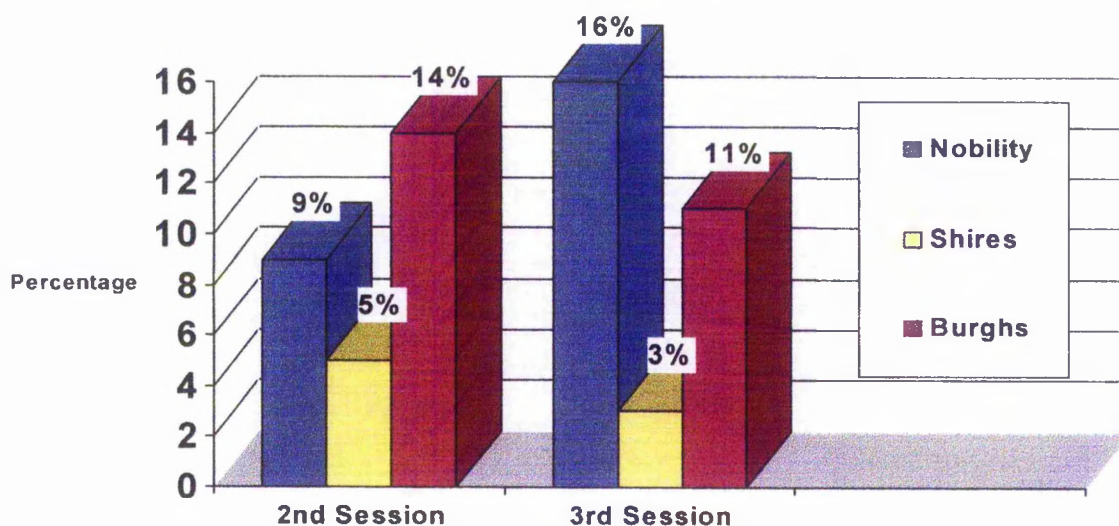
When the first session of the Restoration Parliament came to a close, a number of important issues remained outstanding. Of these, the most pressing were the settlement of religion and the drafting of an Indemnity act. These two issues could be expected to test the royalist administration's grasp of power, as they were amongst the most controversial facing the Parliament as a whole. However, there was no such active opposition to the royalist agenda. A significant number instead stayed away from Parliament, although whether this can be taken as evidence of opposition to the legislative programme is somewhat debatable. What can be ascertained is that the methods used by the royalists to subdue opposition during the first meeting of Parliament were continued into the second and third sessions. By excluding individuals from positions of public trust (and fining such individuals through exceptions from the Indemnity Act), those in opposition were again sidelined. The danger facing the Parliament instead lay within the factional differences simmering between the King's Commissioner, and his London based colleague, the Secretary of State, the Earl of Lauderdale.

* * * *

When Parliament reconvened on 8 May 1662, episcopacy was formally restored, completing the revival of pre-1638 institutions. Unlike in England, no upsurge of popular support for the return to church rule by bishops is evident. Indeed, attendance at the last two sessions of Parliament dropped quite

dramatically. 21 of the 60 burghs who had sent commissioners in 1661 were unrepresented in the next two sessions, and a number of significant opponents did not attend Parliament, including John Kennedy, sixth Earl of Cassillis and John Gordon, Earl of Sutherland. In the 1663 session, Sir Thomas Ruthven, first Lord Ruthven, Lord Coupar, and Lord Balmerino were absent.¹ The absence of many old Covenanters, however, was no great loss to the new government, now firmly in the ascendancy. Numerical analysis of attendance reveals the large percentage who were absent from the second and third sessions.

2.1 Absenteeism in the Second and Third Session of the Restoration Parliament ²



¹ CSPD (1663-4), p.174.

² Of those individuals noted present in the Rolls of Parliament, 1 January 1661 (who were commissioned to sit and were not subsequently replaced), the graph shows the percentages who were absent in the two following sessions, 1662 and 1663. Four commissioners (representing Fife, Stirlingshire, Caithness and Cupar) who had been present in 1661 died before the 1662 session. Three of these commissioners were subsequently replaced (except Caithness) and took their seats in 1662. Again four commissioners (representing Orkney and Shetland, Burntisland, Aberdeen and Bute) died between the 1662 and 1663 sessions. New elections took place to replace three of the commissioners, but the position for Bute remained vacant. In addition, two commissioners were given leave to retire during the parliamentary sessions: James Borthwick of Edinburgh retired in 1662 to devote more time to his patients and Robert Gordon of Embo (Sutherland) retired in 1663 as he was in the King's service. These individuals are not included in the figures, nor are the two vacant seats.

This pattern of non-attendance, which gave rise to legislation specifying fines for absenteeism, has generally been used as evidence exposing a marked hostility to the settlement among a large number of the estates. However, closer examination of the geographical basis of the absenteeism seems to suggest that it was areas normally associated with strong royalist support of Parliament that were the worst offenders.³ Certainly for the burghs, areas such as the north-east, an area with strong royalist traditions and support, suffered higher absence rates. The Highland region also had a relatively high number of commissioners missing from the second and third sessions.⁴ The geographical distance between the North of Scotland and Edinburgh, the seat of Parliament, may provide the explanation for the non-attendance of commissioners from these areas. The burghs, more so than the wealthier shires, struggled in financial terms to fund the expenses of commissioners who were expected to travel to Edinburgh. In 1661 Mr George Dunbar of Cullen was granted 30 shillings Scots a day for his parliamentary expenses, a sum that may have become too uneconomical to maintain, especially as the first session sat for six full months.⁵ Thus widespread hostility to the legislative programme in the second and third sessions, especially towards the restoration of episcopacy, can almost certainly be ruled out as a cause of low attendance. Those commissioners who did have

³ When studying attendance levels in Parliament, it is important to bear in mind the limitations of the original sources. Primary attendance figures have been taken from the Rolls of Parliament, which only record attendance on the first day of each parliamentary session. Actual absence on the days when controversial acts were passed may have been much higher.

⁴ Seven commissioners that were present in the 1661 session representing seats from the north-east were absent from the 1662 session. In 1663, six commissioners were absent. For the Highlands, four commissioners were absent from the session of 1662, and three from that of 1663.

⁵ M. Young, (ed.) The Parliaments of Scotland: Burgh and Shire Commissioners, 2 Vols. (Edinburgh, 1992), I, p.210.

misgivings about such controversial legislation were presumably absent on those specific days.

Commissioners with Covenanting backgrounds account for almost all the absences from traditionally strong Covenanting areas, the south-west and Fife.⁶ This itself, however, is not unusual, as the majority of those with previous experience in Parliament had gained this during the Covenanting era.⁷ The perceived threat of the Indemnity Act, which was to come before Parliament in the second session, may have proved a powerful deterrent for attendance for those who had taken an active part in the rebellion. Nevertheless, only two such absentees were eventually excepted from the Indemnity. John Ewart of Kirkcudbright, a somewhat prolific offender in the eyes of the government, was refused office as Provost in 1662, blamed for riots in Kirkcudbright in 1663, and imprisoned for a time in the tolbooth of Edinburgh, before finally being banished in 1663. Also named was Archibald Douglas of Cavers (representing Roxburghshire) who was fined £300 under the Act. One other absentee was involved in criminal proceedings relating to offences committed before the Restoration: Alan Dunlop representing Irvine, was on trial for his involvement in a raid on the James Douglas, second Earl of Queensberry's lands in 1650.

By far the vast majority of the absent burgh and shire commissioners, however, are linked only by their unexplained absence. Most were still active in their localities, indicating that they had taken all the necessary oaths to occupy offices of public trust, and, in addition, many were to return in later

⁶ Once more, it is the burghs, far more than the shires that were the worst offenders. Ten burgh commissioners from the so-called radical areas of the south-west and Fife did not attend the 1662 session, compared to only three from the shire membership of those areas. Nine burgh members remained absent in the 1663 session.

⁷ See table in Chapter One, p.37.

parliamentary sessions. Hostility to the royalist regime as a whole can therefore be almost certainly ruled out. Indeed, some of the absentees were prominent royalists. One such commissioner was John Irvine of Dumfries whose manner of appointment as Provost in 1660 suggests he had royalist sympathies. A Lord of the Articles in 1661, he was to return in 1665 at the Convention of Estates.⁸

One possible explanation for such unexplained absences lies with the background of the commissioners who were elected in 1661. As mentioned in Chapter One, over 70% of those attending Parliament in 1661 had had no previous parliamentary experience. 20 of the 31 absentee commissioners in 1662 fall into this category. This proliferation of 'new men,' inexperienced and in some cases, placed in position as a crown candidate, may explain their absence, for, after the passage of the majority of the constitutional settlement in 1661, their presence was perhaps not as necessary.

* * * *

Before the second session of the Restoration Parliament met, Middleton had busied himself with recruiting candidates for the episcopate. His original intention had been to appoint the Resolutioner leaders as bishops, a reward from the King for their support during the Interregnum.⁹ Lauderdale, however, doubted that many of the Resolutioner ministers could be persuaded to cooperate, and he proved to be correct in his estimation. By October 1661, James Sharp had only succeeded in recruiting Alexander Fairfoul and James Hamilton, both minor figures in the Resolutioner ranks. Robert Douglas, although a

⁸ M. Young (ed.), Burgh and Shire Commissioners, I, p.373.

⁹ Buckroyd, Church and State, p.41.

former friend of Sharp, dismissed the offer of a bishopric from him with “the Curse of God [on him] ... for his treacherous dealings.”¹⁰ Despite opposition from Resolutioner hard-liners like Douglas, in December 1661 the first four bishops were consecrated: Sharp, Fairfoul, Hamilton and Robert Leighton, Principal of Edinburgh University.

Chosen principally for their moderation, the new bishops at their ordination declared their intentions to be agents of reconciliation in the Church in Scotland.¹¹ However, the next appointments did nothing but antagonise the supporters of a Presbyterian Church. Thomas Sydserf, the only surviving bishop from the pre-covenant church, was rewarded for his devotion with the bishopric of Orkney. David Mitchell, now named bishop of Aberdeen, and George Wishart, chosen as bishop of Edinburgh, had been condemned as heretics for their refusal to sign the Covenant. A further seven appointments were made: John Paterson, bishop of Ross; Patrick Forbes, bishop of Caithness (both from anti-covenant Aberdeen); George Haliburton, bishop of Dunkeld; Robert Wallace, bishop of the Isles; Murdo Mackenzie, bishop of Moray; David Strachan, bishop of Brechin; and David Fletcher, bishop of Argyll.¹² The bishops were chosen principally for their proven support for episcopacy or for their present connections with Middleton and his allies. Their function in Parliament was to boost crown support, but in the localities they also served to “disseminate the nature of the social and political order as perceived by the administration.”¹³

There was little widespread public reaction to the appointment of the

¹⁰ NLS Wodrow Quarto LXIII, “A Brief Narration of the Coming-In of Prelacie,” f. 113.

¹¹ Buckroyd, *Church and State*, p.43.

¹² *Ibid.*, pp.42-45.

¹³ *Ibid.*, p.45.

bishops. Since Charles II's restoration in 1660 it had become increasingly apparent that a return to episcopacy would be favoured, since church rule by bishops ensured crown control in the localities. When Parliament met for the second session, the Act for the restitution and re-establishment of the ancient Government of the Church by Archbishops and Bishops merely confirmed the action already taken by the King. The estates were to ratify without debate the appointments made to the bishoprics some months previously.¹⁴

* * * *

Early in the second session, legislation intended at removing from public office any remaining opponents to the crown was passed through Parliament. Thus any organised resistance in the localities aimed at the newly restored bishops could be easily thwarted. On 24 June 1662 the Act for the Preservation of his Majesty's Person, Authority and Government, condemned the National Covenant, the Solemn League and Covenant and the general activities of the Covenanters during the 1640s. Denouncing the actions of the Covenanters as rebellious and treasonable, it went on to stress that subjects had no obligation to keep to these oaths, or the actions of the Glasgow General Assembly. Anyone convicted of the offences outlined in this act was to be declared incapable of civil, military or ecclesiastical office. The power of pardon for these crimes lay

¹⁴ Despite the lack of opposition in Parliament and the absence of any populist uprising, the Resolutioner ministers, notably Robert Douglas of Edinburgh, understandably felt their fight had been fruitless. Douglas complained that "men are ready to say, yt the ministers did not enough to resist episcopacie." He argued that the ministers preached constantly against the bishops, but with all Kirk meetings without the presence of bishops discharged, it was impossible to convey to the King "what wrong is done." NLS Wodrow Quarto LXIII, ff. 114-116. Nicoll records of how "lytill oppositione was maid [in Parliament], except ... David Leslie, newlie admittit a temporal lord, [who] did refus to vote in favoures of the bischops." The only result of this solitary action, however, was to make "many of the memberis of Parliament to lagh and jeest." Nicoll, *Diary*, pp.368-9.

only with the King.¹⁵

To further strengthen royal authority, a Declaration to be signed by those in positions of public trust was drafted and put before Parliament on 5 September.¹⁶ The subscription of the National Covenant in the 1640s had been mandatory for the exercise of civil power; in 1662, this situation had been reversed, with the imposition of oaths demonstrating commitment to royal authority.¹⁷ The many exceptions from the Indemnity Act to be passed later in the session combined with the system of oaths to remove any remaining opponents from positions of power.

The government in Scotland took its inspiration for this series of legislation from the English Parliament, which in 1661 had passed similar measures. The English Corporation Act was much like the Scottish Declaration in that it excluded from local government those who would not take two oaths abjuring the Covenants. The Anglican sacrament, the infamous 'non-resistance' oath (declaring the taking up of arms against the King as treasonable) plus the oath of allegiance and supremacy were also to be subscribed as a pre-requisite of office. The Uniformity Act, passed by the Commons in May 1662, ordained that all churchmen were to assent to all the oaths outlined in the Corporation Act and, in addition, declare their "unfeigned acceptance" of the whole of the Book of Common Prayer.¹⁸ Similar to the Scottish versions, the legislation passed in

¹⁵ NAS PA 2/28, ff.10-1. The Act bears some similarity to the 1646 Act of Classes in that it fined persistent opponents to the crown, although there were no separate levels or 'classes' of punishment. Unlike the later 1649 Act of Classes, however, the legislation was not brought into being at the insistence of the Church. In 1662, the crown realised the potential of such legislation in that it easily removed opponents from positions of authority in the localities. Nevertheless, the similar action taken in 1649 against those involved in the Engagement presumably provided a prototype for the royalist government.

¹⁶ NAS PA 2/28, ff.36-7.

¹⁷ R.A Lee, "Government and Politics in Scotland," p.32.

¹⁸ J.P.Kenyon, The Stuart Constitution, (Cambridge, 1986), p.337.

England was intended to eliminate grassroots dissent and ensure local allegiance to the crown. In Scotland, however, Parliament's stability was instead to be threatened not from dissent in the localities, but from infighting in the upper ranks of the nobility.

* * * *

The personal rivalries that had simmered between Middleton and Lauderdale ever since their respective appointments finally came to the surface with the Billeting Affair, an attempt by the Earl of Middleton to use Parliament as a tool to displace Lauderdale from the King's favour. Since the appointment of the King's key officials in late 1660, both Middleton and Lauderdale had been battling to secure the position of the King's favourite. The reason for the discord was mainly jealousy over each other's position in the governmental hierarchy. Middleton had remained resentful of the Secretary's close relationship with the King, as he found himself isolated in Edinburgh. Lauderdale, residing at Court, always had the King's ear. Yet Middleton had impressed Charles with the legislative programme enacted in the first session of Parliament, something that Lauderdale resented. It was Middleton, however, who made the first move and hatched a plan to remove Lauderdale from his influential position.

Like so many of his contemporaries, the Earl of Lauderdale had played a significant role in the government of Scotland under the Covenanters, although he had languished in prison throughout the 1650s for his loyalty to the exiled King. Because an Indemnity Act had not yet been passed by Parliament, no individual had yet been formally punished for their involvement in the previous

regime. Thus, among many prominent individuals there remained a degree of nervousness over the exceptions from the act, although few expected the King's recently appointed ministers to be directly implicated in the Covenanting rebellion. Yet, Middleton viewed the Indemnity Act as a useful tool, not only to purge public offices of former radicals, but also to remove his present political rivals from their positions.

The Declaration to be taken by those holding positions of public trust, condemning the Covenanters and their actions, was the first step in a campaign engineered by Middleton and his allies to dislodge Lauderdale from office.¹⁹ The influence of Lauderdale and his associates, John Lindsay, Earl of Crawford-Lindsay, Treasurer, and Sir Robert Moray, Justice Clerk, on the King made the group an obvious target if Middleton wished to strengthen his position at Court. Eventually aiming to exclude them completely from the Act of Indemnity, Middleton attempted to use his control over the drafting of legislation to force his enemies from public office. Middleton believed that Lauderdale and his associates would refuse to subscribe the oath. But it soon became apparent that Lauderdale would, if necessary, take the Declaration of Public Trust to keep his place.

Middleton's scheme did at least have some early success. Crawford-Lindsay, one of the original Covenanters who had formed a close bond with Lauderdale during their imprisonment at the time of the Cromwellian

¹⁹ Middleton's main allies in Parliament were the Earl of Glencairn, William Crichton, second Earl of Dumfries, William Douglas, eighth Earl of Morton and Lord Charles Gordon, first Earl of Aboyne. All had impeccable royalist credentials. Lauderdale later declared that 11 members of the nobility supported Middleton, although he does not name them. *LP*, I, Lauderdale to Sir Robert Moray, 27 June 1663, p.140. In the investigation undertaken into the billeting affairs, Kenneth Mackenzie, third Earl of Seaforth, Sir John Urquhart of Cromarty and John Bell of Glasgow were also implicated as being behind the plot. NLS Lauderdale Ms 3424, f.423.

occupation, refused to take the oath. He had regained his position as Treasurer at the Restoration, but proved to be less enthusiastic to give way on the issue of episcopacy than Lauderdale. His refusal to sign the Declaration made him relatively easy to remove, and he used this as an excuse to resign his office as Treasurer and leave Parliament. Lauderdale himself was a different matter. His closeness to the King meant that Middleton had to find a means of making Lauderdale's position as Secretary untenable. His former involvement in the Covenanting rebellion would be the perfect tool.

The Billeting affair provides for the historian the ideal example for how legislation could be pushed through a submissive Parliament. When it became evident that Lauderdale had no qualms about subscribing the Declaration, Middleton devised what he regarded as a masterpiece of policy.²⁰ To the draft of the Indemnity Act would be added a clause for incapacitating from public trust 12 individuals, to be chosen in Parliament by a secret ballot. The draft was sent to the King for his approval with the assurance that this was the wish of the estates of Parliament; Charles signed the act without further examination, unaware that the act was the invention solely of Middleton and his allies.

The idea of incapacitating certain individuals by a secret ballot in Parliament was not first suggested in the Lords of the Articles, the usual place for proposing laws, but in the committee of fines.²¹ John Leslie, Earl of Rothes, John Hamilton, fourth Earl of Haddington, James Livingston, first Earl of Callander, Sir Alexander Falconer, first Lord Halkerton, Sir George Mackenzie

²⁰ O. Airy, 'The Lauderdale Mss in the British Museum, 26 Vols.' in *Quarterly Review*, LVII (1884), p.417.

²¹ The investigation into the billeting affair heard evidence that the idea of a secret ballot was first made by Charles Stewart, third Duke of Richmond in his lodgings in Holyrood Abbey. It was then tabled in the subcommittee. NLS Lauderdale Ms 3424, f.425.

of Tarbat, Archibald Stirling of Carden, Sir John Scougall and John Bell of Glasgow formed the membership of this committee. Its remit was to identify those who were to be excepted from the Indemnity Act, those who had joined in arms against the Engagement or who gave accession to the Western Remonstrance. Fines were to be set at one year's rent.²² It is interesting to note that this committee was not exclusively staffed with Middleton's supporters: indeed, only George Mackenzie of Tarbat, who was to play an instrumental part in the Billeting affair, can be identified as being part of Middleton's faction.²³

The motion was at first rejected, but "when it was better prepared" it appeared before the Articles.²⁴ Although meeting initial opposition, when Middleton spoke for the idea, "it was believed that he had good warrant for it" and so the proposal was passed onto the full Parliament.²⁵ The anonymous vote in Parliament to compile a list of 12 to be excepted from a future Indemnity Act was to take place on 9 September.²⁶

The King had demanded to see the draft Act of Indemnity before it was put before Parliament, to give it his final approval. Knowing that this would give Lauderdale forewarning of the controversial clause on incapacitating those who were to be fined, Middleton, in an inspired piece of political scheming, sent Sir

²² LP, I, Instructions to Lauderdale, n.d, p.104.

²³ Tarbat had formerly been involved in Glencairn's royalist rising, but otherwise, seems unexceptional.

²⁴ Unfortunately, Lauderdale's own notes on the affair do not expand on this phrase. It suggests, however, that the idea of a ballot had been the subject of much discussion, either in the Committee of Fines or solely in Middleton's faction.

²⁵ NLS Lauderdale Ms 3424, f.333, Petition of Lauderdale to the Scottish Privy Council in London, February 1663. See also NLS Ms 3423, f.287, James Sharp to Lauderdale, 5 September 1662, which informs Lauderdale of the Committee's decision and the rumours in the Lords of the Articles that both himself and Crawford-Lindsay would be named in the ballot. Thus before the act was even presented to Parliament, the outcome of the voting seemed a foregone conclusion.

²⁶ Clarendon, the inventor of a similar English measure, presumably influenced Middleton's decision to oust Lauderdale in this manner.

George Mackenzie of Tarbat to London with two draft copies of the Act. Lauderdale's copy conveniently failed to include the clause on exclusion, mentioning only that those who were named were to be fined.²⁷ Despite Middleton's efforts to deceive him, Lauderdale soon found out about the King's copy of the act, complaining that one of the acts "behoved to be false and at that rate he [Mackenzie] might bring in more."²⁸

Despite reassurances from Middleton that "Parliament intended only to incapacitate a small number of the most guilty," Lauderdale immediately protested to the King how "heinous a punishment incapacitating was, a punishment worse than death." Lauderdale had probably learnt by now from his correspondents in Scotland the likelihood of him being named by Parliament; thus he attempted to persuade the King of the immorality of billeting as a method of punishment. "Any man's honour, his life, his posterity may be destroyed without the trouble of calling him, hearing his answer, nay without the trouble of accusing him ... this is a stranger engine that white gunpowder; which some fancy, for sure this shoots without any noise at all," remonstrated Lauderdale.²⁹ Along with Crawford-Lindsay, Lauderdale sent an appeal to the King desiring that those named should at least be punished legally, as those billeted were condemned in an entirely arbitrary manner. But Charles supported the measure, signed the draft act, and agreed to grant warrant to except those whom Parliament named, unaware that office bearers might be included.³⁰

With the King persuaded that this was the wish of Parliament (and,

²⁷ NLS Ms 3423, ff.330-31.

²⁸ *Ibid.*, f.331.

²⁹ *Ibid.*, f.332; NAS GD 90/2/260, 'Scroll Warrant Book of the Earl of Rothes,' 1660-70, f.26.

³⁰ R.A Lee, "Government and Politics in Scotland," pp.33-36; Buckroyd, Church and State, p.50.

conversely, with Parliament assured that this was the desire of the King), a secret ballot was held. Each member was given a slip of paper, or billet, on which they were to write their list of 12 individuals that were to be excepted from the Indemnity. Through extensive lobbying by Middleton, a list was finally agreed naming the 12 culpable individuals. This was distributed throughout the chamber prior to the secret vote. Contemporary reports also allude to a pre-prepared list of names read out in Parliament by Sir James Livingston, first Earl of Newburgh, who made no secret of the individuals he had voted against.³¹ Meetings were “kept at Mastertons tavern and elsewhere for carrying that which was called the ‘right’ list.”³² In Parliament, ‘agents’ of Middleton³³ were set to work, publicising the names to be billeted, “engadg[ing] all friends, relations, interests and dependants ... to follow their good example ... not sparing to tell some that this was the Commissioners list and would now be a test of their honestie to doe in this what wes so commanded.” John Bell, commissioner for the burgh of Glasgow, attended a meeting of the burghs and offered pre-prepared billets to several members. Mungo Murray, brother to the Earl of Atholl, performed a similar duty at a meeting of the shire commissioners.³⁴ As a direct result of such intrigue, Lauderdale and Crawford-

³¹ Newburgh fought at Worcester, and fled with the King to The Hague soon after. He was a prominent supporter of Charles II, and was in command of the Scottish Lifeguards. His loyalty to the crown was rewarded in 1661 when his estates were fully restored to him.

³² See NLS Lauderdale Ms 3424, f.334 and f.431. Sir John Urquhart of Cromarty testified to the Billeting Commission that he was present at the meeting, as was the Duke of Lennox, the earls of Aboyne and Newburgh and John Bell. Correspondence also names suggested victims of the ballot before it was even known by the full Parliament. See NLS Lauderdale Ms 3423, f.287.

³³ The agents included James Crichton of St Leonards and Sir John Urquhart of Cromarty (cousin of Sir George Mackenzie of Tarbat), both victors in disputed elections in 1661. Their elections were managed to ensure their selection for Parliament. See Chapter One, pp.38-9.

³⁴ ‘Report and Depositions given in to the Commission on the Billeting act,’ NLS Lauderdale Ms 3424, ff.426, 428 and 429.

Lindsay were included on the final list of 12, although "some were ashamed to mention" them, "but many did it in heat and too many through fear."³⁵ The suggestion (circulated by Middleton) that the King had grown weary of his Scottish Secretary had an obvious effect on the voting, as did the bribing and cajoling of members. No doubt eager to please, Parliament accepted the suggestion that Charles was displeased with Lauderdale, and by a large majority, included him as one of the 12 to be incapacitated.³⁶

Lauderdale found himself excepted by 82 votes, Crawford-Lindsay by only three or four, with Sir Robert Moray, Justice Clerk, and John Hay, Earl of Tweeddale also being chosen.³⁷ The result of the vote was kept secret from Parliament, until the Duke of Richmond, the Earl of Dumfries and Mackenzie of Tarbat, sent immediately to London with the draft act, had secured the King's signature of approval.³⁸ Yet, even before they had started their journey, Lauderdale, informed by William Sharp in Edinburgh, had relayed to the King the startling result of the ballot. Lauderdale knew exactly how to appeal to the King, letting Charles imagine that it was he who took the initiative in Scottish affairs.³⁹ Thus, Lauderdale delighted in pointing out that "the Commissioner had not so much as asked his Majesty's advice in pulling his Servants from

³⁵ *LP*, I, William Sharp to Lauderdale, 10 September 1662, p.111.

³⁶ There is no complete list of the 12 individuals named by the ballot. The Commission's report into the billeting affair, presented to Parliament on 26 June 1663, declared that the act was sent to the King sealed and that he has "so ordered that it shall never more come to light." *NAS PA 2/28*, f.80.

³⁷ As one of Lauderdale's allies, the Earl of Tweeddale, had been a victim of Middleton on an earlier occasion. He had been made President of the Privy Council in 1661, but he fell into disfavour in consequence of his being the only person to oppose the death sentence on James Guthrie, a leading Protester who refused to admit the royal authority in ecclesiastical matters. This led to Tweeddale being accused of treason. Imprisoned in Edinburgh castle, and then placed under house arrest, he was only set free on Lauderdale's insistence in May 1662. *RPCS*, I, pp.36-7; pp.41-3; pp.45-4; pp.57-8; *NAS GD 90/2/260*, 'Scroll Warrant Book of the Earl of Rothes, 1660-70,' f.18.

³⁸ O. Airy, 'The Lauderdale Mss in the British Museum,' p.418.

³⁹ *Ibid.*, p.418.

him.”⁴⁰ Was this not an encroachment on the King’s prerogative powers, he argued? Was it not also a blatant and deliberate deceit of both the King and Parliament? Charles wholeheartedly agreed, and, “highly offended” at the outcome of the vote, he immediately renounced the decision. Imagining the ballot would be used to punish unruly Presbyterians, an attack on trusted, appointed servants was unwarrantable. When Middleton’s messengers arrived with the draft containing the result of the ballot, Charles threw the act, unopened, into his cabinet. Dumfries and Tarbat were “severely checked for introducing that new way, and for their rashness in billeting ... his Majesty’s present servants.” The influence and support of Clarendon temporarily saved Middleton, though this was not expected to last indefinitely.⁴¹

In the midst of the billeting affair, on 9 September 1662 an Indemnity Act was finally put before Parliament.⁴² Despite the furore surrounding the accompanying exclusion act, the chamber passed the act without much fuss. Middleton had certainly timed the holding of the secret ballot well. The safety of most of the members of Parliament still depended upon the passing of an act of Indemnity, and many were still fearful of being excepted from the act. Because the ballot took place immediately prior to the passage of the Indemnity act, it was the ideal occasion for members to display their loyalty to the crown,

⁴⁰ Mackenzie, *Memoirs of the Affairs of Scotland*, p.76.

⁴¹ O. Airy, ‘The Lauderdale Mss in the British Museum,’ p.418; Mackenzie, *Memoirs of the Affairs of Scotland*, p.76. The failure of the billeting scheme did not put an end to Middleton’s efforts to remove Lauderdale from power. In October 1662, Lauderdale was given notice that Middleton had acquired the papers of the transactions between the Scottish Commissioners and the English Parliament, implicating the Secretary in the surrender of Charles I to the English. The papers proved to be crude forgeries, but Lauderdale was plagued by such accusations throughout his career. In c.1674 he was forced to write a detailed account of his whereabouts at the time of the execution of Charles I. NLS Lauderdale Ms 597, f.263; *LP*, I, Bellenden to Lauderdale, 13 January 1663, pp.125-6.

⁴² NAS PA 2/28, ff.47-8.

and this was something that Middleton depended on. Yet, voting to incapacitate Lauderdale from public office further demonstrated Parliament's submissive nature at this time.

The billeting affair dragged on into the following year. In January, the King discharged all paying of indemnity fines, but in a further act of folly, Middleton wrote in February to the Chancellor ordering him to begin collection.⁴³ Lauderdale was to use this to argue that the Commissioner, now rapidly losing his favour with the King, had abused his powers by passing acts without the King's knowledge and contrary to his instructions.⁴⁴ Middleton was summoned to a meeting of the Scottish Privy Council in Worcester House, London on 5 February 1663. The chamber was packed, with "each party having invited their friends to be present." Middleton, in a last ditch attempt to save his career, called together James Graham, Marquis of Montrose, James Johnstone, second Earl of Annandale, the Earl of Dumfries and "others who were enemies to Lauderdale." He "strove to convince them that it was in their interest to adhere to their former principles," and tried to assure them that Parliament, who "had been for the greatest part Middleton's own creatures," would "assist them, in maintenance especially of their own actions and authority." But, realising that Middleton's ruin was almost complete, his once loyal allies refused to concur

⁴³ On 12 February an act was drafted for suspending the first terms payment of the Indemnity fines, but on 13 February, Middleton, in the King's name, declared that the proclamation was not to be published. NAS GD 90/2/260, 'Scroll Warrant Book of the Earl of Rothes, 1660-70,' 10 March 1663, f.28.

⁴⁴ Mackenzie tells of how Middleton's previous allies were rapidly deserting him: "The great instruments whom Lauderdale had employed in this revolution were the Earls Marischal [William Keith, seventh Earl Marischal] and Rothes. Marischal having been Middleton's great minion, was persuaded to show the King, how Middleton miscarried in his private conduct, and to rally all his friends and actions. Rothes, for whom his Majesty had much personal affection, had greater influence ... thus the fines, which were impos'd by Middleton to enrich his friends, proved his ruin; and the Declaration, which was designed to make him Treasurer, by ousting of Crawford, proved an occasion to gain one to be his enemy." Mackenzie, Memoirs of the Affairs of Scotland, p.113.

with him, "pretending that his Majesty was so deeply displeased, and that Lauderdale had so uncontrollable an interest with them, that in opposing him, they would rather complete their own ruin, than preserve Middleton."⁴⁵

In answer to the charge that he had passed legislation without the King's knowledge, Middleton maintained that it was impossible to send draft acts to the King before they were presented to a full Parliament, only after they had received parliamentary assent. Arguing that his Commission allowed him to exercise 'sovereign power,' Middleton stressed that he had only consented to billeting, and was not the contriver of it.⁴⁶ Despite maintaining that he had only acted in the interests of the crown, Middleton found his position increasingly untenable. His refusal to implement the royal proclamation concerning the fines provided a legitimate excuse for his dismissal. The King reversed his Commissioner's earlier decision, and again suspended the first term's payment of the Indemnity fines on 17 March 1663. In May, Middleton was forced to resign his commissionership, and, effectively banished, he retired to England. In the ensuing parliamentary session, he was replaced as Commissioner by Lauderdale's ally, the Earl of Rothes.

A painstaking investigation into the origins of the whole affair was undertaken in the third session of Parliament, for which Lauderdale journeyed to Edinburgh to attend. Ignoring any pretence of impartiality, Parliament appointed an investigative committee on 26 June, staffed solely by crown

⁴⁵ *Ibid.*, p.116.

⁴⁶ NLS Lauderdale Ms 3424, ff.342-3.

supporters and allies of Lauderdale.⁴⁷ The Earl of Haddington, Sir John Gilmour of Craigmillar, Sir James Lockhart of Lee, Sir Robert Murray of Edinburgh, Alexander Wedderburn of Dundee (all Lords of the Articles) and Lauderdale himself undertook investigations and reported back to Parliament on 24 July 1663. Unsurprisingly, they found that Middleton had deceived the King by sending two copies (one false) of the Act of Indemnity for his approval, and had misled both King and Parliament into accepting billeting as the most expedient way of voting those to be incapacitated.⁴⁸ The result of the inquiry was the rescinding of the two acts passed in the second session, the Act for Excepting of persons From Public Trust and the Act for Voting by Billets on 9 September 1663, exactly one year since the passing of the Indemnity Act.⁴⁹ The Billeting Affair proved for Lauderdale a convenient method of gaining further control of Parliament, for the estates were eager to condemn their former actions in order to re-establish themselves in the royal favour.

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Despite the short delay in the collection of the Indemnity fines, for the new

⁴⁷ NAS PA 2/28, ff.80-1. The report of the investigation was merely a formality. Middleton's expulsion from court was already decided, and Lauderdale was now the butt of jokes regarding the matter, with Moray relating to Lauderdale the King's comment on opening one of the Secretary's letters: "If you write not upon better paper and with better pens, wee will have yow billeted again." Lauderdale's handwriting is, in some cases, almost illegible. Lauderdale also addressed a letter to the King with the heading, '10th of September, 1663, being the day after St. Billeting's day.' NLS Lauderdale Ms 3424, f.389; *LP*, I, p.136.

⁴⁸ NAS PA 2/28, f.90. See *LP*, I, pp.164-175 for the Secretary's correspondence regarding the investigation into billeting. "The examining of divers noblemen" in a more widespread investigation was rejected; Lauderdale seemed content to recommend only that the Earl of Middleton be removed from office as General of the armed forces, and Tarbat as a Lord of Session and Exchequer, pp.167-8. Excluding Middleton from any further office, the Earl of Rothes argued, would "unite the Nobilitie and gentrie of the kingdome as one family," p.172. The documents gathered for the report survives as 'Report and Depositions given in to the Commission on the Billeting Act,' NLS Lauderdale Ms 3424, ff.425-38.

⁴⁹ NAS PA 2/28, ff.101-2.

regime, like the Covenanters before them, the imposition of fines proved very useful for supplementing traditional financial income. A Commission was appointed to decide on the individuals who were to be punished and the amounts they were to be charged. A total of 896 people were named (including eight nobles), only a handful of which were actually sitting in Parliament. Fines varied greatly: for example, George Gairnes who had represented Burntisland in the 1661 session was fined £50 for his part in the Covenanting rebellion. John Balfour, third Lord Burpleigh, however, was fined the vast sum of £1,100. If payment was refused, goods were instead to be sequestered and raised for the King's use, and the individual was to be punished as persons guilty of sedition, usurpation and rebellion.⁵⁰

One of those penalised under the Act was Sir George Maxwell of Nether Pollok, a commissioner for Renfrewshire in the 1649-50 Parliament. A zealous Covenanter and member of the General Assembly noted for its hostility to the Engagement in 1648, he had in 1661 endeavoured to get new commissioners elected for the Western shires that would be more favourable to the Protester party.⁵¹ Sir George was accused of declaring that Cromwell, during the Interregnum, had as good, if not a better, right to the crown than Charles Stewart. Despite being vindicated from this charge, Sir George was fined £333 under the Act of Indemnity for his conduct during the last 20 years, the highest amount in the shire.

⁵⁰ NAS PA 2/28, ff.47-58.

⁵¹ Sir George had opposed William Cunningham, Earl of Glencairn's election at a meeting to elect spokesmen to travel to London to see General Monck in January 1660. He had thought the election had been too hurried, and had favoured for the position instead Crawford-Lindsay or Lauderdale, as they were thought to be more sympathetic to the Presbyterian cause. Glasgow City Archives, Stirling-Maxwell of Pollok Collection, T-PM 113/ 872; William Fraser (ed.), *Memoirs of the Maxwell's of Pollok*, (Edinburgh, 1863), Vol. II, pp.291-2.

Despite complex bargaining early in 1662 between John Fork, Sir George Maxwell's agent in London and various figures at Court, attempts to release Sir George from paying the large fine seems to have proved futile. Some nine months before the Indemnity act was made public, John Fork was in London conducting informal negotiations with Charles Maitland of Hatton, brother of the Earl of Lauderdale, who had organised an audience with the Secretary himself. Fork informed Sir George that it was expected that "the King will give way to the Parliament, to two years rent at most from the greatest offenders." While Sir George faced such a fine, conversely his father-in-law, Sir Archibald Stewart of Blackhall was in line to receive the same in reparations, since the money raised by fining would be "applicable to the relief of such who have constantly adhered to his matie."⁵² Remarkably, Sir George and his father-in-law seem to have hatched a scheme to ensure that the family would not lose out financially. Blackhall submitted to the King a petition "intimating his single sufferings in person and estate for his constant loyalty unto his maties interest" just grounds for receiving reparations out of the revenue raised by fines. Correspondence reveals, however, that his claim for reparations was none other than a cover for "indemptifying a near relation (who is clouded under prejudice) from the feining." A "dextrous concealing of the severall applications" was required, if the scheme was to succeed, reported Sir George's agent, John Fork.⁵³ A case can be made for Sir George being the unnamed relation since his "business" in London seems to be closely connected with this claim for reparations (as is evident from the detailed reports he receives on the matter).

⁵² Glasgow City Archives, T-PM 113/487, 488, 489.

⁵³ Glasgow City Archives, T-PM 113/489, 490, 492.

Unfortunately, it is not recorded if the conspiracy was a success. Certainly, Sir Archibald Stewart did not receive any ratifications in Parliament, nor is it clear if his £200 per annum pension, granted by Charles I, was restored. If any reparations were received, however, they would have gone some way to relieving the financial situation Sir George was in.

Sir George's friendship with the Earl of Lauderdale did not help him escape the financial penalty, and in fact may have indirectly led to the severity of his punishment. For, in addition to the financial penalties imposed by the crown, many of those excepted from the act also faced personal claims for reparations. Sir George was fined for an attack carried out by him on James Douglas, Earl of Queensberry's estates in 1650. This matter should have been dealt with privately, since if it came before Parliament it was feared that Sir George would suffer the effects of the factional rivalry between Middleton and Lauderdale. John Maxwell warned his brother: "I am affreied to meddil any thing in that matter til my Lord Middleton be gon, because Lauderdale ... is your great freand, and he and Middleton are not wery great freands; so that, as it is thought, the one opposite that quhat the other wold have."⁵⁴ Nevertheless, Sir George was cited to appear before Parliament on 2 March 1662 to answer charges brought by James Douglas, Lord Drumlanrig, that he was an accessory to "burning the gates, wasting the grounds and ruining the tennants" of his father,

⁵⁴ Fraser (ed.), *Memoirs of the Maxwell's of Pollok*, p.299.

the Earl of Queensberry.⁵⁵ This was only one of the numerous claims for reparations directed towards the Maxwell's of Pollok, and many families who had actively opposed the crown during the late rebellions found themselves facing the prospect of financial ruin as the royalist supporters launched their bids for financial compensation.

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Probably intended as a belated reward for Parliament's loyalty, the Indemnity Act included no ministers. Although Middleton had first included a number of ministers, especially Protesters, the final act, perhaps on the order of the King, refrained from fining any churchmen. Indicating that not all at court approved of Middleton's hostility to Presbyterians, the Indemnity marked almost the culmination of the prolonged legislative attack on pre-1638 institutions. The composition of Parliament had now also been radically altered by the restoration of the episcopate. In the 1663 session the bishops took their seats and utilised their voting power in the chamber for the first time since 1633.

Despite Lauderdale's total renunciation of Presbyterianism, the suspicion that he still held such sympathies was the motive behind the clumsy attempt to oust him from power. Lauderdale had consistently opposed Middleton's more extreme policies, especially towards the church, and when the third session of

⁵⁵ In 1650 Colonel Gilbert Ker with an armed force had made an attack on Drumlanrig Castle in which Sir George was implemented. Queensberry's case was subsequently taken up by Parliament in 1661 and it was agreed that reparations were to be set at £2,000 to be apportioned amongst the guilty parties. The lions share of the bill for damages was charged to Sir George. Two additional claims were made against the family. An action brought by Gavin Cochrane, brother of William Cochrane, Lord Cochrane for injuries sustained to their brother, Ochter Cochrane in 1648 was settled by arbitration. A second claim for damages, charging Sir George not as a private individual but as leader amongst the Western Covenanters, was brought by Sir James Hamilton to cover losses he sustained in 1649. This action was subsequently quashed. NAS PA 2/26, f.138-9; Fraser (ed.), *Memoirs of the Maxwell's of Pollok*, II, pp.296-8; I, pp.69-70.

the Restoration Parliament met on 18 June 1663 it could rightly have been expected that a more moderate form of episcopacy, or even a return to presbytery, could have been conceivable. However, in the ensuing session, both the Parliament and Privy Council enacted a series of legislation against non-conformity that actually endangered open conflict in Scotland.⁵⁶

The first legislative measure of the session was the Act concerning the constitution and election of the Lords of the Articles.⁵⁷ The Lords of the Articles, first restored in the 1661 session, were now modified to include the bishops, and a reformed method of election made the committee as stringent as it had been under Charles I. Reverting to the method of election from 1633, the clergy chose eight nobles, the nobles chose eight bishops, and these 16 selected eight barons and eight burgesses, to which was added the Officers of State. This method of election ensured that the Articles would consist mainly of those who were well disposed to royal policy.⁵⁸

The change of personnel in Parliament (from Middleton as King's Commissioner, to Rothes) is reflected in the membership of the Articles. The former Commissioner's ally, the Earl of Dumfries was absent from the new committee, as was John Bell of Glasgow who had come under investigation for his involvement in the billeting affair. However, the eight clergy provided enough leverage on the other estates to enable Lauderdale and Rothes to resist

⁵⁶ Before Parliament met, Lauderdale alarmed many of his Presbyterian supporters when, in June, he appointed Archbishops Sharp and Burnet as Privy Councillors. Mackenzie suggests that these men were "advanced not out of any kindness that Lauderdale had for them, but to let the Episcopal party see that though they had been informed that they would ruin them ... they were to expect from him greater shares of favour, if they comply'd with his interest." Mackenzie, *Memoirs of the Affairs of Scotland*, p.116.

⁵⁷ NAS PA 2/28, ff.79.

⁵⁸ The new bishops owed a debt of loyalty to the crown and were unlikely to antagonise the King by opposing any royalist policies. Moreover, the clergy and the nobility worked in tandem to ensure that those elected from the shires and burghs were both amenable to themselves and to the crown.

interfering further in the membership of the committee. Those who posed no threat to crown policy only ever gained employment on the committee, and other members of the chamber were strictly forbidden to attend meetings or listen to its debates.⁵⁹ Lauderdale could confidently boast that “nothing can come to the Parliament but through the Articles, and nothing can pass in the Articles but what is warranted by his Majesty, so that the King is absolute master in Parliament both of the negative and affirmative.”⁶⁰

With the clerical estate again utilising their voting power in Parliament, a number of controversial acts concerning the recent religious settlement were passed through the chamber. An Act against Conventicles announced that nonconformity would be treated as a “dangerous example and consequence” and would be punished as treason.⁶¹ On 10 July the Act against separation and disobedience to Ecclesiastical Authority reaffirmed the episcopal settlement and tightened up penalties against non-conformists. Persistent offenders who conducted or attended religious services outside the established church were to be subject to fines, the amount varying according to their standing in the community.⁶² As the new Commissioner, Rothes was to embark on an all-out offensive to end the spread of conventicles, especially in Ayrshire and the Borders. However, despite the financial penalties directed at non-conformity, the increasing occurrence of religious dissent in the form of conventicles was directly a result of the church legislation passed by Parliament in 1663. The strict policies introduced in 1663 were largely to fail, since the growth of conventicles continued unheeded.

⁵⁹ Rait, *Parliaments of Scotland*, pp.77-9.

⁶⁰ *LP*, I, Notes for the King, n.d, pp.173-74.

⁶¹ NAS PA 2/28, ff.85.

⁶² NAS PA 2/28, ff.85-6.

At the close of the session, Lauderdale proclaimed to Parliament the King's approval of what had been done concerning the church in the past three sessions. By making it clear that Middleton's policies (especially those concerning the church) would continue under his leadership, Lauderdale had dashed any hope that a more moderate settlement might be introduced. These measures, Buckroyd argues, were intended to disarm political opposition to Lauderdale (since Middleton's demise, led by Glencairn) and to placate a number of the bishops who were increasing pressure for an offensive on nonconformity.⁶³

Towards the end of the session, legislation regarding trade and commerce came under close scrutiny. Since the Restoration, a trade war had been raging between England and Scotland. The English Navigation acts had laid great impositions upon Scottish commodities carried into England, and this together with the Staple Act, required that all goods imported into England should be either in English ships or ships of the country of origin. The new legislation closed off the colonial trade to foreign shipping altogether. In retaliation, Scotland penalised the English manufacturers by setting a tax of 80% on English cloth.⁶⁴ These measures were probably intended to bring England by treaty to some equality in trade, and Parliament agreed that the King was free to order this as he saw fit in the interval between sessions. However, in place of this anticipated act, just before the third session of Parliament rose, on 9 October an Act was brought in empowering the King to impose upon or restrain all trade with foreigners as he pleased. Under these proposals, the full control of Anglo-Scottish trade relations and the ordering of the country's trade and commerce

⁶³ Buckroyd, *Church and State*, p.52.

⁶⁴ NAS PA 2/28, ff.95-6.

were brought under the royal prerogative.⁶⁵ This extraordinary innovation allowed the King to make as many gifts and monopolies as he pleased, and to exact whatever impositions he liked upon foreign commodities. As this was now a prerogative power, Parliament was helpless in being able to question trade decisions.⁶⁶

The revenue from trade was vital to the Scottish economy, and the continuance of high impositions with England, one of Scotland's closest trading partners, was to endanger this essential source of finance. This seems to be the point when the crown really does establish its true dominance over Parliament since the passing of the act is made all the more extraordinary by the apparent lack of opposition to the matter. Very little is mentioned of the act in, for example, Lauderdale's correspondence, which indicates that perhaps Charles II's English ministers devised the legislation. What was of concern to the English government was Scotland's close ties with the Dutch. The great bulk of Scottish foreign trade was with the United Netherlands and the traditional contact between Dutch and Scottish Presbyterianism was the subject of much concern in London.⁶⁷ Since Middleton's strict religious policies had driven many Scots Presbyterians into exile in Holland, the possibility of religious rebellion in Scotland, organised from Holland, worried the English government. The English war with the Dutch was not far off, and a foreign foe combining with internal enemies was a major threat to the peace of the three kingdoms. By taking these concerns into consideration, the legislation on trade can be considered part of the attempt by the royalist government to remove opponents

⁶⁵ *Ibid.*, ff.132-3.

⁶⁶ Mackenzie, *Memoirs of the Affairs of Scotland*, p.133.

⁶⁷ Hutton, *Charles II*, pp.224-5; NLS Lauderdale Ms 3424, ff.420-2.

from positions of power. Controlling Scottish commerce enabled the royalists to ensure that possible opponents to the crown did not abuse trading links.

To further ensure the security of the country, a militia of 20,000 foot and 2,000 horse was to be formed. This new standing army was unique in that the King could call upon his new militia to serve him in any part of country. This excited the King who saw it as a possible means of putting pressure upon his southern kingdom in particular.⁶⁸ Not surprisingly, this measure caused great offence in England “who conceived that Scotland should not have offered their assistance to His Majesty, in their Kingdom, in so publick a way.”⁶⁹ However, as will be explained in the next chapter, this army, rather than strengthen Scotland’s bargaining power with the other kingdoms, proved only to be a massive drain on resources. Parliament’s obedience in granting to the King power over Scottish trade and its militia again indicates how submissive it had become. It seems the investigation into billeting had shamed many members; if Parliament could stay in the royal favour, it was now content to grant the King whatever he wished.

* * * *

The final session of the first Restoration Parliament ended on 9 October 1663. The vast amount of legislation passed by Parliament during the past three years had ensured that, while Parliament was in a submissive state, the crown could exercise complete control. The reshaping of the Articles into an even stricter method of crown control over Parliament was an ample demonstration of

⁶⁸ Hutton, *Charles II*, p.172.

⁶⁹ Mackenzie, *Memoirs of the Affairs of Scotland*, p.131.

this. However, the royalists had not had to resort to bullying tactics to guarantee that crown legislation was passed. Both Middleton and Lauderdale exploited the loyalty of Parliament for their own benefit, and in 1663, Lauderdale was determined to demonstrate that he too could be as loyal a servant as Middleton had been. Charles II proved to be delighted with the increase in his prerogative powers, and any doubts that Lauderdale still held covert Presbyterian leanings were dispelled.

After the close of the final session, the new Commissioner, the Earl of Rothes instructed Sir Robert Moray to inform the King that “the nixt Parliament wold be as intirely at his Maties devotion as he can desire.” Reflecting on the inclusion of the bishops in Parliament in 1662, he highlighted the importance of “the Lords Spirituall and Temporall ... sitting in the same hous, [for] the King knows what influence they have.” The other estates would be equally compliant with the crown since

the power which the officers of state and noblemen have in Elections of Commissioners for Shires and Burroughs may secure his Matie of the new elections, especially seeing the declaration concerning the Covenant keeps out those who are avers to the Church Government establisht.⁷⁰

This was the key to the success of the first Restoration Parliament. Opportunities for tension did not arise, as the King did not make any additional financial demands after the 1661 session; membership had been comprehensively purged to ensure a compliant chamber; controversial legislation on episcopacy and trade passed without objection. Based on past events, the Earl of Rothes was right to be confident of future royalist dominance

⁷⁰ NLS Lauderdale Ms 3424, f.454.

in Parliament. However, the first signs of non-conformity in 1663 regarding the church suggested that, for some, loyalty to the King had its limits.

Parliament was not to meet again until 1669, but the three sessions of the Restoration Parliament had achieved more than would have been thought possible in 1660. By sweeping aside the constitutional revolution of 1640-41, Parliament had demonstrated its essential loyalty to the crown. The return of Charles II was welcomed because monarchy provided stability to a country that had suffered massive upheaval over the past 20 years. Episcopacy was restored as the preferred church government because it was that which was most compatible with monarchical authority.

Increasingly, political favour relied on the ability to serve the interests of the King, and the rivalry between the two main figures of the period, Middleton and Lauderdale, throughout the parliamentary sessions, escalated into a contest to see which of them could best serve their monarch. The opposition to the crown was skilfully eliminated from the public arena by utilising the covenanting traditions of oaths; only those guaranteed office (and thus an opportunity for expressing their discontent) were those who would subscribe to the principles of the crown. Undoubtedly the ministers suffered from their significant involvement in the Covenanting regime, but early action to ensure that they were unable to gather at rival meetings and publish opposing pamphlets in protest to Parliament ensured that opposition to the restoration of royal authority was sidelined. As a reaction to the constitutional upheaval of the previous two decade, the settlement was led by the nobility anxious to recover their power lost first to the Covenanters, then Cromwell.

The Scottish Parliament was not to be called again for six years, with

executive control being transferred back to the Privy Council. In the interval between Parliaments, two Conventions of Estates in 1665 and 1667 were summoned, but solely for the purpose of taxation. Thus when Scotland was dragged into a wholly English trade war with the Dutch, it was not thought necessary to consult a Scottish Parliament, for the Restoration settlement had revived control from London: the Scottish Privy Council had an English offshoot, and Scottish council meetings at Court guided legislative policy. As a result of the increase in the crown's prerogative powers, Parliament had given itself a minimal role in the legislative process.

Chapter Three

The Conventions of Estates, 1665 and 1667

When the last session of the first Restoration Parliament finally adjourned on 9 October 1663 the primary responsibility for the day-to-day running of the country passed to the Privy Council. Charles II's first Parliament had been in session for 17 months, spanning a period of three years. It is not surprising, therefore, that the close of the Parliament was greeted with some relief. The King's Commissioner, the Earl of Rothes, was glad to see the "return to the good old form of government by his Majesty's Privy Council." A long Parliament was "an unsupportable charge to the nobility in obliging them to live at a high rate and to the gentry and burroughs in maintaining their commissioners."¹ Rothes was no doubt thinking of the Billeting affair, which had cast an ugly shadow over the proceedings of the last two sessions of Parliament when he complained to Sir Robert Moray that "long Parliaments are more unfitt for Scotland than for any other place for public business being done they can only serve here for creating divisions by carry on private interests."² It had been factional divisions amongst the nobility that had disrupted Parliament, for serious opposition to the legislative programme amongst the shires and the burghs had already been removed from the chamber. At the next meeting of the estates, the Convention of Estates held in August 1665, the domestic situation in Scotland had drastically changed. The demands of providing forces for a foreign war and the increasing hostility and violence which the religious

¹ NLS Lauderdale Ms 3424, 'Private Instructions to Sir Robert Moray from the Earl of Rothes,' f.454.

² *Ibid.*, f.454.

settlement provoked was to provide the first serious test to the royalist grasp of power in Scotland.

The second Anglo-Dutch war, which effectively began in the summer of 1664, was not officially declared until 22 February 1665. For decades the English and Dutch had squabbled over trade routes and importation rights. Therefore, the escalation of the dispute into armed conflict represented no great shift in English foreign policy. What had changed since the first Anglo-Dutch war in 1652 was Scotland's role in the conflict. Scotland had nothing to gain from the war (the Dutch may have been England's greatest mercantile rival but they were also Scotland's biggest trading partner), but the country was expected to provide her share of men and money to ensure victory. To defend the coastline from Dutch attack, money would have to be spent on upgrading and rebuilding coastal garrisons, an additional expense for the Treasury to meet.

Soon after the formal declaration of war between the English and Dutch, discussions began as to the method of raising funds in Scotland. Two options were open to the government: either a full session of Parliament or a Convention of Estates could be summoned. The King advised Lauderdale to arrange a meeting of six or seven of the Privy Council "to advise seriously whither it be not necessarie to call a Parliament or rather a convention ... to grant such a moderat tax as the country may bear."³ However, by and large, the decision had already been made. The King agreed with Lauderdale, who was "utterly against a Parliament" due to the prevalence of religious dissent in the localities. A Parliament would have had scope to discuss a wide variety of topics and may have provided the ideal theatre for the expression of discontent against the

³ NLS Yester Ms 7023, Lauderdale to Tweeddale, 9 March 1665, f.18.

government.⁴ Instead Lauderdale advised “a Convention which hath legally power enough for a small tax.”⁵ Crucially, the Convention was summoned solely for the purpose of granting supplies for the Dutch War, the royal letter forbidding the discussion of any other business.⁶

In the seventeenth-century, numbers attending Conventions of Estates began to increase, this depending to some extent on the total number invited to attend and partly upon the interest taken by the estates in the business of the Convention. By 1630 Conventions were beginning to approach the numbers of a Parliament with 20 shires and 31 burghs represented (as compared with an attendance of 27 shires and 50 burghs in the Parliament of 1633).⁷ It was in 1643, however, that the Convention began to assume the role at least in membership of a Parliament, with the numbers attending the assembly topping 154. “The Convention was a most frequent meeting; never a Parliament so great,” announced Baillie, and only one session of Parliament in 1639-41 managed to command a higher membership.⁸ The large number of attendees was an indication of how important Convention of Estates had come to be

⁴ The Earl of Rothes echoed Lauderdale’s fears, lamenting the “dangarus necesitie of calling a convensioon.” “My greatiest aprehensione,” he wrote to Lauderdale, “is that at this juncktur of taym ther should be such a multitud of pipill cald togeather from all the severall corniers of the kingdum, and no doubt the waysiest men in it ... so as it giffs operteunatie to eivill youmirs not onlie to worck bot groue, for uhen discontentid pipill mit togeather everie uans regreates to other hightins ther resentmimts.” NLS Lauderdale Ms 3424, Rothes to Lauderdale, 13 April 1665, ff.611-12. The Commissioner’s assertion that ‘evil humours’ could be expected amongst those called to attend the Convention would have done little to allay the fears of the already apprehensive administration in London. It also increased the likelihood of crown interference in shire and burgh elections.

⁵ *Ibid.*, f.18. As Tweeddale had earlier pointed out to Lauderdale, if the government was intent on more extensive financial reform, for example, changing the customs rate, a Parliament would have to be called. A Convention did not have the power to alter laws that had already been decided by Parliament. NLS Yester Ms 7033, f.435. See also NLS Lauderdale Ms 3424, f.604 for Tweeddale’s report to Lauderdale on the condition of the country and his advice on the best possible method of raising tax.

⁶ NAS PA 8/1, f.152.

⁷ Rait, Parliaments of Scotland, p.155.

⁸ Baille, Letters and Journals, II, p.75; Rait, Parliaments of Scotland, pp.155-58.

regarded.

During the later seventeenth-century, and especially after the Restoration, Conventions began to be regarded as a meeting of the estates assembled solely for the purposes of taxation. This was partly a reaction against the precedent set by the 1643 Convention that took Scotland into the English Civil War. In 1665 and again in 1667, taxation was the only topic on the agenda. The Act anent his Majesty's Prerogative in calling and dissolving Parliament of January 1661, which rescinded the Triennial Act of 1641, restored to the monarchy the prerogative right to summon, prorogue and dissolve parliaments. Therefore the crown was under no obligation to call Parliament at any specific time, but through sheer financial necessity, it was agreed that a Convention be summoned to convene on 2 August 1665.

A total of 139 commissioners attended the first day of the Convention, a significant number considering the brief length of time for which they sat. The burgh turnout actually exceeded the attendance for the estate in the last session of Parliament in 1663.⁹ Although a large numbers of the burghs stayed away from Parliament in 1663, their high attendance at the Convention no doubt reflected their concern at the economic situation. As merchants, the estate would have had a keen interest in the amount of taxation to be granted to the crown. Such an increase was not consistent throughout the estates, however. The attendance of the nobility dropped from 70 that were present in 1663 to only 42 for the Convention. It was the only time during Charles II's reign that both the shire and burgh membership outnumbered that of the nobility.¹⁰

⁹ 45 commissioners attended in 1665 compared with 42 who attended the 1663 Parliament.

¹⁰ 44 shire commissioners attended, as did eight bishops.

What is also of interest is the large numbers of both shire and burgh commissioners in attendance at the meeting who had not been present at the last Parliament. Of the 89 shire and burgh commissioners, 67 made their first appearance in either a Parliament or Convention since the Restoration. For 27 of those 67, attendance at the Convention in 1665 was their only appearance at either a Convention or a Parliament. This proliferation of 'new men', commissioners with no previous parliamentary experience, has much in common with the composition of the membership of the first session of the Restoration Parliament in 1661, perhaps suggesting a similar level of crown interference in elections. As previously discussed in Chapter One, a number of shire and burgh elections in 1661 had been managed by the crown, and with control over the selection of candidates, the membership of the Parliament was successfully purged of opposition to the King. In the Convention of 1665, the majority of such commissioners who had been present in the Parliament of 1661-63 were largely absent. However, there is no firm evidence of managed elections to the Convention,¹¹ but to have allowed free and uncontrolled elections for the replacement commissioners, may have left the government open to attack from the dissident groups that were causing so much friction in the localities.

The main difference in the Restoration era between a Parliament and a Convention of Estates was that a Convention was called only to raise taxation, with the desired sum being agreed prior to the meeting. The Proclamation

¹¹ As far as can be determined, there was no instance of any controverted elections, and as the Convention sat only for two days, there would have been no time for any disputed elections to be considered. If the crown had managed shire and burgh elections, the unquestionable loyalty of the Convention indicates their success in eliminating any opposition from the chamber.

summoning a Convention and the orders sent to the localities for the subsequent elections therefore had to specify the amount to be raised. This gave forewarning as to the burden to be placed on the country, and Rothes warned Lauderdale the present humours of the people should be considered as to "hou such a mesige uold be uelcumied." Rothes recognised that part of the crown's power over the electorate was gone: "the ackt of indemnitie is nou past, uich was the rod lay over manie heads, and occasioned ther so ffrie consents to the ackt ffor the ffortie thousand pound [granted in March 1661]." Therefore, due to this "greater ffridum as to the elexion ... taym most be alouied and ceare teakin that honiest and intrestied persons be chosien." The danger facing the government was precisely what Rothes warned, that discontented people first gain election to the Convention, and then join forces to obstruct the raising of the tax.¹²

Evidence does exist which suggests that the royalist administration was concerned about specific candidates who were competing for election to the Convention.¹³ In the election for the commissioners to represent the shire of Stirling, Rothes (acting as Lord Chancellor)¹⁴ instructed Sir Archibald Stirling of Carden, a prominent crown supporter in the previous Parliament, to ensure that John Murray of Touchdam and Polmaise, also present in the previous Parliament, was elected to the shire. James Seton of Touch, a man who had been sincerely attached to the cause of King Charles I, and said to have suffered

¹² NLS Lauderdale Ms 3424, Rothes to Lauderdale, March 11 1665, ff.594-5.

¹³ Rothes had written to Lauderdale to alleviate his concerns about the forthcoming Convention, reassuring him that if "the Burrows be for the proposals they will go near to have as many voices in the Convention as will be against them." In the end, opponents to the taxation seem to have stayed away, with Rothes reporting to Lauderdale that "scarce any [were] absent, but from two or three of the remotest shires and some of the meanest burghs." NLS Lauderdale Ms 3424, f.660 and f.671.

¹⁴ The post had been vacant since the Earl of Glencairn's death in May 1664, but the Earl of Rothes unofficially took over the office and conducted the business associated with it.

much on his account, was ordered to withdraw from the contest.¹⁵ The reason for this remains a mystery, as Touch possessed impeccable royalist credentials. Consequently, Carden, as the head of the most influential family in the shire, persuaded his relations to vote in favour of the election of Polmaise. He wrote to his son, Sir John Stirling of Keir, to do likewise and “other yea heave power with, to doe the lyk.”¹⁶ It seems to have been family connections that ensured the failure of the scheme, for whatever happened behind the scenes, Touch was elected as one of the Commissioners to the Shire. The Stirling family apparently put up little resistance, despite their plan to vote in favour of Polmaise. Indeed, Sir Archibald Stirling of Carden’s daughter, Elizabeth, later married James Seton of Touch. Although Rothes promised Touch to “befriend him in his business to the utmost of his power, whilk indeid will be more useful then anie thing he can procure by his ane cariedge in Parliament,” he was elected in the face of opposition from the crown.¹⁷ This indicates that, in some respects, the royalist administration had limitations in its power to manage local elections. Despite the attempt to exclude him from the Convention, the fact that the elected candidate was a proven supporter of the crown presumably permitted his attendance at the meeting. If the shire had elected a known royalist opponent to represent them, perhaps the crown would have acted to remove the offending candidate? A safeguard was in place, however, to ensure that the membership of Parliament was largely supportive of the crown. The oath against the Covenants, taken by all the commissioners, ensured that no conscientious opponent of episcopacy could sit in Parliament, thereby excluding hard-line

¹⁵ M. Young (ed.), *Burgh and Shire Commissioners*, II, p.629.

¹⁶ William Fraser (ed.), *The Stirlings of Keir and their Family Papers*, (Edinburgh, 1858), pp.502-03.

¹⁷ *Ibid.*, p.503.

dissenters from any part in the election process.

Although there is no explicit evidence indicating widespread governmental management of the elections to the Convention, the estates, assembled on 2 August, proved to be remarkably loyal and co-operative with the crown's demands for finance. Sitting only for two days, a tax on land was voted. A committee, nominated by the Commissioner to "consider of the quota and the way of inbringing of the same," reported in favour of reverting to the old method of taxation.¹⁸ Thus, a tax of 40 shillings Scots upon every pound land of old extent was granted, to be raised in five yearly instalments from Whitsunday 1666 to Whitsunday 1670 (the total payment consequently being spread over a period of five years). The archbishops and bishops agreed to a corresponding tax on church land and benefices, and the burghs paid in proportion.¹⁹

Events in the Convention proceeded smoothly for the crown, but this concealed the complex (and often inharmonious) bargaining that had gone on during the preparations for the meeting. In Privy Council there had been "great debates" as to whether taxation should be raised by the "old way" or by cess, as had been favoured during the Covenanting years, but which the King had promised in 1661 not to resort to. Archbishop Sharp, along with Rothes and Dumfries (one of Middleton's 'billeting' allies), "joyned with the west countrie lords and others ther" to urge that the taxation be raised by means of a cess. Lord Bellenden, despite being Rothes' deputy, sided with Lauderdale, to whom he related the proceedings in Council. Cess, he feared, would "cause much division and heate at the Convention, which lyke enugh may be a desygne of

¹⁸ NAS PA 8/1, ff.154-161.

¹⁹ Rait, Parliaments of Scotland, p.499.

some, rather than to carye on the busienes with quyet and satisfaction to the countrie.”²⁰ The inequity of the system of old extent was likely to cause opposition, among the landed estates in particular, but cess, largely based on valuations made in the 1640s by the Covenanters, placed the greatest burden on those who had remained loyal to the crown.

The debate surrounding the preferred method of raising taxation became caught up with personal and factional loyalties. Both Sharp and Rothes, by uniting with Dumfries, seriously damaged their standing with Lauderdale. The Duke of Hamilton, sensing the mounting tensions, further enhanced his status as the main opponent to Lauderdale, by joining with Sharp on this issue, despite the history of animosity between the two and the “Lord Primat’s dissatisfaction against him in all other maters.”²¹ Rothes’ continued assertion that the old method of taxation was “unequall bothe as to the surthe and the vast countrie ... I beliff [it will] ruin bothe” made no impression on Lauderdale.²² When the Convention met in August, the Secretary had outmanoeuvred his opponents, and with the King behind him, had ensured that the taxation would not be raised by means of a cess.

In hindsight, perhaps Lauderdale should have listened to his colleagues in Scotland. The system he favoured was woefully inefficient, and it is difficult to see how it helped the crown’s current financial situation since the funds came to the Treasury so slowly.²³ The rates based on the valuations of old extent were

²⁰ NLS Lauderdale Ms 3424, Bellenden to Lauderdale, 19 July 1665, f.663.

²¹ *Ibid.*, f.663.

²² *Ibid.*, Rothes to Lauderdale, 19 July 1665, f.664.

²³ Rothes had previously warned Lauderdale that “the munie that can be resid by an convension cannot be expectied till a considerabell taym effter the tearme of martimis,” but this issue had received little consideration in preparations for the Convention. NLS Lauderdale Ms 3424, f.612.

also grossly unfair. William Douglas, Earl of Queensberry would have to pay a sum ten times that of his rent, almost equal to the total for the shire of either Midlothian or Haddington.²⁴ Such disparities were not likely to prove popular for the government.²⁵

Ultimately, the value of the taxation voted by the Convention - £11,083 annually for five years - was not sufficient to meet the government's financial demands. Parliament had voted a large tax in 1661 of £40,000 raised from customs and an excise on beer and ale, but by the time the Convention met in 1665, it had become apparent that the Treasury was experiencing a large shortfall. The figure granted by Parliament rarely matched the amount collected for the government's disposal, and indeed, the tax of 1661 had been badly hit by the downturn in custom receipts after the passage of English and Scottish restrictions on trade. The mismanagement of the customs by Sir Walter Seaton of Abercorn also cost the government dear. A later investigation into his accounts revealed that after two years, the Treasury had received only £12,042 (after fees and allowances) towards the 1661 tax.²⁶ The same investigation revealed that Seaton, as farmer of the customs, received abatements valued at the massive sum of £16,893 between November 1663 and 1665.²⁷ The outbreak

²⁴ R. Lennox, "Lauderdale and Scotland: A Study in Restoration Politics and Administration, 1660-1682" (University of Columbia, Ph.D., 1977), p.56. Old extent especially penalised the western shires, but the report commissioned by the government, 'Reasons why the Taxation ought to be uplifted in the Old Way,' stated that this was not an important factor. The western shires were a few in number, and, in any case, many were under suspicion of disloyalty to the crown. NLS Yester Ms 7033, f.44.

²⁵ The act passed by the Convention did contain a clause for the relief of the western shires. The sum of taxation due in Lanark, Ayr, Renfrew, Dumbarton, Bute, Argyle, Wigton, Dumfries and Peebles was to be calculated on merkland rather than poundland. Merks were worth two-thirds of one pound Scots, saving approximately 33%. NAS PA 8/1, f.160; R. Lennox, "Lauderdale and Scotland," p.56.

²⁶ R.A.Lee, "Government and Politics in Scotland," pp.110, 112, 113-4. See Chapter Three of this thesis for an extensive study of crown finances.

²⁷ LP, II, Sir Robert Moray to Lauderdale, 17 October 1667, pp.77-8.

of the Dutch War only served to compound such problems of collection.

* * * *

The Convention adjourned only two days after its first meeting. The financial shortfall experienced by the government at this time should have been tackled with urgency, but the Convention, by reverting to the older methods of taxation, failed to address this. There was undoubtedly opposition both to the amount of taxation awarded and to the manner in which it was raised, but the gathered estates had little input to the drafting of the legislation. The sum and method of collection had been decided prior to the assembly of the Convention, and the Committee responsible for drafting the act was nominated by the Commissioner and staffed with proven crown supporters.²⁸ The estates merely rubber-stamped what had been decided in advance.

Although the Convention had, by voting a large amount of taxation, been a success for the crown, now, more than at any time since the Restoration of Charles II, the domestic order in Scotland was in danger of breaking down. The traditional Presbyterian links between the Dutch and their brethren in Scotland (and those in the Provinces recently forced into exile by Middleton's policies) meant that, to many, the Dutch were regarded as religious allies. Thus, military conflict was likely to raise dissenting voices amongst the Presbyterians.

The possibility of an internal rebellion organised by a foreign foe was a real fear for the administration in Scotland. The authority of Episcopal Church government had continually been challenged by the prevalence of conventicles

²⁸ The majority of bishops and nobles, four of the shire commissioners and one of the burgh representatives had been elected to the Lords of the Articles in the previous Parliament.

throughout many areas of the country. For some of the King's ministers (such as Rothes, and Alexander Burnet, Archbishop of Glasgow), religious non-conformity was simply another way of expressing discontent with the government. Both men advocated severe penalties that must be enacted on those who dissented.²⁹ In the previous session of Parliament, an Act against Conventicles went some way in extending the penalties concerning nonconformity. The Privy Council continued in this vein with the passing of an act on 11 August 1663 which dispensed additional punishments for those nonconformist ministers who remained within their old parishes.³⁰

These measures had led to unrest within parts of the country, particularly the south-west shires. In 1662 it had been agreed that all ministers who had entered their charges in or since 1649 when lay patronage had been abolished, and who had subsequently refused to obtain presentations to their parishes from either a patron or a bishop, were to be deprived.³¹ 270 ministers were eventually displaced, many from the Presbyterian heartlands of the west and south-west. In a move that succeeded mainly in demonstrating the apparent contempt of the administration for its subjects' religious sensibilities, troops were quartered in the area and ordered to begin tax collecting. In March 1663, the growth of conventicles in the area led the Privy Council to urge vigilance on the part of the military. In May, riots broke out in Kirkcudbright and the parish of Irongray over the attempted induction of new ministers.³² 300 soldiers were ordered to Edinburgh in the event that unrest broke out in the capital, but the danger had

²⁹ See LP, I, letters from Rothes to Lauderdale and LP, II, Appendix A, letters from Archbishop Burnet to Archbishop Sheldon for confirmation of their uncompromising stance towards dissenters.

³⁰ RPCS, I, pp.403-4.

³¹ NAS PA 2/26, ff-4-6.

³² Buckroyd, Church and State, p.52.

been exaggerated. The uprisings had been little more than disorganised scuffles between locals and troops stationed in the area.

Lauderdale, on the receiving end of constant reports of unrest in Scotland, recognised that the government itself had undermined the stability of the country with its overly aggressive policies. He advised that the Commission for Church Affairs, set up in November 1663 to control the administration of ecclesiastical laws, should take a more moderate approach to the punishment of dissenters.³³ It seemed that the best way to secure peace in the church was to apprehend the ringleaders, and this was the only realistic option considering dissent had become so widespread since the admission of bishops. Even in this undertaking, however, the Commission encountered difficulties. Ever since the re-establishment of episcopacy, the nobility, realising that their ambitions and “expectations hold not in the promising way as they projected, do now think it is fit for them to appear cold, and secretly to come to a contempt and opposition” of the bishops.³⁴ The legality of the Commission itself was also in dispute, and the bishops “mett with some impertinent debates at the first sitting of the Commission, some great men contending for nice formalities of law, thought to have rendered ... proceedings ineffectual and uselesse.”³⁵ This apathy crippled the Commission, who relied on the co-operation of the nobility to enforce church policies on their tenants. The resentment of the escalating power of the

³³ This new policy was opposed by Burnet, who complained to Lauderdale that the work of the Commission was being impeded by “persons of great power and interest” who “plead so frequently ... and speake so favourably” on behalf of cited dissenters, that this would ultimately “villifie and sleight the authority of the Commission.” NLS Lauderdale Ms 2512, f.84.

³⁴ NLS Lauderdale Ms 2512, James Sharp to Lauderdale, f.29.

³⁵ LP, II, Appendix A, pp.iii-iv.

bishops was not merely contained to those on the Commission.³⁶ Indeed, Lauderdale's increasingly strained relationship with Alexander Burnet, Archbishop of Glasgow, would come to a head in the Parliament of 1669. The policy of moderation had been as unsuccessful as the policy of provocation it replaced. In light of this failure, the administration of Scotland now seemed unsure of how to proceed with dissenters.

* * * *

The outbreak of the Pentland Rising in November 1666 seemed to confirm the Bishops' fears of an organised rebellion against episcopacy, although contemporary accounts generally exaggerate the magnitude of the uprising.³⁷ The unrest seems to have originated in Dalry in Kirkcudbrightshire where on 12 November a number of soldiers stationed to exact fines for non-conformity were held captive. On 13 November in nearby Balmaclellan an estimated 16 soldiers were taken prisoner. The following day a crowd of 200 rebels marched to

³⁶ Despite the legislation in force requiring obedience to ecclesiastical authority, significant numbers of those in power made their dislike of episcopal government well known. For example, not only were the vast majority of his parishioners in Glasgow hostile to episcopacy, so were the council. The Archbishop of Glasgow, Andrew Fairfoul, had yet to put in an appearance in the city when, on 17 April 1662, orders were received that the cathedral was to be restored into its ancient condition. This involved a number of partitions being removed, at some expense to the council. Somewhat unwillingly the council agreed to the expense (in the end the work does not seem to have been done), but sullenly ordered that the magistrates bestow on the Archbishop's imminent visit to the city only as much ceremony "as they can and the toune will afoard." To add further insult to injury, there was widespread unwillingness amongst the town's dignitaries to even ride out to meet the bishop. The council was thereby forced to issue a decree imposing a fine of £12 Scots on all those who were commanded to ride out, but who failed to go. Renwick and Marwick (eds.), *Extracts from the Records of the Burgh of Glasgow*, II, p.483; George Eyre-Todd (ed.) *The Book of Glasgow Cathedral: A History and Description*, (Glasgow, 1898), p.164.

³⁷ Nicoll who tells of how "ane great uproar [arose in Dumfries] betwixt the inhabitants in that town and the parochineris against Sir James Turner, allegit ane oppressour of the simple people in uptaking of fines against these that frequent not thair awin kirks but went to uther parochie kirkes for hearing of better sermons, whom they thought better teacheris.", Nicoll records that the Privy Council was moved by the uprising to "putt the whole kingdome in armes." *Diary*, pp.451-2.

Dumfries and took hostage the local garrison commander, Sir James Turner. Gathering reinforcements on the way, the rebels at first made towards Glasgow, but on hearing that the government forces were in the city, they began to march towards Edinburgh. Reaching the outskirts on 27 November, the rebels, albeit depleted in number from the journey, faced General Dalrymple at Rullion Green in the Pentlands. The rising was crushed with ruthless ease. Of the 900 men, 50 were killed and 80 taken prisoner, and in the following month 36 were tried and executed for their part in the uprising.³⁸

Contemporary diarists claim that the rebellion was the spontaneous reaction of the country to the programme of cruelty and brutality that had been pursued by the government since 1663. The government itself suspected that a number of rebels were involved in a conspiracy with foreign enemies. In 1666 the Dutch, who had much to gain from a rebellion in Scotland, may have been in correspondence with a number of conventicle ministers in the south-west, but it was only military incompetence which had allowed the rising to gain any momentum.³⁹ The small group of dissidents had represented no real threat to government, yet Rothes, acting with now typical brutality, ordered large numbers of troops to be quartered in the region.⁴⁰

³⁸ Buckroyd, *Church and State*, pp.65-66; for a comprehensive account of the Pentland Rising see C.S Terry, *The Pentland Rising*, (Glasgow, 1905).

³⁹ Buckroyd, *Church and State*, p.67.

⁴⁰ Lauderdale was sent alarming reports of the growth of unrest, with Rothes claiming that, with a few exceptions, the gentry of the south-west would join with the King's foreign enemies to fight against him. *LP*, I, Rothes to Lauderdale, 17 December 1666, p.263. Archbishop Sharp wrote "dismal letters to the Court magnifying the strength of the enemy," even going as far as to proposing that the Privy Council "should shut themselves up in the Castle of Edinburgh" to ensure their safety. Burnet, *History of His Own Time*, I, p.420.

* * * *

Partly to pay for the increase in troops necessitated by the Pentland Rising, the government was forced to call another meeting of the estates for a further grant of taxation. The second Convention of Estates in as many years was summoned to meet on 9 January 1667. The first indication that events would not run as smoothly as in 1665 was given when the Duke of Hamilton replaced Archbishop Sharp as President.⁴¹ Due to the absence of a Chancellor in 1665, Sharp had been chosen as President, an office that enabled him to carry out the Chancellor's duties. The post was retained in 1667, although this time Hamilton was preferred.⁴² The elevation of Hamilton to President at the expense of the Archbishop of St Andrews made public Lauderdale's falling out with Sharp, who had temporarily lost favour with the Secretary and had become, along with Rothes, a scapegoat for the Pentland Rising.

150 commissioners attended the opening day of the Convention. Shire and burgh representation had increased slightly compared with attendance at the Convention of 1665,⁴³ and in addition, there was a very respectable turnout of the nobility.⁴⁴ It is likely that concern over the deteriorating domestic situation helped boost attendance at the Convention, with all estates taking an increased

⁴¹ NAS PA 8/1, f.165. This change in personnel ignited great discussion amongst the commissioners gathered in Edinburgh for the forthcoming Convention. When Rothes was asked if Sharp had fallen out of favour with the King, he "put it aff uith ansuiring the King may neam uho hie shall jud most ffit" but the rumours persisted, and "everie persons conjecktur upon it." LP, I, Rothes to Lauderdale, January 8 1667, p.269.

⁴² Burnet states that Sharp was ordered to stay within his diocese throughout the duration of the Convention, a punishment more often given to crown opponents. However, Sharp is named in both the Rolls and as a commissioner in the Committee for the Supply to be offered to His Majesty. It is unlikely that Sharp would have been named in the Committee if he had been forbidden to attend. Burnet, *History of His Own Time*, I, p.428.

⁴³ 46 commissioners representing 27 shires attended in 1667 compared with 44 commissioners in 1665. 48 commissioners representing 47 burghs were present in 1667 compared with 45 commissioners in 1665.

⁴⁴ 56 members of the nobility were present at the first day of the Convention; only 44 nobles attended in 1665. Two members of the clergy and five officers of state also attended.

interest in the amount of taxation that they were expected to supply.

Again, the King's letter read to the gathered commissioners forbade discussion of any topic except that for which they had been summoned. Alleging that the Dutch "will this summer in all probability endeavour to invade Our Dominions," another year's supply was proposed.⁴⁵ However, the disastrous performance of the 1665 tax, and the failure of the older method of taxation to raise the required sum, meant that for this Convention, the use of old extent as a basis of taxation was finally abandoned.⁴⁶ Government accounts for the first two years of the tax voted in 1665 – for the years 1666 and 1667 – revealed that, after the Duke of Hamilton retained his sum in part payment of the debt owed to his family by the King, the tax had only raised approximately 44% of the total.⁴⁷ In light of the failure of 1665 tax, Rothes and Lauderdale had previously agreed that funds should be raised by means of a cess, something the King had promised in 1661 not to resort to.⁴⁸

The granting of the taxation, as had been expected, was not without argument or debate. In the Committee for Supply, the Earl of Dumfries "pressed to know the number of the forces to be levied and the establishment before we condescended on a soume." His was a lone voice, however, and his objection "was waved" aside.⁴⁹ The Committee for Supply, nominated by the Commissioner without an election being held, had a membership of 44, the

⁴⁵ NAS PA 8/1, f.165.

⁴⁶ Only four members of the Convention voted against the proposal, Rothes informed Lauderdale. LP, I, 15 January 1667, p.272.

⁴⁷ R.A.Lee, "Government and Politics in Scotland," p.116; NLS Yester 14489, ff.82-3.

⁴⁸ The term 'cess' is derived from the monthly assessments of £6,000 collected during the Cromwellian era as Scotland's contribution to the Commonwealth. Cess itself was a direct descendant of the Covenanters monthly maintenance, first introduced in 1645. See D. Stevenson, "The Financing of the cause of the Covenants, 1638-51" in SHR, 51 (1972), p.106, p.1.22. Also Rait, Parliaments of Scotland, p.500.

⁴⁹ HMC, Report on the Laing Manuscripts Preserved in the University of Edinburgh, I (London, 1914), Argyll to Lauderdale, 11 January 1667, p.355.

majority of which were unequivocal supporters of the King.⁵⁰ The Committee had been chosen principally to rubber stamp the decision that had already been made to raise the supply by means of a cess, and any differing views were not welcome. Archbishop Burnet proposed that the west should have peculiar taxes since they were the occasion of keeping up the army, but this too was rejected as being nothing more than an attempt by Burnet to punish the area for its part in the previous rebellion.⁵¹ The Committee eventually came to an agreement, with only four objecting to the raising of funds by means of a cess.⁵²

When the Committee finally reported its method for raising the taxation to the Convention, Rothes predicted that there would be "great heat as to the uay of laying on the burthien."⁵³ Several different proposals were being discussed outside the Committee of Supply; some were in favour of retaining the traditional method of taxation, others for the raising of funds by a poll tax. However, Rothes was determined to ensure that the taxation was raised by the crown's favoured method, by means of a cess: "I am to sing alluays uan song, uich is that thay may sequrr to the King uhat thay have giffin him."⁵⁴ The proposals were not popular, and both the shires and burghs initiated a number of debates as to the method of raising the supply.⁵⁵ It was objected that the raising of money by cess placed the whole burden upon land. However, as a means of appeasing those who would face the largest payments, a poll tax was adopted for the relief of heritors, which imposed a levy on residents in the counties whose incomes were not derived directly from land. In burghs, residents who were not

⁵⁰ NAS PA 8/1, f.165.

⁵¹ Burnet, *History of His Own Time*, I, p.430.

⁵² LP, I, Rothes to Lauderdale, 15 January 1667, p.272.

⁵³ *Ibid.*, p.271.

⁵⁴ *Ibid.*, p.271.

⁵⁵ *Ibid.*, p.273.

burghesses were liable to a tax at the discretion of the town councils.⁵⁶ With these changes made, the supply was eventually granted, with only six commissioners voting against the majority.⁵⁷ Testing the loyalty of the representative estates to the full, the crown nevertheless had managed to secure a monthly cess of £6,000 (in total a sum of £72,000).⁵⁸

The sum agreed by the Convention had exceeded all expectations, yet the financial demands of the Dutch war had only served to compound an economic crisis that had plagued the Treasury from the time of the Restoration. The financial settlement agreed by Parliament in 1661 included a large grant of £40,000 yearly for the crown, and allowed for an additional income from property and from duties on exports. Excise, originally introduced by the Covenanters, was retained, although generally there was a concern that further financial burdens on the country should be avoided, combined with a shared belief that the King should attempt to live within his established means. Soon after Parliament had dissolved, however, it became apparent that the crown, despite looking adequately financed on paper, was experiencing a large shortfall in money actually received into the Treasury accounts. From 1662 the country had to meet the costs of a standing army, something which no previous administration had possessed. One of the military's main tasks was to collect the taxation due to the crown, yet the financial difficulties of the past 20 years had left the army woefully under-funded, resulting in troops often collecting

⁵⁶ NAS PA 8/1, ff.171-2; Rait, *Parliaments of Scotland*, pp.500-1.

⁵⁷ *LP*, I, Rothes to Lauderdale, 15 January 1667, p.273.

⁵⁸ NAS PA 8/1, ff.167-173. Disagreement as to the raising of taxation by cess had been expected, and careful management of the membership of the key committee sidelined opposition to the proposals. Rothes could satisfactorily report to Lauderdale the Convention's willingness to "ventur ther layffs and ffortuns uhensoever his Majestie should call them tu it, and at this taym decleared themselffs most uilling to teack uhat burthien upon them that thay ar eabell to bear." *LP*, I, 10 January 1667, p.270.

taxation simply to meet their own pay demands. This resulted in a vicious circle that plagued the royal administration throughout the mid-1660s: more troops were needed to help collect taxation, while at the same time taxation needed to be increased to fund this expansion in manpower.⁵⁹ Faced with this financial headache, the crown was forced to use £30,000 of the fines imposed by the 1662 Indemnity Act (which were originally intended for the relief of the impoverished nobility that had remained loyal to the monarchy throughout the rebellions) to pay for troops.⁶⁰

This constant drain on government finances was one of the main reasons behind the subsequent failure of the 1667 tax to provide the necessary finance. An account of February 1668 by Sir William Bruce, collector-general of the tax, estimated that the army swallowed up 68% of the cess, indemnity fines and money that had been borrowed from the Duke of Hamilton out of the 1665 taxation.⁶¹ In the same year, Tweeddale calculated that the crown's annual Scottish income should reach £63,000. Total crown expenditure – money spent on troops, pensions and fees – was calculated at approximately £50,000.⁶² On paper, the finances looked relatively healthy, but the shortfall in the Treasury told an entirely different story.

To exacerbate matters, Scottish trade was already suffering badly from the English Navigation Acts, a series of legislation passed in the early 1660s which was intended to protect England's colonial trade from the Dutch and other foreigners. By ensuring that it was English ships that carried the higher proportion of the goods brought into English ports, Scottish merchants were

⁵⁹ R.A.Lee, "Government and Politics in Scotland," p.106.

⁶⁰ *Ibid.*, pp.116-8.

⁶¹ *Ibid.*, p.118.

⁶² *Ibid.*, pp.122-3.

heavily penalised.⁶³ In addition, Scottish goods imported into England were subject to heavy impositions. Partly in retaliation, the Scottish Parliament passed a series of restrictive acts that penalised heavily the English woollen trade with Scotland.⁶⁴

The effect of the Dutch conflict on the public revenue was even worse than had originally been feared. Contemporary accounts tell of how “trade and traffick ceased universallie by sea, and [there was] no employment by reason of the war betwix the Kinges Majestie and the Hollanders, to the havy damage and wreck of the pepill.” Ships carrying goods from abroad could only sail towards Scotland accompanied by a heavy English guard; such was the risk of attack from the Dutch.⁶⁵ As the revenue from custom receipts plummeted, so did the income from excise. Rothes, as Lord Treasurer, even found that he could not raise funds to pay a garrison stationed on the Shetland Isles, forcing the government to borrow money and buy arms and materials on credit.⁶⁶

The summoning of two Conventions of Estates, which voted two separate grants of taxation in as many years, had done little to alleviate the crown’s financial situation. In many respects, it was external factors that contributed to the failure of both the 1665 tax and the cess of 1667. When Parliament in 1661 had granted a more than generous sum of £40,000 yearly for the King, it had been thought that this would place government finances on a healthy

⁶³ Financial conditions were so bad that in Edinburgh a scuffle broke out between merchants and the King’s custom officers over an attempt by the traders to avoid payment of the custom rates by bringing secretly a quantity of English “braid cloth ... over the Toun wall of Edinburgh in the nycht.” Nicoll, *Diary*, p.424.

⁶⁴ E. Hughes, “The Negotiations for a Commercial Union between England and Scotland in 1668” in the *SHR*, XXIV, October 1926, pp.30-33.

⁶⁵ Nicoll, *Diary*, p.429.

⁶⁶ *LP*, I, Rothes to Lauderdale, 13 May 1665, p.220; Hutton, *Charles II*, p.225. It is not clear how much the government had to borrow to fund the garrison. R.A.Lee, “Government and Politics in Scotland,” p.115.

footing. Yet, because of the protectionist trade policies pursued by England and France, customs receipts plummeted. Due to a reluctance to raise money by cess, by far the most efficient means of taxation, the grant offered by the 1665 Convention did little to improve the balance in the Treasury. In 1667, cess was reintroduced, but because taxation had become so unpopular, the majority raised was allocated to the troops who were quartered around the country to ensure payment. As long as a large standing army was needed to protect the country from an external invader and to quell discontent in the localities, there was little possibility of an improvement in government finances.

* * * *

The administration in Scotland under Rothes was largely an authority based on military force, yet this was often antagonistic to Lauderdale's position at Court. His position depended on the illusion that all was well north of the border, and the embarrassing Shetland incident did little to assuage the Secretary's critics in London, nor did it tend to reinstate Rothes in the royal favour. Rothes' obvious overreaction to the dissenters had displeased both the King and Lauderdale, whose only concern was for peace in Scotland. The Court in London had all along been receiving reliable reports on the true state of affairs in Scotland. The rebels were "simple misled poore people," wrote Sir William Bellenden.⁶⁷ Clearly there was no danger of widespread insurrection and there never had been. Lauderdale publicly distanced himself from the autocratic methods used by the King's Commissioner, and privately made plans to strip all power from him. As Commissioner, Rothes controlled the military

⁶⁷ LP, I, 1 December 1666, p.252.

forces and, as Treasurer, was in control of the public purse. Lauderdale was determined to get the post of Commissioner for himself, and equally resolved to get the Treasury into his own hands.⁶⁸

Rothes' downfall was eventually sealed in May 1667 when the Dutch fleet sailed into the Firth of Forth. They did not attack, but it emerged that despite the large amounts spent on the military, Leith was defenceless and Rothes himself was absent. Rothes hoped that his personal friendship with Charles II would secure his job, but since the King agreed that the Commissioner was too much of a liability, arrangements were made to remove him from office. Rothes was one of the King's favourites, so any personal condemnation was to be avoided. Instead, Rothes was to be stripped of his office "by degrees" since "the doing so all at once would have looked much more to the disadvantage of the person."⁶⁹

Despite his vehement protests, Rothes was induced to take the Chancellorship, a post that had been lying vacant since the death of Glencairn in 1664.⁷⁰ In this position, an office with little real power, Rothes would be harmless and unable to interfere in the affairs of the government.⁷¹ Archbishop James Sharp, also associated in the public imagination with the brutality of the

⁶⁸ LP, II, Introduction, p.xiv.

⁶⁹ Burnet, History of His Own Time, I, pp.431-33; LP, II, Sir Robert Moray to Lauderdale, 24 September 1667, p.71.

⁷⁰ Despite his protestation that he was incapable of holding the office of Chancellor due to "his want of faculties for the legall part of that function" (his inability to read Latin and his lack of understanding in law), Rothes knew that his apparent 'promotion' was nothing more than a design to remove him from a position of power. LP, II, pp.3-4. See also HMC, Report on the Laing Manuscripts, I, p.358, where Rothes unsuccessfully attempts to persuade the King that "there is no person mor incapabil to goe about your services in that statione" than himself.

⁷¹ Rothes was also stripped of his office as Treasurer, which was now to be put into commission. Four of Lauderdale's allies, Tweeddale, Moray, Kincardine, and Sir William Bellenden, formed the majority on the commission, giving the Secretary a powerful presence.

troops, likewise found himself sidelined. He was soon to be joined by Alexander Burnet, Archbishop of Glasgow, who continued to question Lauderdale's policy on the Scottish church. The reason for their downfall: Lauderdale's position at court was precarious, based on the condition that the political situation in Scotland was trouble-free. Sharp, Burnet and Rothes had made public their desires to pursue a different policy than that authorised by Lauderdale. Thus they were each a threat to the survival of Lauderdale in London.

Lauderdale replaced his former allies with two men with whom he shared close personal ties. Sir Robert Moray was not a committed Covenanter, but had supported the Engagement in 1648 and, like Middleton, was a former soldier who had taken part in royalist risings throughout the Cromwellian era. He had been denied office earlier because he was on poor terms with both Glencairn and Middleton, but had linked up with Lauderdale in London where he served as a courtier. Such was his bond to Lauderdale, he was one of those to be seen as a threat by Middleton and was subsequently billeted. Already establishing a reputation as a scientist (he was to become a founder member of the Royal Society), his status at Court was the ideal position from which to observe opinion in England, this so crucial to Lauderdale's success as Secretary and, later, Commissioner to Parliament.⁷²

John Hay, second Earl of Tweeddale had been on the ascendancy since 1664 when he was made a Lord of Session; in 1666 he became closely linked with the Secretary when his son married Lauderdale's daughter. Unlike those he took over from, Tweeddale was known for his moderation in church affairs and

⁷² For a comprehensive, although dated, account of Moray's career, see A. Robertson, The Life of Sir Robert Moray, (London, 1922).

this made him ideal for a prime place in Lauderdale's new administration. Both men would play an increasingly important role in the future government of Scotland, introducing, at the behest of Lauderdale, more moderate policies to replace those of Rothes.

* * * *

The fall of the Earl of Rothes was the first major change in personnel since the Billeting Affair and the subsequent disgrace of Middleton in 1663. Like his fellow Commissioner, Rothes had antagonised Lauderdale through the policies he initiated in Scotland in an attempt to extinguish all dissent in the localities. This had been an important undertaking, which had the support of Lauderdale in its early stages. The reason Conventions were called during the period rather than a Parliament was because of the threat of the membership being infiltrated by dissenters who may have obstructed or even rejected the government's attempt to increase taxation. Conventions of Estate were instead restricted to dealing only with the business for which they had been summoned, and since they sat for such a short period of time, crown management of the membership was much easier.

Both the Conventions of 1665 and 1667 had satisfactory outcomes for the government. Learning from the mistakes made at the Convention in 1665 (the reversion to the older method of taxation proved to be the wrong decision), the Convention in 1667 was a success in terms of the supply that was raised. The raising of taxation by means of a cess, although more controversial than the method that had been used in 1665, resulted in an unexpected financial bonus for the crown. However, the misappropriation of those funds, combined with

the desperate condition of the country, ravaged by war and suffering badly from lack of trade, only intensified the religious dissent that Rothes had been determined to silence. Lauderdale, recognising that non-conformity in religion did not necessarily mean that the dissenters were a direct threat to royalist control in Scotland, saw instead the brutal military suppression of some localities as the most disruptive threat to the peace of the country. Paving the way for the more moderate stance that would eventually lead to a formal Indulgence, Rothes, joined also by Archbishop Sharp and Burnet, was sidelined. The new session of Parliament that met in 1669 would again reaffirm royal control over church matters, where toleration for non-conformity would replace Rothes' policy of provocation.

Chapter Four

Arise King John: Lauderdale and the 1669 Session of Parliament

In the nine years since the Restoration of King Charles II, John Maitland, Earl of Lauderdale, had come to dominate Scottish politics. This supremacy was achieved by the successful removal of all his closest rivals. Although based at Court in London, through his deputies on the ground in Scotland after 1667, Lauderdale oversaw all aspects of policy and had come to exert almost complete control over the Scottish administration. Any vestiges of opposition or independence to his supremacy were swiftly quashed, as both the Earl of Middleton and Rothes had found to their cost. When appointed Commissioner of Parliament in 1669, he journeyed to Scotland confident that any opposition to measures such as the proposed union with England and the intended redefinition of the royal supremacy in ecclesiastical matters would be easily dealt with. The Oath of Allegiance and Declaration of Public Trust still regulated the membership of Parliament, ensuring that no one unsympathetic to the crown gained election. The Articles remained the principal method of crown control over parliamentary business. Thus Lauderdale had no reason to believe that the 1669 session would be any less compliant than the previous Parliament and Conventions of Estates. Yet it was this belief that Parliament was a submissive body, easily persuaded into granting the requests of the crown, that ignited protest. The resulting opposition would prove to be the source of the most serious challenge to crown control over Parliament since the Restoration.

* * * *

After the removal of Rothes from his positions as Commissioner and Treasurer in mid-1667, the running of Scotland passed into the hands of the Earl of Tweeddale and Sir Robert Moray. With Lauderdale, these two men formed a triumvirate that maintained control of Scottish affairs until late 1670. Tweeddale and Moray's impact on policy was immediate. The standing army, the focus for much of the discontent in the localities and a potential power-base for Rothes, was disbanded as a gesture of moderation. In addition, a new policy that attempted to conciliate moderate dissenters in the Church was introduced.

One of the major objectives for the new administration was to deal with the widespread corruption that had flourished under Rothes. A high level investigation in 1668 into abatements granted to Sir Walter Seaton, farmer of the custom revealed that he had struck a bargain with the merchants which had over the years reduced the value of the customs by almost two-thirds.¹ When the true scale of the corruption became apparent, Moray and Tweeddale hastened "to get rid of a servant who cannot be supposed to be honest when he has so grossly corrupted others." The continuance of the "customs in his hands [had] kept us from ever getting to know their real worth." Other competitors were encouraged to vie with Seaton at the bidding for the Customs, and were successful in outbidding him. Under the new management, the value of the customs increased by £12,300.² The new policies were a success: Moray and Tweeddale "reduced things to a much better regulation; all payments were duly made ... several projects were set on foot for the encouragement of trade and

¹ R.A Lee, "Government and Politics in Scotland," pp.113-4; *LP*, II, Sir Robert Moray to Lauderdale, pp.72-5, 78.

² British Library Lauderdale Papers, Ms 23128, f.125. James Turner, collector of the fines, was made a scapegoat for the Pentland Rising, and was also removed from power.

manufactures ... all vice was discouraged, [and] justice impartially administered.”³

Despite his accomplishments in the past year, Moray left Scotland in the summer of 1668 to return to London and to his scientific laboratory. He was to never again play such an active role in the Scottish administration.⁴ After Moray’s return to Court, Tweeddale was overwhelmed by the amount of work that fell on his shoulders, and his letters to Lauderdale consisted of constant appeals for Moray’s return. Tweeddale was engulfed by the work of the Treasury and the Privy Council, but Lauderdale, at first sympathetic, soon grew tired of his deputy’s ‘whining.’⁵ It is more than likely that this episode played a significant part in their subsequent breach.

After a few months, Lauderdale submitted to Tweeddale’s requests, and in September 1668 a number of new individuals were appointed to assist Tweeddale in the running of the country. Alexander Bruce, second Earl of Kincardine, a member of Charles II’s court in exile and a close friend of Moray’s, had previously had a public falling-out with Archbishop Sharp over his alleged support for irregular practices in the Kirk.⁶ With Sharp out of favour, Kincardine was chosen to be part of Lauderdale’s new clique. Joining

³ Burnet, *History of His Own Time*, I, pp.439-40

⁴ Much has been made of the decision by Moray to return to Court. It has been suggested that the Countess of Dysart, to whom Lauderdale married in 1672, persuaded her husband that Moray had higher ambitions than simply to be Lauderdale’s deputy in Scotland. Relations between the two were certainly strained, particularly over the repayment of a debt Moray owed to Lauderdale, but although Moray no longer took an active part in the running of Scottish affairs, he remained an important contact at Court as their future correspondence shows. Burnet, *History of His Own Time*, I, p.439. A far more salacious account of his departure from Scotland exists. Lauderdale, for one, suspected Moray to be guilty of a “monstrous love” besides “alchemy,” rumoured to be between Moray, and his niece, Lady Sophie Lindsay. Contemporaries deemed Moray’s concern over her ill health excessive, and there were reports of an intended secret marriage between the two, something Moray was continually forced to deny. NLS Yester Ms 7023, f.212; NLS Ms 5050, ff.159-60.

⁵ NLS Yester Ms 7024, f.121.

⁶ Buckroyd, *Church and State*, pp.69-70.

Kincardine was Lauderdale's brother, Charles Maitland of Hatton, who was appointed an Ordinary Lord of Session. This appointment caused a great deal of controversy, not because of allegations of nepotism, but due to the reputation Hatton had already garnered as Master of the Mint. 'Weak,' 'insolent' and 'corrupt' were just some of the words used to describe him.⁷

Absent from the new line-up was the Duke of Hamilton. He had been badly affected by the dissolution of army, having invested £3,000 of his own money on his troops just a matter of months before the decision was made to disband them.⁸ He had won the support of Archbishop Burnet for his uncompromising stance against rebels in the localities: "[He] hath obliged me more than all the nobility in this countrey," Burnet wrote to the Archbishop of Canterbury.⁹ Hamilton's friendship with Burnet may have irritated Lauderdale, but the Duke had expected to be compensated with some kind of office, perhaps the post of Chancellor, which Rothes had instead so begrudgingly undertaken, or at least as one of the commissioners of the treasury. Disappointed at being overlooked, he journeyed to London in October 1667 with Rothes, both men longing for a turn around in their fortunes.

Hamilton hoped that by making a good impression on the King, he might be able to get the large debt owed by the crown to the Hamilton family since the reign of Charles I repaid. At the crucial audience with Charles II, however, all semblance of tact seemed to have deserted him: Hamilton "prest fiercely for his money" and, when this was refused, instead "did offer to farne the Kings revenue at much advantage and to finde most excellent security for it." Charles

⁷ Burnet, *History of His Own Time*, I, p.534.

⁸ *LP*, I, Lieutenant General Drummond to Lauderdale, 2 April 1667, p.279.

⁹ *LP*, II, Appendix, Burnet to Sheldon, 24 August 1667, p.liii.

refused to authorise such a scheme, instead referring it to the commissioners of the treasury. On his exit from the meeting, Lauderdale read Hamilton's disappointment "in great letters in his face."¹⁰ The only prospect for the resurrection of Hamilton's political career lay in reconciliation with Lauderdale, and reluctantly he approached the Secretary, asserting that "he wold doe what Earl of Tweeddale and Moray should advise; in a word he promised to be very good."¹¹ It was a massive personal climb-down for Hamilton, now forced into swallowing his pride and co-operating with Tweeddale and Moray, the same men who had ignored his requests for office. But perhaps Tweeddale was right when he warned Lauderdale "Duke hamiltonne is lost to yow for not making him a commissioner of the treasurie."¹² Hamilton obviously had the potential to cause trouble, and proving Tweeddale right, in the next Parliament he was to lead the most serious opposition against Lauderdale that he had as yet faced in his career.

* * * *

Throughout early 1669 it had become clear that a Parliament would need to be called to deal with a number of pressing issues. In the aftermath of the second Dutch War, it was vital that more effective measures be undertaken to ensure military security. A new national militia was proposed, combined with reform of government finances to place the country back on its pre-war footing.

¹⁰ SHS, *Miscellany of the Scottish History Society*, Vol. VI, "Letters from John, Earl of Lauderdale to John Hay, second Earl of Tweeddale and others," edited by Henry M Paton, Lauderdale to Moray, 2 January 1668, pp.145-6.

¹¹ *Ibid.*, Lauderdale to Moray, 3 March 1668, p.157. Moray had urged the King to remind Hamilton at their meeting that there was the possibility that he would be excluded from command under the new militia arrangement. Such threats worked perfectly. O. Airy, 'The Lauderdale Mss in the British Museum,' p.434.

¹² *LP*, II, 19 July 1667, p.21.

The continued problem of religious non-conformity was not to be tackled by repression, as had been the case under Rothes, but instead by an Indulgence. To give the government more flexibility in dealing with those religious issues that threatened the peace of the country, the royal prerogative in ecclesiastical matters was to be strengthened by a supremacy act. The principal issue, however, was that which was the theme of the King's letter to Parliament, a proposed union between the English and Scottish Parliaments.

The idea of union had first sprung from the unsuccessful trade negotiations in 1668 that aimed to iron out the disputes between the two countries that had existed since the Restoration. Contemporaries attributed Scotland's economic backwardness to the English Navigation Act, for under this legislation, Scotland was denied access to the lucrative market in the colonies. During the Dutch Wars the situation became desperate. A Commission appointed to deal with the matter first met on 13 January 1668,¹³ the Scots hoping that the talks would ultimately lead to the trade situation returning to that as it had been under James VI and Charles I, before the implementation of the Navigation Act. Yet the discussions were plagued with disagreements. The English commissioners refused to negotiate on any issue until the full scope of the Scottish propositions were known. However, when these demands – an end to the import duties on cattle, linen, salt and beer, and to the duties on exported horses and grain - were clarified on 3 February, they did not meet with a favourable reception. The English requested a list of all Scottish ships, to assess the level of competition

¹³ Lauderdale, Moray and Tweeddale dominated the Commission, though it also included two of the Secretary's opponents, Rothes and Glencairn. The chief English minister was the Duke of Buckingham, but the real leader was Sir George Downing. Sir Thomas Clifford, the Treasury minister, who had been likely to be the most favourable to closer Scottish links, was left off the commission. Maurice Lee Jr., *The Cabal*, (Urbana, 1965), pp.45-6.

that would exist if the Navigation Act were repealed. This was delayed for a number of weeks, and in the meantime, arguments broke out over the particulars of any settlement.¹⁴ The English declared that they were unwilling to allow Scottish access to colonial trade, but were prepared to allow access to the timber trade in the Levant and to the foreign salt market. Rather than accept this and use it as a basis for future negotiations, the Scottish representatives rejected the proposals outright. They left London with nothing.¹⁵

It has been argued that Lauderdale set out determined to see that the trade negotiations would fail, and this explains why the Scottish commissioners pitched their demands so high. Lauderdale's true design was to demonstrate that mere commercial union was unobtainable, thereby illustrating the need for full parliamentary union.¹⁶ This seems unlikely for a number of reasons. Firstly, the failure to ensure the repeal of the Navigation Act would be viewed in Scotland as a failure of the negotiations as a whole. The uncompromising stance of the Scots regarding the act was vital if further concessions on customs, duty on salt and tax on coal were to be realised. Moreover, the breakdown of negotiations was hardly due just to the demands made by the Scottish commissioners. The English themselves were guilty of delaying tactics, querying every small detail of the Scottish proposals and demanding access to the original parliamentary

¹⁴ Sir Andrew Ramsay of Abbotshall suggested that Sir George Downing, the head of the English commission, should be offered a bribe to ensure a favourable outcome to the negotiations. Ramsay insisted that Downing was not averse to such measures, indeed he had once given him £100. Tweeddale refused, saying that if such a scheme was ever made public, it would be a huge embarrassment for the Scottish administration. British Library Lauderdale Papers, Ms 23129, f.39. The commissioners' desperation can be easily understood, for, Downing seems to have been an obstinate character. When the Scottish commissioners threatened to take their trade elsewhere, Downing "insolently" interjected that "Lord Lauderdale and a thousand Lords Lauderdale could never settle any trade elsewhere." NLS Yester Ms 7023, f.142.

¹⁵ Lee Jr, *The Cabal*, pp.46-8; for a complete account of the negotiations between the Commissioners for Both Kingdoms, see NLS Yester Ms 14492.

¹⁶ Lee Jr, *The Cabal*, p.50.

records.¹⁷ In the end, both sides left the negotiating table with nothing.

If Lauderdale had designs for a fuller union at the trade negotiations, he would have been delighted when throughout late 1668 and early 1669 the issue gained momentum. This was due partly to the support it had from the King. To unite the two kingdoms and their respective parliaments, to succeed where James VI had failed would be a great coup for Charles II. More important than this, however, was the prospect of using the control he had over the Scottish Parliament to displace opposition in the House of Commons. If Scotland was joined to England both her parliamentary votes and her soldiers could be used south of the border where politics and politicians had proved more troublesome to deal with.¹⁸ Other historians have suggested that the Earl of Tweeddale was the main promoter of the union proposal.¹⁹ He was certainly an enthusiastic supporter of the motion, as the many references in his letters to Lauderdale testify. Yet, it is unlikely that he alone could have spearheaded such an initiative. Nevertheless, the union proposal had an appeal both for the King, who could make use of Scottish votes in England, and for ambitious politicians like Tweeddale, with the tempting prospect of promotion within a British government.

The initial reaction to the Union proposal in both countries would prove crucial to the success or failure of the whole project. Certainly in England the prospect of using the Scots in the manner described above caused consternation.

¹⁷ NLS Yester Ms 14492, f.34.

¹⁸ Lee Jr, The Cabal, p.51. Union was also useful for weaning Scotland away from commercial and political associations with the Dutch. A. Macinnes. "Politically Reactionary Brits? The Promotion of Anglo-Scottish Union, 1603-1707" in S.J. Connolly (ed.) Kingdoms United? Great Britain and Ireland since 1500, (Dublin, 1999), pp.50-1.

¹⁹ *Ibid.*, pp.51-2. Burnet also attributes the idea to Tweeddale. Burnet, History of His Own Time, p.505.

Bearing in mind the recent disagreement between the trade negotiators, Lauderdale was at first cautious. To sound out opinion in Scotland, he authorised a few trusted nobles to discuss the plans among themselves.²⁰ The first problem to arise was the question of the precedence of peers in a new combined Parliament. English peers were very sensitive to the claims of both Scottish and Irish peers, but if the union scheme did not provide for a sufficient number of Scottish peers in a combined Parliament, the Scottish nobility would refuse to accept the plan. Linked to this was the proposed configuration of the Parliament. Was it to be a bicameral institution following the model of the English Parliament or would it revert to the unicameral system of the Scottish Parliament? These questions remained for the moment unanswered, but talks continued informally amongst Lauderdale and a number of English ministers.²¹

If such negotiations were to progress further, it was necessary that Parliament be convened to approve the discussions with their English colleagues. Any date for the new session, however, would be subject to the ongoing discussions for union. Tweeddale hoped that the English Parliament would meet before the Scots' in Edinburgh, "for if unione took happily it will be best ue tak measures from proceedings ther. If otherways that the unione be not lik to succeed it wer good peoplis minds wer settlid heir as soon as possible ... what ever fall out."²² Tweeddale's fear of the possible failure of the Union

²⁰ SHS, *Miscellany*, VI, Lauderdale to Rothes, 3 December 1668, p.174.

²¹ *Ibid.*, p.174; NLS Yester Ms 7023, Lauderdale to Tweeddale, 26 August 1669, f.224.

²² NLS Yester Ms 7001, Tweeddale to Lauderdale, 22 March 1669, f.216.

project when it came before Parliament was not unfounded.²³ Although opposition in England was expected, the Scots were proving to be rather unenthusiastic about the whole idea. Tweeddale reported to Moray that the "union is mightily spoken against" in the Privy Council.²⁴ A 'cabal' was forming against the union, with Hamilton suspected to be at the head of it.²⁵ This sudden rash of hostility had come about as a result of a leaked paper circulating around the peers that suggested that in a united Parliament only 20 of the nobility would receive a seat.²⁶ Full union may serve Scotland economically, but for those who would lose power, those benefits were of little importance.

The details of the union proposal had been the subject of much behind-the-scenes discussions. Finally, though, its contents became public on 10 June when the full particulars were presented to the foreign committee of the English Privy Council. An inseparable union under the King and his heirs, with equal privileges for the subjects of each country was proposed. However, both the Church and legal system of each country would remain separate. A bicameral Parliament of both nations would sit in London, with the Scots allocated 30 seats in the Commons. The controversial issue of the status of the Scottish peers was for the moment postponed with the agreement that the King could summon

²³ In an attempt to buy support for the union, in June the King authorised payments to be made to a number of key individuals (mainly those who had been allies of Rothes). Amongst the beneficiaries were John Murray, second Earl of Atholl, William Crichton, second Earl of Dumfries, Alexander Erskine, third Earl of Kellie, Sir James Home, third Earl of Home, General Thomas Dalryell and Lieutenant General William Drummond. NAS Exchequer Papers E9/3. Hamilton was quietened with the part repayment of the debt owed to him by the King. It would be paid in stages to secure his continued co-operation. NLS Ms Yester 7024, f.108 and 110. The payments did not go unnoticed, however: Mackenzie tells that the ill-timed payments occasioned "much jealousy amongst the people, who lookt upon these as bribes." *Memoirs of the Affairs of Scotland*, p.141.

²⁴ NLS Yester Ms 7001, f.220.

²⁵ SHS, *Miscellany*, VI, Lauderdale to Tweeddale, 13 July 1669, p.213.

²⁶ NLS Yester Ms 7024, ff.166-7.

what Scottish peers and bishops he wished and determine their precedence. On the crucial economic aspect, custom rates, excise and poll tax were to be equal. Other taxes were to be considered on a proportional basis, with England paying 70%, Ireland 18% and Scotland 12%.²⁷

To enact the above proposals, both parliaments were summoned to convene in October 1669. In Scotland, the length of the first session would be determined purely by the ongoing union discussions. "If the union proceed, the first session wilbe very short," wrote Lauderdale to Tweeddale, envisaging a swift quickening of pace in the negotiations after both Parliaments had given their approval.²⁸ To ensure things went according to plan, it was proposed that the election of commissioners would be left to the King; Parliament would be left to approve the Commission in principle. Lauderdale argued the historical precedence of the union negotiations in 1604, but on inspection of the old registers, it was found that Parliament had elected its own commissioners, not James VI as had been believed.²⁹ No doubt remembering the debacle of the trade discussions, Lauderdale refused to back down. The Commission would be presented to Parliament, but he would advise that the King would hold the right to appoint those who he thought fit. Anticipating discord at this decision, it was decided that Lauderdale should oversee events himself. Rather reluctantly, the Secretary left London for his homeland and for his new post as Commissioner to Parliament.

Lauderdale arrived in Edinburgh on 12 October, a week before Parliament was due to formally convene. This time was to be spent in preparation of

²⁷ Lee Jr, *The Cabal*, p.53.

²⁸ SHS, *Miscellany*, VI, 22 July 1669, pp.215-6.

²⁹ NLS Yester Ms 7023, f.224.

parliamentary business, but Lauderdale had already done most of the groundwork. He had left London with a legislative programme already agreed with the King, for, preparation was to be the key to the success of the union proposal. As detailed previously, it had already been decided that the first session was to be a short one so negotiations with the English could proceed. However, Lauderdale's instructions also contained proposals for a Supremacy act to regulate the royal prerogative in church matters, for the establishment of a national militia, and for the regulating of excise. These were all weighty issues and could be expected to test crown support in Parliament. Nevertheless, the timetable for the session remained unchanged. Lauderdale expected little opposition and therefore little delay from Parliament, perhaps believing that his position as the King's closest advisor would overawe any possible opponents.³⁰ It was dangerous to take the subordination of Parliament entirely for granted.

The second Parliament of Charles II formally opened on the 19 October with the traditional prayers. Rejecting a request by Presbyterian ministers to preach, in case they told "God almighty news from the debates," Lauderdale appointed the Bishop of Dunblane, Robert Leighton, to address the gathered commissioners.³¹ The Commission was read, the Rolls were called and the Parliament fenced (affirmed). This was a slight change in procedure. Middleton as Commissioner had first fenced the Parliament and then read the Commission, in other words approved the Parliament before the King's authorisation for its meeting was presented.³²

³⁰ It seems that Lauderdale thought the privilege of being Commissioner to Parliament was somewhat beneath his standing: "Oh, I am wearie of this grinning honour, faine wold I be at Whitehall againe; indeed I am now out of my element," he wrote to Sir Robert Moray barely a month after he had arrived in Scotland. *LP*, II, 13 November 1669, pp.158-9.

³¹ *LP*, II, Lauderdale to Charles II, 19 October 1669, p.141.

³² *Ibid.*, p.141.

A total of 190 attended the 1669 session of Parliament: 11 members of the clergy, 65 nobles, 56 shire and 58 burgh commissioners. Only the first session of the 1661-3 Parliament exceeded this turnout. As would be expected for a full Parliament, there was also a significant increase in attendance from the two previous Conventions of Estates. What had changed was the continuity of membership that had existed since the first session of the Restoration Parliament. Inevitably, increasing numbers of past attendees succumbed to old age and illness, and a host of new men replaced many of those who had been present in the first Restoration Parliament. This was especially the case for the nobility, where 27 of the peers present in 1661 died prior to October 1669. A further 17 died by the 1673 session. Lack of information regarding dates of death for the other two estates hampers similar investigation, but the same trend of sending new commissioners exists. Of the 31 shires present, 22 had at least one commissioner who had not attended any previous sessions (there were 28 new shire commissioners in total). Likewise, commissioners with no previous parliamentary experience represented 30 of the 58 burghs.

Despite the changes, the government seemingly had no difficulties in recruiting loyal subjects to take the place of those now absent. "The Commissioners for the Parl^t are, I heare, well chosen," wrote Lauderdale to the King a few days after arriving in Edinburgh.³³ There is little evidence of widespread manipulation of local elections, as had been the case at the previous meeting of Parliament. It seems that the Oath of Allegiance and the Declaration of Public Trust had largely succeeded in preventing any known opponents from obtaining election. Certainly, there does not seem to have been the same trouble

³³ LP, II, pp.140-1.

taken over managing elections in the localities, although Parliament did undertake investigations into instances of double commissions in shires of Berwick, Stirling, Kincardine and the burgh of Cromarty.³⁴ Only the account of the election in Stirling survives, but this suggests that the dispute was not a result of a contest between a chosen crown candidate and a local opponent (as had been the case in 1661), but rather a dispute between two local factions.³⁵

After all members had undertaken the Oath of Allegiance and the Declaration, the King's letter was read in which it was declared that the purpose of the Parliament was to bring the "two Kingdoms of Scotland and England to as close and strict an Union as is possible."³⁶ The Parliament was adjourned to elect the Lords of the Articles. Here the pattern was set for the rest of the session. Rather than break-up peacefully, there were endeavours on the part of some unidentified members to delay the Articles till some controverted elections were determined. When Lauderdale "cut that debate short, for, it wold have

³⁴ These disputed elections provide a good example as to how parliament procedure evolved to deal with an increase in workload. Controverted elections had been a rather infrequent occurrence until 1639 when the new importance attached to parliamentary proceedings led to the emergence of contests about elections. In 1661 the whole parliament had decided on the outcome of any disputes. However, in 1669, partly due to the time involved in investigating what had become an increasing problem, a Committee was appointed to consider all the relevant details and to report back to Parliament with the final decision. This practice continued until the Revolution.

³⁵ The parties involved were Sir John Stirling of Keir and James Seaton of Touch, and John Buchanan of that Ilk and John Murray of Polmais. Both Buchanan and Polmaise had been the Commissioners at the last session of Parliament. The contest seems to have been a struggle between the supremacy of old and new factions in the shire. (A similar dispute had arisen in 1665. See Chapter Three, pp.93-4.) The eligibility of voters was the issue on which the contest was fought, and thus to clarify the guidelines for qualification, an Act anent the Election of Commissioners of Shires was passed. NAS PA 2/29, f.5. After examining both submissions, the Committee advised a new election to be held, at which Sir John Stirling of Keir and James Seaton of Touch were selected. They eventually took their seat on November 23. NAS Supplementary Parliamentary Papers PA 7/25/32/8/1-17. Although in this case, the dispute seems to have arisen over legitimate concerns of voter eligibility, this does not mean that the eventual decision was not determined by political considerations. Indeed, Mackenzie believed the new system of committees was a grievance, presumably because it prevented opposition from participating in the decision. Mackenzie, *Memoirs of the Affairs of Scotland*, p.143; For an overview of disputed elections and parliamentary procedure, see Rait, *Parliaments of Scotland*, pp.309-14.

³⁶ NAS PA 2/29, f.3.

made three dayes delay," questions were then raised as to the election of the Articles. The King's Instructions had stated that the Bishops were to receive a "list of those the King wold have them name to be of the Articles" so that "they be not left to make such a choys as they mead in 1617."³⁷ Partly to circumvent this rather blatant attempt at increasing crown control over the election to the Articles, when the Bishops had chosen the nobility, and the nobility had chosen the Bishops, it was questioned by some members whether only those elected should choose the shire and burgh members, or whether the whole body of the bishops and nobles present in Parliament should take part. Although Lauderdale was convinced that only the elected should elect the other estates, the Lord Chancellor could not remember what had been done in previous sessions and the Clerk Register could not find the Act from 1663 that laid out the procedure of election. Hamilton, seeing his chance, joined the opposition and "cryed out against it." No doubt angry at the unexpected uproar barely minutes into the new session, Lauderdale was caught out. Rashly, he ordered the Register to "break up the door where the record lay (for he [the Register] pretendit not to have the key)." Sharp unearthed a copy of the disputed act just in time to save the demolition of the offending door, and passed it around to quiet the debate.³⁸

It is more than likely that the whole debate as to the election of the Articles was a set-up, perhaps a demonstration to Lauderdale of the capacity of the members to bring business to a standstill. It is unlikely that such an important act, the subject of much discussion in 1663, had simply been forgotten by so

³⁷ NLS Yester Ms 14488, 'Instruction as to the ensuing Parliament, 2 August 1669,' f.81. In 1617, the clergy undertook to superintend the election of members to the General Assembly, but they failed to procure an obedient membership and James VI's church reforms were delayed.

³⁸ NLS Yester Ms 7024, f.182.

many, the Lord Chancellor included. To the surprise of Lauderdale, the events of the first day revealed that some members were determined to debate or obstruct almost any measure brought before them. This was to be met by an equal determination from Lauderdale to eradicate any such pretence to independence.

The election of the Lords of the Articles went ahead without any further debate. Despite the opposition that had been aroused, the final membership of the committee could not have been more carefully composed.³⁹ All of the members had sound royalist credentials and would therefore be expected to approve Lauderdale's pre-prepared legislative programme. All of the nobility (except the young Marquis of Douglas) were Privy Councillors.⁴⁰ Of the shire representatives, four were Privy Councillors and two were collectors of the King's customs.⁴¹ The two remaining members had equally strong crown connections. Sir Alexander Fraser of Dores was an old physician to the King in exile, and Sir John Cochrane of Ochiltree was son of one of the Treasury commissioners, William Cochrane, Lord Cochrane (later first Earl of Dundonald.)⁴² The burgh representatives were chosen for their previous parliamentary experience: seven of the eight burgh representatives had served in

³⁹ For the membership, see NAS PA 2/29, f.4.

⁴⁰ The Duke of Hamilton, the earls of Tweeddale and Kincardine, James Douglas, second Marquis of Douglas, Archibald Campbell, ninth Earl of Argyll, Gilbert Hay, eleventh Earl of Erroll, John Murray, second Earl of Atholl, and Charles Seton, second Earl of Dunfermline were chosen as the members representing the nobility.

⁴¹ The Privy Councillors were Sir John Gilmour of Craigmillar, Sir James Lockhart of Lee, Charles Maitland of Hatton (Lauderdale's brother) and the Lieutenant General, Sir William Drummond of Cromlix. Sir James Hay of Linplum and Sir Archibald Murray of Blackbarony were the two collectors of the customs.

⁴² M. Young (ed.), Burgh and Shire Commissioners, I, p.264 and p.127.

previous sessions.⁴³ The new man, Sir Andrew Ramsay of Wauchton was the son of a long time ally of Lauderdale, Sir Andrew Ramsay of Abbotshall, Provost of Edinburgh, and he joined his father in the Articles.

Lauderdale had taken no risks in the staffing of the Articles, preparing, as set out in his Instructions, a list of ideal candidates that had been passed to the Bishops and from which they were to make their choice.⁴⁴ The final selection was as Lauderdale had intended: "If they be amiss blame me for I wrott the lists and not a man was altered," he informed the King.⁴⁵ Hamilton was included, despite his potential for trouble making. By giving him this position, Lauderdale hoped not to distance him any further. Nevertheless, surrounded by the Commissioner's main supporters, Tweeddale, Kincardine and Argyll, he would be quickly overcome if he attempted to upset the smooth passage of Lauderdale's legislative programme through the Articles.

To secure this crown superiority in the Articles, first a certain practice must be revoked. An order of Parliament in May 1662 had recognised the right of members who were not actually members of the Articles to be present at its meetings.⁴⁶ This Lauderdale now flatly refused to allow, asserting that "if all members of Parliament were allowed to come into these meetings, they would become tumultuary, and wold be too open, and so unfit for consultation and

⁴³ The burgh representatives were Sir Andrew Ramsay of Abbotshall (Edinburgh), Patrick Thriepland (Perth), John Geddie (St Andrews), William Cunningham (Ayr), Sir Robert Milne of Barnton (Linlithgow), Sir Andrew Ramsay of Wauchton (North Berwick) and Patrick Moray (Selkirk). There is some uncertainty surrounding the identity of the commissioner for Aberdeen. Alexander Alexander was appointed to act as commissioner in the absence of Robert Petrie of Portlethen who had been originally elected. Petrie is recorded as being present in the Rolls taken on the first day, but when he was replaced remains unknown.

⁴⁴ NLS Ms Yester 7024, f.182.

⁴⁵ LP, II, 19 October 1669, p.142.

⁴⁶ NAS PA 2/28, f.3: "Nor any persons [shall be] suffered to stay at the Articles, save members of Parliament."

contriving."⁴⁷ After all, was not the whole point of the Articles to allow for business to be discussed by a smaller, more manageable body made up of representatives of the whole parliament? Lauderdale's demand was granted, and this was a crucial victory. By quashing demands for a wider parliamentary involvement in the election of the Articles, he could with some ease ensure that the committee was staffed with loyal supporters. Their meetings and discussions as to the proposed legislation would now also remain secret. The prospects for the controversial Union bill and for the Supremacy Act looked encouraging since it was specifically in the Articles that legislation would be changed and amended. Lauderdale believed that his presence in the chamber would check any remaining opposition there.

The first business to be attended to was the answering of the King's letter and therefore the Parliament's response to the idea of union. This came up for discussion in the Articles on 20 October. The debate was concentrated on the issue of whether the nomination of commissioners, the quorum for the meetings and their time and place should be left to the King. To place this responsibility in the King's hands would, of course, remove the threat of any undesirable members being elected onto the commission, members to whom if negotiations became disagreeable may prove to be less complacent than those who would be chosen for their crown support. Lauderdale recognised this fact, and pressed for the Articles to take their cue from the negotiations in 1604 in which all such particulars were left to the King.⁴⁸ After some debate (which was held up by the

⁴⁷ Mackenzie, *Memoirs of the Affairs of Scotland*, pp.142-3.

⁴⁸ Lauderdale continued to press for this, even though his earlier investigations had revealed that it had been Parliament that had chosen the commissioners in 1604. See p.124. SHS, *Miscellany*, VI, Tweeddale to Moray [draft letter], 22 October 1669, p.224.

Duke of Hamilton making his now obligatory protest on the whole proposal) a small committee was appointed to decide on their answer.⁴⁹ At the next meeting, they announced that the nomination for commissioners to negotiate a treaty of union was to be left to the King; Parliament would reserve the right to veto any decisions they might make.⁵⁰

At the full session of Parliament the next day, Lauderdale was given advance warning of the reception that was likely to meet the Articles draft reply to the King's letter. Rumours abounded of "caballing in the hous by some who were displeased they were not of the Articles, Lords and others, especially Lawyers."⁵¹ What had caused the most concern was the revelation that the commissioners to treat with the English were to be chosen by the King. This undoubtedly negated the main function of Parliament in this issue, but Lauderdale knew that to allow a free election might threaten the whole union process. The Commissioner refused to back down, but decided not to put forward the draft letter to an immediate vote and therefore risk a defeat. Instead he would allow a free debate to take place, hoping that "the humour might evaporate and he might better know the temper of the house."⁵²

Firstly, it was argued that the process towards union was moving too fast. Events were progressing in Scotland while it remained unclear what the Parliament of England would do as to the matter; if Scotland progressed too rapidly, she would be seen as being over "fond" of union. This had been a

⁴⁹ It was almost entirely Lauderdale's associates that staffed this offshoot of the Articles. Although Hamilton was allowed to attend, the other members would again mitigate his influence. Joining Argyll, Tweeddale, the Archbishop of St Andrews, Lockhart of Lee, and Ramsay of Abbotshall, were two officers of state, Archibald Primrose, the Clerk Register and John Nisbet, Lord Advocate. *Ibid.*, p.224.

⁵⁰ Only Kincardine spoke against the proposal. *Ibid.*, p.224; See also LP, II, pp.143-4.

⁵¹ SHS, Miscellany, VI, p.224.

⁵² *Ibid.*, p.224; LP, II, p.143.

concern of both Tweeddale and Lauderdale before Parliament had been convened, but the Commissioner now dismissed it, telling the King that such humours were due to the “great paines [that] have been taken to alarum all sort of people against union.”⁵³ Robert Dickson, a lawyer representing the burgh of New Galloway, spoke on the legal and constitutional ramifications of the union. The fundamental laws, right and privileges of the kingdom, he argued, were under threat unless Parliament had the final say on whether the treaty of union should be allowed to progress or be rejected (in effect a veto over anything agreed by the Commissioners). The Commission granted by James VI in 1604 had preserved these rights, as must the new commission. Dickson was seconded by his fellow lawyers, Sir George Mackenzie of Rosehaugh and by Sir George Gordon of Haddo, representing the shires of Ross and Aberdeen respectively. In a ‘long winded discourse,’ Mackenzie declared that the vote regarding the reply to the King’s letter must be delayed to allow time for more debate. Hamilton, despite “all his assent in the morning” likewise urged a delay in the proceedings.⁵⁴ Haddo gave his support, and then brought up the valid question of what should happen if the succession of the crown and the line of James VI should fail.⁵⁵ At this, Lauderdale could no longer remain silent. Haddo, in the

⁵³ LP, II, p.143.

⁵⁴ Tweeddale attributed Hamilton’s bizarre behaviour to his friendship with Rothes: the Duke “is never 24 of a tune and I dare promise nothing of him,” he told Moray. The “factious inclinations and the insinuations of you know who [Rothes] are still soe poerfull with him that he [Rothes] makes him speake his mind whilst himself goes sweetly along.” SHS, Miscellany, VI, p.225; It has been suggested that Rothes was exploiting the less experienced Hamilton for his own ends. J Patrick, “The origins of the opposition to Lauderdale in the Scottish Parliament of 1673” in SHR, liii (April 1974), p.8. Hamilton does not mention his own involvement in the debate in his ‘Memorandum of Some passages in Parliament begun October 1669 first Session.’ NAS Hamilton Papers, GD 406/2/640/2.

⁵⁵ Hamilton, whose own family had a place in the succession to the Scottish throne, supported Haddo in this matter and rose to defend him. Union with England might have altered his claim. Mackenzie, Memoirs of the Affairs of Scotland, p.148.

conclusion of his speech, was “sharply taken up by My Lord Commissioner and had a sorie reprimand,” Tweeddale reported with some satisfaction to Moray.⁵⁶ Having heard the two hours of debates (and “having snubbed some who talked impertinently upon the terms of the union”), Lauderdale consented to a delay in the final vote to allow for further consultation.⁵⁷ Yet this was no defeat for the Commissioner; Lauderdale was quite content to allow additional debate on the issue. He was confident that when it came to the final vote, he could depend on the continued loyalty of the majority of members.

Parliament reconvened at ten o'clock the following day, and the debates began afresh (albeit with the same speakers). Mackenzie continued from where he left off with an overlong, ‘branched’ speech that succeeded only in boring those present.⁵⁸ Taking his cue from a suggestion first made by Rothes, Hamilton joined in the debate and insisted that if commissioners were to be chosen by the King alone, Parliament must possess the right to alter those royal nominees as they saw fit. Haddo made the suggestion that two letters should be sent to the King: one concerning the union in general, another as to the nominations for the commissioners. This was rejected as being impractical. Finally, the vote was taken, and the original letter was passed with only one objection. Sir George Mackenzie, “in love of singularity as much as solitude,” was the lone dissenting voice.⁵⁹

⁵⁶ SHS, *Miscellany*, VI, p.224.

⁵⁷ *LP*, II, p.143.

⁵⁸ Tweeddale finally interrupted Mackenzie, telling him in no uncertain terms that his speech was ‘intolerable’ both because of its length and because it was in opposition to the King’s wishes. Mackenzie retorted he had not been interrupted, but had finished his speech. Hamilton took Tweeddale to task for curbing the privilege of free speech. See Mackenzie, *Memoirs of the Affairs of Scotland*, p.148 for a full account of the debate.

⁵⁹ SHS, *Miscellany*, VI, p.224. Hamilton thought that too much time had been taken up with petty disputes as to the selection of commissioners; the ramifications for the Scottish Parliament of the union proposal as a whole had been largely overlooked. NAS Hamilton Papers, GD 406/2/640/2.

The chamber had passed the King's letter by a very comfortable margin, but the prolonged debates revealed to Lauderdale that many of the members had an exaggerated belief as to the power and privileges of Parliament. Mackenzie had raised a number of important issues when he had stated that if "union should be a national act ... all steps should be nationally concluded."⁶⁰ By this, he meant that Parliament should not only choose the Commissioners, but should also be consulted on all proposals every step of the way. This was not the role Lauderdale envisaged. Parliament may be the King's 'great council' to whom he turned to for advice, but it was in turn expected to show its loyalty by concurring with the crown's demands. Nevertheless, Mackenzie, in highlighting the difficulty of balancing loyalty to the crown with the rights of Parliament, had articulated what was likely to be a widespread opinion. The long debates as to Parliament's role in the selection of union commissioners had demonstrated this.⁶¹

* * * *

The next business could have been expected to cause as much debate as the union issue. The Act of Supremacy, asserting the royal prerogative in ecclesiastical matters, would tackle the mess caused by the government's own failed initiatives to settle the policy of the church. The idea for such legislation had first been suggested by Moray in July 1669, but Tweeddale had been thinking along the same lines since the summer of 1668. The Bishops' reception of the Indulgence only heightened the need for legislation that set out

⁶⁰ Mackenzie, *Memoirs of the Affairs of Scotland*, p.154.

⁶¹ *Ibid.*, pp.150-4. Mackenzie made the crucial point that the practical necessities of combining two countries would require future parliamentary involvement, since such an important task could not be left to a committee.

clearly the King's authority over the church.⁶²

Lauderdale had taken great pains in preparation for the Act, the first of which was to remove the threat of opposition from Alexander Burnet, Archbishop of Glasgow. Burnet's outspoken views on government church policy, given a wider audience by his correspondence with Gilbert Sheldon, Archbishop of Canterbury, had long irritated Lauderdale.⁶³ Burnet's reaction to unwelcome developments in the church was to express his opinion publicly. His letters to Sheldon, full of dire predictions of widespread rebellion and uprising, conveyed to English officials a poor impression of the administration in Scotland as a whole.⁶⁴ Matters came to a head at the meeting of the Synod of Glasgow in mid-September of 1669. A Remonstrance against the Indulgence was drawn up which expressly condemned the policy, and which accused the government of a lack of progress towards uniformity of worship and discipline in the church. The King reacted to the protest with fury; opposition to royal policy was nothing less than sedition. Burnet was warned to stay away from the forthcoming session of Parliament, and measures were being taken to effect his resignation.⁶⁵

Burnet's absence from the chamber no doubt eliminated one of the major

⁶² The Indulgence had been passed against the will of the bishops. This, they argued, was clearly a breach of the 1662 Act for the Restitution and Re-establishment of the Ancient Government of the Church by Archbishops and Bishops which decreed that the King must consult on church policy with the bishops. NAS PA 2/26, ff.4-6; Buckroyd, Church and State, pp.80-1.

⁶³ Burnet's occasional letters to George Morley, Bishop of Winchester worried Lauderdale more than the letters he sent to Sheldon. Both the King and the Duke of York somewhat abused Morley's hospitality and spent large amounts of time at the Bishop's home, Farnham Castle because of its proximity to their favourite hunting grounds. Burnet would have informed Morley of the 'true' state of the Scottish Church, and Lauderdale presumably feared that the topic would come under discussion in the presence of the King. Burnet had indicated that he would be happy to take up a parsonage in England; Lauderdale 'heartily wished' he had two. SHS, Miscellany, VI, p.163.

⁶⁴ The majority of these letters are printed in LP, II, Appendix A.

⁶⁵ Buckroyd, Church and State, p.84; NLS Yester Ms 7001, ff.230-3.

threats to the Act. However, Archbishop Sharp now took up the campaign of opposition on behalf of the bishops. On 26 October, he preached a sermon to the Parliament that infuriated Tweeddale and Lauderdale. In it, he analysed the nature of the royal supremacy over the church, concluding that it was very limited. In addition, he argued that the Indulgence was a threat to the independence of the episcopate.⁶⁶ For this, he faced the wrath of the Commissioner who ordered that he retract his statements and preach again, this time to the opposite effect.⁶⁷

A draft of the Supremacy Act, which Moray and Tweeddale had been working on for some months, was now presented to the Articles. A Committee was immediately appointed to prepare it, but before it had begun deliberations, Sharp was given a copy of the draft that had already been prepared. As soon as he saw the proposals contained in the act,

he took the alarum wondrous haisty, and said wilde things to E. of Tweeddale, that all King Henry the 8th ten yeers' work was now to be done in three dayes, that four lines in this act were more comprehensive than a hundred and odd sheets of Henry 8.⁶⁸

Despite Sharp's vocal opposition, it became apparent that he could command little support. His attempt to prevent the passing of the Act in the committee

⁶⁶ Sharp took personal offence at the Indulgence. On 9 July 1668 James Mitchell, a conventicle preacher, had made an attempt on his life. Sharp escaped injury when a shot was fired at his coach, but the Bishop of Orkney received a serious wound to his arm. One of the rumours surrounding the motive for the attack was that the Bishops had themselves employed Mitchell, hoping to discredit the Presbyterians and "stop that favour that was intended them of opening some of their ministers mouths." Although the incident delayed the Indulgence for almost a year, it finally went ahead, much to the disgust of Sharp and the other bishops. Journals of Sir John Lauder of Fountainhall with his Observations on Public Affairs and other Memoranda, 1665-1676 (Edinburgh, 1900), p.231; Ravillac Redivivus: Being a Narrative of the Late Tryal of Mr James Mitchell, a Conventicle preacher who was Executed the 18 of January, 1677 for an attempt which he made on the sacred person of the Archbishop of St Andrews (London, 1682), GUL Sp Coll Ferguson AK-x.15.

⁶⁷ *Ibid.*, p.82.

⁶⁸ LP, II, Lauderdale to Sir Robert Moray, 2 November 1669, p.153.

appointed to draft it was obstructed by Hamilton, Tweeddale and Kincardine.⁶⁹ Shaken by this (“he had no great feast to buckell any more”)⁷⁰ he approached Lauderdale in private and assured the bishops’ co-operation if a small change was made to the wording of the act. He required that to the phrase “the ordering and disposall of the Externall Government and policie of the Church both properlie belong to his Maiestie” should be added “as it is settled by law.” This, Lauderdale recognised, would have had made the act redundant. He refused its addition.

The Act was then presented to the Articles as a whole. Despite a long speech outlining his theological opposition to the Act, Sharp’s objections were again ignored.⁷¹ Lauderdale agreed not to put the Act before the full Parliament until it had the King’s approval, but it passed in the Articles without a contradictory vote. Disregarding the expected opposition from the Bishops, it is remarkable that no others spoke against the Supremacy Act. Mackenzie attributed this to resentment at past subjugation at the hands of the episcopate:

The nobility had been in this and the former age, kept so far under the subjection of insolent churchmen, that they were more willing to be subject to their prince, than to any such low and mean persons as the clergy; which consisted now of the sons of their own servants or farmers.⁷²

The lay members of the Articles, he claims, were positively enthusiastic at the shift in power, since “all the government of the Church would fall on the hands

⁶⁹ *Ibid.*, p.152.

⁷⁰ *Ibid.*, p.152.

⁷¹ Sharp argued that episcopacy was *iuro divino*, thus the implication in the Act that the King had the authority to change the form of church government was misleading. He attempted to emphasise that his objection to the Act was purely on a theoretical basis and was in no way an indication of any personal disloyalty to the King. Just to affirm this, he rebuked the Bishop of Ross for making the same suggested addition to the act as he himself had done to Lauderdale. Buckroyd, *Church and State*, p.82; *LP*, II, p.153.

⁷² Mackenzie, *Memoirs of the Affairs of Scotland*, pp.159-60.

of laicks and especially of councillors, of which number they were.”⁷³ However, it is doubtful that these factors were taken into consideration when the Articles considered the Supremacy Act. More likely, the belief amongst the other estates that the crown would better regulate church affairs than the Church themselves influenced the voting.

The King was understandably delighted by the Supremacy Act.⁷⁴ With his full support, Lauderdale put the act to the vote before Parliament on 16 November.⁷⁵ As was the case in the Articles, it passed unanimously and without protest. Indeed, vociferous support for the act came from some surprising quarters. The Earl of Dumfries, who had collaborated with Middleton to have Lauderdale ‘billeted’, rose to his feet and told the chamber that he was glad that “now the King was to be mor than a pretender to supremacy and was declared to have better right than Pope or presbiter.” He then imparted to Tweeddale his delight that “the King had now got in between God and the Bishops.”⁷⁶ Enmity towards the Bishops was perhaps stronger than the traditional factional divisions that had in the past determined voting patterns.⁷⁷

⁷³ *Ibid.*, pp.159-60.

⁷⁴ Lauderdale too was overjoyed by the Act. In a letter to the King, he boasted that “You may now dispose of Bishops and ministers, and move and transplant them as you please (which I doubt you cannot doe in England). In a word this church, nor no meeting nor Ecclesiastick person in it can never trouble you more unles you please.” The next piece of legislation, the Militia Act “settles you twentie thousand men to make good that power.” NLS Lauderdale Ms 3136, f.160. After Moray’s death, the letter fell into the hands of Hamilton who intended to use it to begin impeachment proceedings against Lauderdale. Burnet, *History of His Own Time*, II, p.286. Hamilton’s copy is in NAS Hamilton Papers GD 406/1/2730.

⁷⁵ NAS PA 2/29, ff.5-6.

⁷⁶ NLS Yester Ms 7024, Tweeddale to Moray, 18 November 1669, f.193.

⁷⁷ Partly to pacify the Bishops, on November 30 two acts were passed which tightened up the penalties for non-conformists. The first made parishes liable for any acts of violence committed against ministers, and the second outlined severe penalties for those who refused to pay bishops duties and ministers stipends. This legislation was intended to settle the minds of the clergy by demonstrating that the government still looked seriously on non-conformity and active dissent. NLS Yester Ms 7001, ff.234-5.

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The Militia Act, the next issue to come before Parliament, was to be altogether more troublesome for the government. A statute of 1663 that provided for 20,000 foot soldiers and 2,000 horse had been slow to be implemented.⁷⁸ The Privy Council had been given full responsibility to order and maintain the forces, but the events of the past few years had impeded the raising of many regiments. To remedy the situation, stricter penalties for non-attendance at rendezvous and for non-payment of proportions were proposed. The Act was given into the Articles for consideration, but a dispute arose at the suggestion made in the draft act that penalties should be exacted by the method of quartering. Although it passed by a majority, for the first time in this session an act did not secure unanimous approval in the Articles.⁷⁹ The act, complete with disputed clause, was brought into Parliament on 29 October. The substance of the act was approved in principle, but many 'bogled' at the proposal allowing quartering for deficiency. Due to the unpopularity of the clause, the act was delivered back to the Lords of the Articles, and there it was agreed that the offending clause should be removed. Instead, distraining of the subject's goods would comprise the penalty for defaulters.⁸⁰

The Act passed with only one opposing vote when it reappeared before Parliament on 16 November, yet the resistance within the chamber to quartering revealed to Lauderdale the extent of the hostility to the billeting of soldiers in

⁷⁸ See Chapter Two, p.84.

⁷⁹ LP, II, 2 November 1669, p.150; Hamilton started the debate with his request that compensation be given to those areas where the burden of quartering would be heaviest. It was something he regretted even mentioning, for, immediately Lauderdale threatened that he would be represented to the King as "one opposer of his service." NAS Hamilton Memorandum GD 406/2/640/2.

⁸⁰ LP, II, p.151.

the localities.⁸¹ Indeed the opposition had been so strong as to necessitate the act to be returned to the Articles for modification, something that had not been done since before the Restoration. Nevertheless, this was an issue on which Lauderdale could afford to be flexible. As long as militia membership increased and their general condition improved, the method of exacting obedience was unimportant.

What surprised the government was the reception given to the act in England. The legislation allowed for the militia to “march to any part of his Maties dominions of Scotland England or Ireland, for any service wherin his Maiesties Honor Authority or Greatnes may be concerned.”⁸² Although this clause only re-enacted the same section of the 1663 act, it caused a great deal of agitation south of the border.⁸³ Some modern historians have made the assumption that Charles II was strengthening his grip on his Northern Kingdom with a view to using the Scots to impose his will on his English subjects. Although this assessment echoes fears expressed at the time, it is doubtful that the Scots viewed this particular piece of legislation in the same manner as the English. The Militia Act was merely an attempt at reorganising national security, necessary after the disbandment of the standing army.⁸⁴

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With the major legislation of the session safely through, attention began to turn back to the issue of union. The arguments over the reply to the King's

⁸¹ NAS PA 2/29, ff.6-7.

⁸² *Ibid.*, f.6.

⁸³ See NLS Yester Ms 7023, f.231 where Lauderdale describes to Tweeddale of the “noys” and “strange prejudices against me concerning our act of militia” that greeted him when he returned to Court.

⁸⁴ Hutton, *Charles II*, p.248.

letter had been largely unexpected and Lauderdale admitted to Moray, "it may be the worke is more difficult then was imagined."⁸⁵ English apathy to the proposal also had to be overcome, and the government in Scotland waited anxiously on events in the House of Commons. Charles had decided to leave the naming of the English negotiators to the House of Commons, rather than appoint a commission without election. It was hoped that this concession would encourage the English to proceed, but it soon became apparent that for the English Parliament, union with Scotland was not very high on the agenda; the disappointing news from London was that the issue was unlikely to receive any consideration until mid-December.⁸⁶

Until the English had approved the proposal for union, a Commission appointing the membership, date and place of negotiations could not be issued. Clearly the Scottish Parliament could not remain in session until the English discussed the proposal. Instead, Moray proposed that an Act should be passed to allow the King to issue a Commission under the Great Seal. The Parliament could then be adjourned when all other matters had been dealt with.⁸⁷ Without waiting for reaction from Scotland, Charles proceeded to authorise the passage of the act.

This proposal horrified Lauderdale. In deference to Scottish sensibilities, he had expressly avoided putting a draft of the Commission through Parliament. That Parliament should approve a blank Commission, so the King could appoint Commissioners under the Great Seal without further recourse to Parliament

⁸⁵ LP, II, p.154.

⁸⁶ The English attitude to union is made clear by an entry in one of the MP's diary concerning the day's events in Parliament: "It was taken into consideration the trade with Scotland, to *prevent* the Scots from carrying their commodities to Holland or France." [my italics] Extract from diary of John Milward, cited in Lee Jr, The Cabal, p.45.

⁸⁷ LP, II, Sir Robert Moray to Lauderdale, 28 October 1669, pp.149-50.

would only create further hostility to union as a whole.⁸⁸ “No command could be more grievous,” wrote Lauderdale, instructing Moray to acquaint the King with the depth of feeling in Scotland. Before anything else could be done, the English must act; whatever was decided there could then be pushed through the Scottish Parliament.⁸⁹

Confident that his advice would be taken due to his high standing with Charles II, Lauderdale was ‘amazed’ to receive from Court an express command from the King demanding that an act be passed which would allow for Commissioners to be named under the Great Seal.⁹⁰ Lauderdale’s only comfort was that before the act would be finalised, he was permitted to discuss the matter with other officials to gauge its likely reaction. Consequently, a meeting of certain members of the Articles was arranged.⁹¹

As Lauderdale had expected, the proposal was roundly condemned. The chief objection amongst the committee was that the Scottish Parliament had progressed towards union in good faith, expecting the English to do the same. The English Parliament’s continued refusal to consider the matter was simply an insult to a nation that had suffered so grievously under their trade restrictions for the past nine years. Notwithstanding the loyalty justly owed to the King, it was inappropriate to insist that the Parliament pass a measure to relinquish its own authority in approving the Commission. Scottish national pride was involved,

⁸⁸ Lee Jr, *The Cabal*, p.62.

⁸⁹ *Ibid.*, Lauderdale to Moray, 2 November 1669, pp.154-5.

⁹⁰ *Ibid.*, Lauderdale to Moray, 9 November 1669, pp.155-6. Lauderdale blamed Moray for the whole incident, and criticised him for failing to advise him properly of events at Court.

⁹¹ Lauderdale called together the Archbishop of St Andrews, the Duke of Hamilton, and the earls of Rothes, Argyll, Dunfermline, Tweeddale and Kincardine. Also present were Charles Maitland of Hatton, Sir Alexander Fraser of Dores, Sir Andrew Ramsay of Abbotshall, Lieutenant General Drummond, the Clerk Register and the Lord Advocate. Although he was not a member of the Lord of the Articles, joining them was the Treasurer-Deputy, Sir William Bellenden, Lord Bellenden. *Ibid.*, p.156.

and the nation could not be seen as being subordinate to England. Thus, if the Act proceeded, whatever should be concluded in the negotiations would be unlikely to gain the final approval of Parliament. Despite his authority as Commissioner, even Lauderdale admitted that no such measure could be pushed through an unwilling chamber.⁹²

To the relief of the Scottish administration, the King, after communications from Lauderdale, agreed to drop the idea of a Commission under the Great Seal. However, as had been predicted, opposition to the union continued to increase. The Scots were not reassured by events in England where, despite requests from the King, the House of Commons continued to stall, refusing to consider the matter until more pressing public business had been dealt with. As the likely failure of the union project became increasingly apparent, Lauderdale wrote to Charles asserting that if nothing was to be done in this session, the issue of trade must be resolved. The King was less pessimistic and insisted that the delays in the English Parliament did not mean there was opposition to union.⁹³ Unconvinced by this assertion, it seems that the Scottish ministers had begun to give up on union.⁹⁴ Thus plans to arrange a commission for trade to meet in the interval between parliamentary sessions were put into effect by December.⁹⁵

⁹² *Ibid.*, pp.156-7.

⁹³ *Ibid*, Moray to Lauderdale, 30 November 1669, p.165; Lee Jr, *The Cabal*, pp.58-9.

⁹⁴ The letter of adjournment from the King confirmed that the union project had now taken a backseat. It may be some time before it would be taken into consideration by the English parliament, who were so taken up with affairs which must precede it, that "Wee cannot think fit to mynd them of it, but doe resolve to leave them to their own method, because Wee would not interrupt them, nor seem to imagine they neid to be again myndit of what Wee have already seriously recommendit to them." NAS PA 2/29, f.17. Negotiations for closer links with France, culminating in the Treaty of Dover, had now taken precedence over union with Scotland.

⁹⁵ This Commission for promoting trade was one of the few ordinary committees with executive powers appointed in the Restoration period. It had full powers to prepare overtures and proposals for the improving of trade which would be presented to the next session of Parliament. As it was appointed for a special purpose, a number of burgesses who were not members of parliament were included, Walter Cheislie and Charles Charters, both burgesses of Edinburgh. Rait, *Parliaments of Scotland*, p.385.

With closer trade links to England looking unlikely, an Act for the Naturalisation of Strangers, approved on 8 December, was a direct attempt at encouraging skilled tradesmen to bring their expertise to Scotland. Upon successful application to the Privy Council, these immigrants would be regarded as native born residents of the Kingdom of Scotland with the same legal rights and privileges. It was a move principally aimed at the English, but it also opened the doors to the Dutch.⁹⁶ However, it was impossible to resurrect the economy by measures like the Naturalisation Act alone. Overseas trade turned largely on foreign policy, but foreign policy was a luxury Scotland no longer enjoyed. The outbreak of the Third Dutch War in 1672, again a war fought purely for English interests, subjected Scottish trade to further injury.⁹⁷

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Although the major legislation of the session had already passed, it was the seemingly innocuous measures that proved to be the most controversial. On 15 December an Act concerning Forfeitures of Persons in the late rebellion was brought into the chamber.⁹⁸ The process against rebels from the Pentland Rising, exempt from the King's pardon, had been delayed because of their continued refusal to turn up at trial. The Act proposed that those who rose in arms openly against the King might have their estates forfeited in their absence. Lauderdale expected little difficulty in its passage, but when presented to the chamber, it immediately met opposition from predictable quarters. First, Sir George Gordon of Haddo spoke 'loosely' against it. He spoke, however, in the

⁹⁶ NAS PA 2/29, f.10.

⁹⁷ W. Ferguson, *Scotland's Relations with England to 1707*, (Edinburgh, 1977), pp.153-4.

⁹⁸ NAS PA 2/29, ff.13-14.

“plurall number We” and Lauderdale soon “snapt him up, and desired to know if he was a single person, or spoke in name of a collective bodie.”⁹⁹ This silenced Haddo, but Sir George Mackenzie was again prepared to make his opposition public. Taking his cue from Haddo, Mackenzie declared that by civil law all prosecutions should be heard in the presence of the accused party, as it was unlawful for any institution other than Parliament to try an absent person.¹⁰⁰ Despite the long debate, in the end the act passed with only a few dissenting votes among the shires and burghs.

The trouble for Lauderdale did not end there. The Act for Excise and Customs contained a clause that rescinded the right to import duty free salt for fish-curing. To protect Scottish trade, a duty of 40 shillings Scots had been placed on all salt imports; only salt for use in the fishing trade was exempt.¹⁰¹ However, the loophole had been so heavily exploited that the majority of salt now imported escaped payment. The act proposed that all imported salt should be subject to customs duty, but that those using it to cure fish could apply for a rebate.¹⁰² There was widespread opposition to the proposals: in the Articles all the burgh members voiced their discontent, and when it was presented to Parliament, it met with such a hostile reception, Lauderdale feared it would be

⁹⁹ LP, II, Lauderdale to Moray, 16 December 1669, p.172; The exchange between Lauderdale and Haddo gained some notoriety. Another account tells of how Lauderdale insulted Haddo by asking if he had mice in his arse. This was included in the pamphlet “An Accompt of Scotland’s grievances By Reason of the Duke of Lauderdale’s Ministry, Humbly Tendered to His Majestie (1675), as an example of Lauderdale’s misgovernment of Scotland. See GUL Sp Coll 2875, p.38.

¹⁰⁰ Mackenzie, Memoirs of the Affairs of Scotland, p.175.

¹⁰¹ The duty was imposed by the Act for raising the annuity of £40,000, ratified 29 March 1661.

¹⁰² NAS PA 2/29, ff.14-17.

thrown out.¹⁰³ The Commissioner consented to a delay in the vote, presumably hoping that again such ‘humour would evaporate.’ However, he had underestimated the strength of the opposition. When it became apparent that the burghs had widespread support amongst the three estates, Lauderdale interrupted the debate and “swore that though the Parl^t stopt the Act, yet they should gain nothing by it; for he would, by virtue of his Majesty’s prerogative, pepper the fishing ... with impositions.”¹⁰⁴ This assertion only antagonised the Act’s opponents. Sir George Mackenzie declared that the King had no such right, because an existing statute already covered the matter.¹⁰⁵ Hamilton expressed his suspicions that the act was intended only to benefit private individuals, a reference to Lauderdale’s ally, the Earl of Kincardine, who as a salt producer stood to gain financially from an increased levy on foreign salt.¹⁰⁶

At the end of the debate, the Clerk declared the crucial vote equal, to the amazement of those that had calculated that the majority had voted against the Act. Patrick Lyon, third Earl of Kinghorn demanded a second vote, but the request was refused; Lauderdale challenged him to instead pursue the Clerk,

¹⁰³ Since the matter had been discussed in the Articles, burgh commissioners had been working to mobilise opposition. Their aim was for the estates to join forces and unite against the act. Tweeddale gave Moray an account: “there was a club mead in the hous as we fund afterward for the west country men and north country had bein soe bussie Sunday Munday and heirsday that many of the nobility and gentry and most of the borrows were fixed against the act.” NLS Yester Ms 7024, Tweeddale to Moray, 18 December 1669, f.192. Lauderdale himself told the King that “we have been working through great opposition of merchants and almost all the Burroughs.” NLS Lauderdale Ms 3136, 16 November 1669, f.160.

¹⁰⁴ Mackenzie, Memoirs of the Affairs of Scotland, p.170; See also NAS Hamilton Memorandum GD 406/2/640/2.

¹⁰⁵ This was the Act asserting His Majesty’s Prerogative in the Ordering and Disposal of Trade with Foreigners, passed on 9 October 1663. The taking away of a privilege, granted in the same parliament that the prerogative to control trade was granted, could not be sanctioned, argued Mackenzie. Mackenzie, Memoirs of the Affairs of Scotland, p.170.

¹⁰⁶ NAS Hamilton Memorandum GD 406/2/640/2; The Duke of Hamilton, Sir George Gordon of Haddo and Sir George Mackenzie were suspected of being the ringleaders of the opposition in the chamber, capitalising on the discord that began with the burghs to further undermine Lauderdale’s authority as Commissioner. NLS Yester Ms 7024, f.193.

Thomas Hay, for falsehood. Again the Clerk declared the vote equal, at which time the Chancellor, after an 'apology' to the opposition, gave his casting vote in favour of the act.¹⁰⁷

The crown had secured the narrowest of victories against what had been a relatively well organised opposition. For what had begun as an issue that had been only of concern to the burghs had gradually gathered strength, so that at the final vote the opposition included members from each estate. However, co-operation between the estates would only go so far. Indeed, it was discernible that at the crucial ballot, those who were not concerned

in their immediate interest, did still vote for the Commissioner ... for those who have salmond care not how much be impos'd upon beef, etc; whereas, when it comes to their share to be concerned, they who have the other commodity do, out of revenge, or at least by the same reason, desert them.¹⁰⁸

This led to a situation where "the nobility neglects the burghs; and they again desert the nobility, in what is their concern." This is undoubtedly a correct description of contemporary parliamentary politics, and it was something that had in the past aided the crown, since it was expected that very few issues would unite all three estates in opposition. Lauderdale had not been prepared for the strength of feeling surrounding increases in customs duties, but the trading issue proved to be an issue on which members from each estate would unite.

Sir George Mackenzie of Rosehaugh had made his continued opposition to

¹⁰⁷ LP, II, p.173; NAS Hamilton Memorandum GD 406/2/640/2; Mackenzie, Memoirs of the Affairs of Scotland, pp.170-1.

¹⁰⁸ Mackenzie believed that it was the duty of every member to oppose all impositions upon any commodity. Each member was a part of one body, representing not their own selfish interests, but those of the whole kingdom. Mackenzie, Memoirs of the Affairs of Scotland, p.172. Hamilton too complained that on issues such as the excise, members voted against their conscience because of their private interests. NAS Hamilton Memorandum GD 406/2/640/2.

the government all too obvious, and now he incurred the wrath of the Commissioner. On consultation with his 'council of favourites,' Lauderdale decided to question the election of Mackenzie on the grounds that he held his lands from the Bishop of Ross, not the King, and was therefore not a free baron. Archibald Primrose, Lord Clerk Register, came to Mackenzie's rescue, eventually persuading Lauderdale that because people were already suspicious of some design to overturn their liberties, his removal would only cause more mistrust. Furthermore, it could be guaranteed that Mackenzie would "glory in this exclusion" because it would be believed that the government was unable to execute their intentions if he were allowed to keep his place in Parliament.¹⁰⁹ Thus, Mackenzie won a reprieve, but Lauderdale's conduct revealed that some of his actions seemed to be dictated solely by personal spite and arrogance. Growing resentment towards the Commissioner, particularly amongst the shires and burghs, manifested itself through continued opposition in the chamber to the government's demands.

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With the majority of legislation now over, attentions began to turn towards the private business of ratifications. This was the first chance for Lauderdale to reward his allies, many of whom had already been trusted with positions on committees such as the Lords of the Articles. Many of Middleton's old associates had since been reconciled with the Commissioner, but the business of the Billeting affair still rankled with Lauderdale. He was delighted, therefore, when he got the chance to bring the islands of Orkney and Shetland, which had

¹⁰⁹ Mackenzie, Memoirs of the Affairs of Scotland, p.173.

long been dominated by the earls of Morton, under direct control as crown property, not just superiority.¹¹⁰ The present earl, William Douglas, had been one of Middleton's most important allies, and had his family's original disposition of the islands approved in the Parliament of 1662. Confirming his continuing allegiance to Middleton, he had since married the disgraced Commissioner's daughter.

Plans were made to deprive Morton of the lucrative income the islands provided, and an incident during the late Dutch war furnished the government with a convenient pretext. A Dutch vessel had shipwrecked upon the coast of Orkney with a cargo of gold worth approximately £12,000. This Morton was foolish enough not to declare, and so on 23 December 1669, Parliament sanctioned the act for the annexation of Orkney and Shetland to the crown.¹¹¹ This single act caused great loss, if not absolute ruin, to the Morton family, and despite Morton's indiscretion during the Dutch war, many correctly surmised that the true motive for the act was Lauderdale's long-standing grudge against Middleton. The whole episode merely served as a further demonstration of legislation being dictated by the Commissioner's personal spite.

For those allied with Lauderdale, the rewards could be great. Those granted ratifications on 23 December included the earl of Tweeddale, John Murray, second Earl of Atholl, Gilbert Hay, eleventh Earl of Erroll, Archbishop Sharp, Sir James Lockhart of Lee, Sir Alexander Fraser of Dores and John Nisbet, Lord Advocate (all of whom were members of the Articles). Reconciliation was offered to Rothes' old military ally, Lieutenant General Drummond with a

¹¹⁰ NAS PA 2/29, ff.17-19.

¹¹¹ LP, II, p.176; Mackenzie, Memoirs of the Affairs of Scotland, pp.175-6.

ratification of the lands of Williamson. It was hoped that the Duke of Hamilton would be pacified with the three separate ratifications granted to his family.¹¹²

A ratification in favour of the rehabilitation of the Earl of Argyll was also approved. The vicissitudes of Argyll's fortune had been sudden. He had been sentenced to death for treason on August 26 1662, but after Lauderdale's intervention, he was liberated from Edinburgh castle in June 1663, and restored to his grandfather's title of Earl in October of that year. Plagued by the massive debts accrued by his father, the famous covenanting leader, Archibald Campbell, Marquis of Argyll, the majority of his estates were ordered to go towards the payment of his creditors. By 1669, however, many of the debts remained unpaid. Amongst the individuals still owed money were the Earls of Erroll, Marischal, Patrick Lyon, third Earl of Kinghorn and James Seton, fourth Earl of Dunfermline. The city of Glasgow had also been in a long-running dispute with Argyll over the non-payment of their debt. Opposition to the Ratification from Argyll's creditors was so vocal that Lauderdale was unwilling to risk a vote. He argued that the issue was only of concern to the King: a vote was therefore not necessary. Sir George Mackenzie challenged this assertion and argued that as an act of Parliament, it must be put to the vote. Lauderdale relented, and much to his relief, the act passed without a contrary vote.¹¹³

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The act of adjournment ordered the next session of Parliament to convene

¹¹² NAS PA 2/29, f.44; f.21; 24; f.39; ff.47-8; f.20; ff.61-5; ff.69-72; ff.29-32; ff.108-109.

¹¹³ Although they did not vote against the act, the Earls of Erroll, Marischal, Kinghorn, Dunfermline, the bishop of Aberdeen (in name of the bishop of Argyll), and the commissioner for Glasgow all formally protested that the ratification should not prejudice the payment due to them by Argyll's father. NAS PA 2/29, ff.33-4; Mackenzie, Memoirs of the Affairs of Scotland, pp.177-9.

on 8 June 1670. In the interval, no new elections for commissioners to the shires and burghs were to be held unless there were vacancies due to death. There was no need to change the membership, for, despite the opposition to a number of acts, Lauderdale was able to carry virtually unchanged all of the measures set out in the instructions he had brought with him at the beginning of the session. "Never was [a] King so absolute as you are in poor old Scotland," Lauderdale wrote to Charles after the passage of the Supremacy and Militia acts, and certainly, the legislation of the 1669 session had achieved everything that both the King and his Commissioner had desired.¹¹⁴ The Church and its Bishops had been reined in, the appointment of the commissioners for the union negotiations had been left to the King and customs duties had been tightened up. All this was achieved despite the most vocal opposition in Parliament since the Restoration.

By far the majority of the opposition was not directed at the substance and content of the legislation, but at the way it was concluded. The previous Commissioners, Middleton and Rothes had at least involved Parliament in decision-making, and both had courted Parliament in such a way that tended to emphasise its importance. The gathered estates certainly believed that they had a substantial role to play. However, from the start of the session in 1669, it became apparent that the new Commissioner envisaged a minimal role for Parliament; Lauderdale had come to Scotland with a pre-prepared package of legislation, and wanted Parliament to rubber-stamp it.

Such an attitude aroused some of the usually compliant estates into opposition, and the result was that some debates now became so involved, they

¹¹⁴ NLS Lauderdale Ms 3136, f.160.

often carried on to the next day. Yet at the crucial votes, the controversial legislation was either carried unanimously, or with only a few objections. This was because the Commissioner could successfully play the different groups, interests and estates against each other. As both Mackenzie and Hamilton had recognised, the majority would always vote with the Commissioner unless specific legislation impinged on their own self-interests.

Lauderdale left a great deal of resentment behind him when he left Scotland and returned to Court. He had offended not only a number of high profile individuals by refusing to award them positions in his government, but had alienated those who believed that Parliament ought to play a meaningful part in the process of government. By his high-handed attitude,

the members were rather overaw'd than gain'd to a compliance; for Lauderdale ... never consulted what was to be done; nor were the members of Parliament solicited by him, or his friends, upon any occasion; whereas, on the contrary, he would oftimes vent at his table, that such Acts should be past in spight of all opposition.¹¹⁵

Mackenzie's description of proceedings is largely confirmed by Lauderdale's own accounts. He found debate tiresome and did indeed threaten to push through unwelcome legislation by the power of the royal prerogative alone. Yet despite the hostility directed towards Lauderdale for his arbitrary control over proceedings, Parliament remained consistently loyal to its King. The next sessions would test this loyalty to the full.

¹¹⁵ Mackenzie, Memoirs of the Affairs of Scotland, pp.181-2.

Chapter Five

Grievances and Protest: The Growth of Opposition, 1670-74

Lauderdale had left a considerable amount of resentment behind him when he left Scotland after the first session of Parliament in 1669. This was partly due to the manner in which he had governed as Commissioner. Lauderdale had notoriously little patience when it came to the delicacies of managing the Scottish Parliament, preferring instead to play off the different interests and estates against one another. It was a method that had some initial success, and Lauderdale with some ease fulfilled all the King's demands in the first two sessions. After the second session, however, the nature of the opposition in Parliament changed. Previously the majority had always voted with the Commissioner, except when specific legislation impinged on their own self-interests. In subsequent sessions, however, the Duke of Hamilton and other disenchanted members of the nobility were able to harness the increasing bitterness that was developing in response to Lauderdale's ministry. With leadership, an organised opposition developed in Parliament for the first time since the Restoration.

* * * *

The second session of the second Parliament of Charles II met on 28 July 1670. A total of 187 attended: six members of the clergy, 66 nobles, 56 shire and 59 burgh commissioners. There was no significant drop in attendance from session to session, as had been the case in the previous Parliament. Indeed, the

membership of 1670 remained remarkably similar to that of 1669. The reason was that following Lauderdale's instruction given in December, no new elections were held. However, due to the death of the original commissioners, two were held in the burghs of Burntisland and Lauder.¹

As detailed in the previous chapter, despite vocal opposition to a number of measures in the session of 1669, Lauderdale had nevertheless been able to secure parliamentary approval for all he had been instructed to. It is no surprise, therefore, that there was to be no change in membership for the new session. And to further safeguard the proposed legislation for this meeting of Parliament, no new election of the Lords of the Articles was to be held. Instead, the committee that was selected last session was to reconvene. This, of course, did not meet with universal approval, and opposition to this measure was heard from now familiar quarters. On 28 July, the first day of the session, the Duke of Hamilton, talking with the Earl of Rothes in the drawing room beside the Parliament chamber, raised the question of whether the Articles would be chosen again this session. Interrupted in their discussion by the entry of Lauderdale, the question was put to him. Hamilton tentatively suggested that the committee should again be elected, as had been "the former practice so farr as I heard." Lauderdale's reaction was typically over the top, and in reply to Hamilton's query, he "said in passion there should be no choise." There was to be no further discussion on the matter. Thus the first business had yet to begin, and Hamilton had already had a run-in with the Commissioner. Despite the Duke's assertion that "I said it not out of designe of any alteration, but meerly to

¹ In Burntisland, Captain William Ged was elected to replace the deceased David Seaton, and in Lauder, Thomas Wood was chosen to replace John Maitland.

know his intention, for no where else I did not so much as move in it in the least," the whole episode merely dragged up the ill-feeling that had been simmering between the two since the last session.²

The King's letter was the first matter of business to be dealt with when Parliament assembled later that morning. In it, the King declared his intention to pursue the union between Scotland and England, continuing the process that had begun in the previous session. There was even less enthusiasm for the project than there had been in 1669, yet the issue could not now simply be dropped. The English Parliament in March 1670, after some gentle persuasion from the King, had finally given its approval for commissioners to meet with the Scots to hammer out some kind of settlement.³ All that now remained was for the Scottish Parliament to approve the nominees which the crown had chosen (on their behalf) and to provide a supply to cover the commissioners' expenses.

The Act authorising commissioners for union negotiations, brought in to the full Parliament on 30 July, was met with remarkably little dissent. Compared to the long-winded speeches of complaint the act first aroused when it was heard in the last session, it now passed with relatively little fuss. This was despite the fact that Lauderdale refused to reveal the names of the chosen commissioners

² This exchange is contained in Hamilton's own 'Memorandum of Some Passages past in Parliament begune 28 July 1670, Second Session,' NAS Hamilton Papers GD 406/2/640/3. This accompanies his 'Memorandum' of events in the first session, GD 406/2/640/2.

³ The Commission that was granted by the English Parliament was particularly vague when it came to the specific detail of the proposed union treaty. The commissioners were not to be limited by any particular instructions, but, as the Scots had also stipulated, they were to agree to nothing that was prejudicial to the laws, liberties or privileges of either kingdom. This made any potential agreement impossible.

until after the act was safely passed.⁴ Some thought that there should be an immediate debate on the general detail of parliamentary union; for example, it had not yet been resolved if there was to be one or two parliaments or if the laws and privileges of both countries were to be preserved entirely.⁵ It was therefore prudent that these issues were discussed now, as it would save casting out what the commissioners had negotiated if it was not suitable. Concern was also voiced as to the dominating influence of England at the negotiations. Not only were they to be held in London (thus the English Parliament would have an immediate knowledge of proceedings), but many of the English commissioners were courtiers and therefore had considerable influence with the King. Only Lauderdale could boast of similar connections, but it was doubtful whether he would oppose any unfavourable proposal for which the King was strongly inclined. The purpose of the debate was basically an attempt to secure Scottish interests in advance, but Lauderdale was unwilling to retread old ground. An almost identical discussion along the same lines had taken up two full days of business last session.⁶ Thus the issue was brushed aside, with the promise that the Parliament would have their say on any finished settlement.⁷

⁴ The identities of the commissioners were the subject of much speculation. Indeed, in the fortnight prior to the meeting of Parliament, the sole subject of discussion was "who shall be the Commissioners for the Union." It seems that members of the government were also kept in the dark, with the Earl of Rothes "guessing as fast as any, [although he] says plainly that he believes he will be left at home." NLS Yester Ms 7004, Sir Archibald Murray of Blackbarony to Tweeddale, 16 June 1670, f.91.

⁵ This was a suggestion that was to reappear at the union negotiations in September. Rather than a wholly incorporating union (which would mean the destruction of the Scottish Parliament), both the English and Scottish Parliaments would remain separate, coming together and sitting as one only in matters of emergency.

⁶ See Chapter Four, pp.131-5.

⁷ This provided little reassurance. Some felt that it would be impossible for Parliament to reject a finished settlement, especially if the English had already approved it. Mackenzie, *Memoirs of the Affairs of Scotland*, pp.185-7; NLS Lauderdale Ms 595, f.226.

The lack of any vocal opposition towards this act is somewhat surprising, certainly when considering the hostility the subject first aroused in 1669. Yet what was now apparent to all observers was the lack of enthusiasm with which the whole exercise was being carried out. Lauderdale's assertion in March 1670 that "there is no more doubt of a treaty for the union" had already been undermined, first by the lukewarm reception the plan received in England, and secondly, by the continued aversion of many of his Scottish colleagues.⁸ Could it be that in the face of such difficulties, most had already realised that there was little hope in the union becoming a reality?

Nevertheless, a motion to raise a supply to fund the union commissioners' expenses engendered a more animated response. The proposition encountered opposition first in the Articles, then in the full Parliament. This was not entirely unexpected, but Lauderdale had attempted to overcome any opposition by asking for a supply that would not only provide for the union commissioners, but would also serve as a grant to repair the King's residences in Scotland. By coupling the two unrelated items, it was hoped that those who were simply against the union negotiations would be discouraged from voting against the supply as a whole. That a supply should be granted was unanimously agreed in the Lords of the Articles, but disagreement arose as to the amount. The Provost of Linlithgow, Robert Milne, proposed a sum of 12 months' cess, an excessive recommendation. This was supposedly an attempt to "screw himself into favour, and to carry one of the [union commissioner] nominations."⁹ A grant of ten and then eight months' cess was then suggested by a number of other

⁸ NLS Lauderdale Ms 7023, 10 March 1670, f.235. The true scale of the opposition amongst the Scottish government would soon become apparent at the negotiations in September 1670.

⁹ Mackenzie, Memoirs of the Affairs of Scotland, p.190.

commissioners, presumably anxious to show their similar devotion for the King. Lauderdale, who had been instructed to secure a supply of three months' cess, interrupted the debate and declared that less than six months would be sufficient. Five months' cess (amounting to £30,000) was the amount finally agreed upon, until the Duke of Hamilton intervened. He had been listening with increasing alarm at the amount others on the committee were suggesting. Knowing the poverty and "inabilities of the countries," Hamilton rose to argue that it was not in the King's interest to impose such a burden. He suggested a more realistic sum might be £20,000. "I thought I was not out of purpose," the Duke records in his 'memorandum' of events, "since it was above what his Majesty's instructions and more than I believe will be made use for the ends proposed." As would be expected, Lauderdale was not pleased with Hamilton's suggestion, but the proposal for a supply amounting to £30,000 (raised through a land cess)¹⁰ passed easily enough through the Articles.¹¹

The act came before Parliament on 9 August. First of all, Sir George Mackenzie of Rosehaugh called for the names of the union commissioners to be read out, since "much of the quota would depend upon their quality." His argument centred on the premise that any supply to be granted should be based on the status of the commissioners, "it being unreasonable that a burges or baron, should get as great an allowance as an Earl, or an Earl as a Duke." Mackenzie suggested that the supply should be paid only when the negotiations

¹⁰ This had been the method used to raise the last supply in 1667. See Chapter Three, p.104.

¹¹ 'Memorandum,' NAS Hamilton Papers GD 406/2/640/3. Hamilton's continued disruption had become a tiresome joke for Lauderdale. Writing to Sir Robert Moray, he told of how "some out of their laudable humour of contradiction obstructed" the passage of the Supply Act through the Articles. "Indeed it was but one, yow may guess him," he wrote. With Hamilton's recent opposition to many of the Commissioner's measures, Moray would have no trouble in identifying the subject of Lauderdale's letter. *LP*, II, 2 August 1670, p.188.

were over and the commissioners had returned, in much the same way, for example, commissioners for the shires were reimbursed for their expenses. Parliament would then be able to award a sum based on the outcome of the negotiations.¹² Mackenzie's contribution to the debate was, however, merely ignored, and the act was put to the vote. The sum agreed by the Articles was approved without much complaint, and the method of raising the supply was remitted to the next day's session.

The reason why the act was to be voted in two different parts soon became apparent when the actual method of payment was announced to Parliament. The Articles had agreed that debtors should retain 10% of the interest they owed, enabling them to pay the cess imposed. This was an attempt to spread the burden of payment between landowners and those with large personal estates (where wealth was not tied up in land, but who had instead, in modern terms, a healthy bank balance). Some opposition had been expected, but the strength of feeling surprised the Commissioner. The clause was thrown out by about 40 votes, with opposition coming from almost all quarters. Although the clause had been instigated for their relief, many landowners voted against the plan because they were also debtors. To appease this group, Lauderdale was forced into abandoning the collection of arrears of cess from the covenanting period for the duration of the present supply.¹³ The strength of feeling was such, however, that the controversial clause was omitted from the final act.

Lauderdale had been instructed to obtain a supply of three months' cess (£18,000); instead he had secured almost double the amount. The opposition to

¹² Mackenzie, *Memoirs of the Affairs of Scotland*, p.191.

¹³ *Ibid.*, pp.192-3; NAS Hamilton Papers 'Memorandum' GD 406/2/640/3.

the union and the supply necessary for the commissioners had been easily overcome. “[In] all ways the obstructions did good,” Lauderdale informed Moray, for, after Hamilton’s outburst in the Articles, others in the committee were determined to ensure that a larger amount than that contained in the instructions would be offered.¹⁴ Such a gesture would inform the King of their loyalty, and with places on the union commission up for grabs, doing so was in the interests of their political careers. Thus the sum agreed in the Lords of the Articles was put before the full Parliament, where it gained full approval.¹⁵ And although the clause regarding interest-free payments was soundly defeated, Lauderdale could afford to be flexible as to the method of raising the supply. The Commissioner had again achieved more than was expected of him.

With the supply safely through, the negotiations with the English began in earnest on 14 September.¹⁶ Although daily attendance often varied, 25 Scottish commissioners attended over the two months of diets. The Scottish membership was made up solely of Lauderdale supporters, a number of bishops and Officers of State. The only burgh representative was Sir Andrew Ramsay of Abbotshall, widely recognised as a crown-appointed Provost of Edinburgh.¹⁷ Discussions centred on the process of reducing both Parliaments into one, a difficult task since both countries had agreed that all laws and privileges should remain

¹⁴ LP, II, p.188.

¹⁵ This was despite the continued hostility of Hamilton, who was joined by the Earl of Cassillis and the Earl of Callander. NLS Yester Ms 7025, f.20.

¹⁶ One of the Scottish commissioners’ first engagements upon arriving in London was a meeting with the King. Sir John Baird, one of the members, acquainted Sir George Mackenzie with the proceedings: despite the meeting room being “too dark” so that the King “could see none of our faces,” Lauderdale explained the full quorum had arrived and would do their utmost to honour the King’s wishes. Mackenzie, Memoirs of the Affairs of Scotland, p.194. However, rumours abounded that even Lauderdale had developed a “foul aversion” to union. NLS Yester Ms 7004, Sir Archibald Murray of Blackbarony to Tweeddale, 27 September 1670, f.151.

¹⁷ For a list of both the English and Scottish commissioners, see C.S.Terry (ed.), The Cromwellian Union, (Edinburgh, 1902), Appendix I, p.188.

intact.¹⁸ Only days into the joint conference, Sir John Nisbet, Lord Advocate of Scotland, made a “long and studied speech against any Union on any terms.” To negotiate the Parliament out of existence in this way, he argued, was outright treason. Nisbet’s outburst was not a surprise, for since the conference had begun, he had abstained at every vote and had made it quite clear that if he was allowed to vote as his conscience dictated, he would vote in the negative.¹⁹ Some pointed out that he should have made his feelings known before he gave his assent to the Commission, but Nisbet had raised an important point. Were any of the commissioners willing to vote away the institution from which they acquired their authority?

Faced with such opposition from within his own camp, Lauderdale presented to the Scottish representatives a proposal that smacked merely of desperation. His solution: a small number of Englishmen would sit permanently in the Scottish Parliament, but on matters of emergency, the King might call both Parliaments together for a joint session at Westminster.²⁰ The Scottish commissioners, who continued to push for a combined Parliament where the entire Scottish estates would be represented along with their English counterparts, never formally adopted this as a valid proposal, but Lauderdale’s suggestion brought matters to a complete deadlock. The English refused to accept such a scheme. On 29 October, Lauderdale told Tweeddale that the difficulties appeared so great that no further progress could be made at that time.²¹ The King eventually called the commissioners together on 14 November

¹⁸ C.S.Terry, *The Cromwellian Union*, Appendix I, pp.188-207 has the complete record of proceedings.

¹⁹ NLS Yester Ms 7023, Lauderdale to Tweeddale, 27 September 1670, f.246.

²⁰ Mackenzie, *Memoirs of the Affairs of Scotland*, p.207; A. Macinnes, “Politically Reactionary Brits?” in *Kingdoms United? Great Britain and Ireland since 1500*, pp.50-2.

²¹ NLS Yester Ms 7023, Lauderdale to Tweeddale, f.246.

and told them that he believed the treaty was not feasible now.²² He promised that the negotiations would continue, but the Commission was never to meet again.

When the negotiations dissolved without reaching any practical conclusion, the union project that had begun in 1668 was finally abandoned. Although publicly the proposal for political union was never formally dropped, many privately understood that the negotiations would go no further. Like his grandfather before him, Charles II's proposal had never won the support that was necessary for its success. Indeed, the similarities between the events in 1670 and the discussions held by James VI in 1604-07 are striking. English apathy and then downright hostility, especially over any trading concessions to the Scots, had plagued both sets of discussions. The Scottish commissioners were desperate to secure the abolition of the Navigation Act, believing that this was the root cause behind recent economic difficulties. Yet, it has been argued that in Scotland, there was not a widespread feeling that the Navigation Act was to blame for the country's woes. Instead it was the Dutch War and excessive taxation that were thought to be the main causes of the economic slump.²³

It remained that the only kind of union acceptable to the English was one in which Scottish institutions and authority was absorbed into their model. Yet, it might be argued that the Scots' commissioners were as much to blame for the union's failure, by the less than enthusiastic manner with which they approached events. Their demand that Scotland should never be incorporated or annexed by

²² Lee Jr., *The Cabal*, pp.66-8.

²³ *Ibid.*, p.62.

England dominated every aspect of the union question from 1603 to 1707.²⁴ The Cromwellian occupation, barely a decade earlier, remained fresh in the minds of all Scottish politicians and the events of the 1650s had proved that it was very unlikely that Scottish institutions would survive political union. Thus, opposition to virtually every aspect of the project arose either in Scotland, or in England, or in both.²⁵ So the project ended "rather to the wonder, than dissatisfaction of both nations."²⁶

* * * *

The remaining legislation of the session was more of a success for the crown. The second item in which the King's letter was concerned was the subject of religious dissent, a problem that had been escalating since the granting of the Indulgence.²⁷ The English Parliament, sitting a few months before their Scottish counterparts, had passed a new act punishing conventicles. In this parliamentary session, Lauderdale was instructed by the King to pass a similar piece of legislation to deal with nonconformity in Scotland. For some, however, the English Act was not a suitable model for the Scots to follow. Alexander Bruce, Earl of Kincardine wrote in a letter to Tweeddale that he

²⁴ For a near contemporary's view on successive union attempts from Roman times to 1707, see History of the Union of Scotland and England by Sir John Clerk of Penicuik, (edited by D. Douglas), (Edinburgh, 1993). Clerk, however, largely overlooks the union discussions of the 1660 and 1670s. Another excellent study of the history of union from 1660 to 1707, emphasising the dissimilarities between the two nations, is Mark Goldie, "Divergence and Union: Scotland and England, 1660-1707" in B. Bradshaw and J. Morrill (eds.), The British Problem, c.1534-1707, (Basingstoke, 1996), pp.220-45.

²⁵ Commercial union was once more mooted in 1674, after requests from the House of Lords. However, this too met with little enthusiasm and was never taken any further. Macinnes, "Politically Reactionary Brits?" in Kingdoms United? Great Britain and Ireland since 1500, pp.51-2.

²⁶ Mackenzie, Memoirs of the Affairs of Scotland, p.211.

²⁷ A particularly large conventicle had taken place at the Hill of Beath, Fife in June 1670. Previously an area undisturbed by such gatherings, the government was alarmed by reports that as many as 2,000 had been in attendance, the majority of whom were armed.

found the English punishment of small fines to be “of ane odde nature,” and doubted that the penalties contained in the English act would deter Scottish dissenters.²⁸ Yet Kincardine need not have worried about the severity of the punishment that was to be meted out to offenders; the acts presented before Parliament comprised the harshest penalties yet seen.

The principal legislation was the notorious ‘Clanking Act’ against Conventicles, brought into the chamber on 13 August.²⁹ This outlined a number of various offences and the penalties by which they were to be punished. Holders of indoor conventicles were required to pay 5,000 merks security that they would not do the same again, or else remove themselves from Scotland. Actual attendance at such a gathering was to be penalised by fining, the amount rising on a scale of culpability. The holding of outdoor conventicles was to be punishable either by the confiscation of personal property or death. Participation in field conventicles risked fines double the amount stipulated for indoor conventicles. The Act was to have effect for three years only, the implication being, Buckroyd argues, that this was extraordinary legislation passed to deal with an emergency.³⁰ Passed on the same day was the Act against Invading of Ministers under which assaults on members of the clergy were to be punished by confiscation of goods or, in extreme cases, by death. Accompanying this series of legislation was the Act against those who shall refuse to Depone against Delinquents. This was in response to the increased difficulties in getting suspects to testify before the Privy Council. Failure to inform the authorities of any conventicle or to condone them in any way was to

²⁸ NLS Yester Ms 7004, Kincardine to Tweeddale, 23 April 1670, f.25.

²⁹ Lauderdale coined this phrase in a letter to Moray. *LP*, II, 11 August 1670, p.200.

³⁰ Buckroyd, *Church and State*, p.94.

be punishable by fining, imprisonment, or in exceptional cases, banishment to the plantations.

Despite the severity of the legislation, it passed without any real resistance. Only John Kennedy, the young seventh Earl of Cassillis voted against the Conventicle Act, conforming, as Lauderdale saw it, to the laudable custom of his father.³¹ Mackenzie of Rosehaugh was more concerned about the Act anent Deponing; his fear was that the new law requiring defendants to answer on oath would be tantamount to the powers of an Inquisition. Nevertheless, it also passed without objection. Collectively, these measures represented an attempt to crush any belief that the crown intended a general toleration. Presbyterian ministers were to be forced to seek readmission to the Kirk on the terms of the Indulgence of 1669.³²

It has been argued that one of the purposes of the legislation was to subdue Hamilton. As a key member of the Commission to the West, Hamilton had written to the Secretary suggesting that only a standing army could tackle the problem of dissent in that part of the country. Hamilton, with a financial interest in the raising of military forces, stood only to gain from the suggestion.³³ Thus

³¹ This is a reference to the opposition in the Parliament of 1661 of John Kennedy, sixth Earl. See Chapter One, pp.42-3. *LP*, II, Lauderdale to Moray, 13 August 1670, p.200.

³² Buckroyd, *Church and State*, pp.91-93. Generally it has been accepted that this was the point where Lauderdale and the crown totally abandoned any sort of leniency or moderation. Certainly, Tweeddale's rhetoric in a letter to Sir George Maxwell of Nether Pollok was forceful to say the least: "the proposals mead for the pac of the church, on which depends its present quiet and much of its futur hapines ... may be the occassione of much good if listened to; but if not, I dread the consequencis." As a leading figure in the community, albeit one who had already spent most of the previous decade in prison for his non-conformity, Tweeddale was determined to secure Maxwell's support for the measures. If he would not, Tweeddale warned of the consequences: "I pray yow, lett us find that yow ar a good instrument, according to your interest, and pour with these people; for I know that yow may doe much: and this opportunity lett slip, we can hardly hop for such another. And if you be ane indifferent onlooker, it will be understood to be opposition." Fraser (ed.), *Memoirs of the Maxwell's of Pollok*, II, pp. 316-7.

³³ Buckroyd, *Church and State*, pp.92-3.

the new legislation was a great disappointment for the Duke.³⁴ Mindful of the problems Hamilton could cause if he was pressed into open opposition to the crown, Lauderdale offered the Duke a sweetener to induce his co-operation in the new policy. This took the form of an act passed on 20 August which granted the family an indemnity from a debt owed to Patrick Ruthven, first Earl of Forth by the Duke's father-in-law. Lauderdale had long used the settlement of Hamilton's finances (especially the payment he was still due from the King in recompense of a debt from Charles I's reign) as a levering tool. Yet this measure was little more than a badly disguised bribe.

The act did little to calm the Duke. In November he wrote in a fit of anger to Lauderdale, furious at being regarded as 'insignificant ... neglected and misrepresented.' "I wish to have ground to thinke I might expect friendship from you," he wrote.³⁵ The Secretary was understandably disturbed by Hamilton's outburst: "I think it something strange that it should be thought His Grace [Hamilton] may oppose as he pleases the Kings orders and dissatisfaction." Yet Lauderdale also understood that the Duke's "humour must be cared for... to endeavour not to give his Grace, opportunity to oppose heir [at Court] as he did there [in Parliament]."³⁶ However, Lauderdale made no apology for his actions in his reply. Instead, he blamed Hamilton's behaviour in the last session of Parliament as the source of his mistrust, and warned the Duke that he knew well "how to distinguish betwixt your Grace, who does express

³⁴ According to his 'Memorandum,' Hamilton made numerous complaints in meetings of the Articles about the proposed legislation. He advocated a more extreme approach (i.e. the subduing of dissent by military force); bonds and declaration, he thought, would only occasion more disorder. He was more than likely seeking the re-establishment of his troops, disbanded in 1667. NAS Hamilton Papers GD 406/2/640/3.

³⁵ NAS Hamilton Papers GD 406/1/2702, 14 November 1670.

³⁶ NLS Yester Ms 7004, Lauderdale to Tweeddale, 1 October 1670, f.168a.

confidence in me and him who is so very diffident of me.”³⁷ Hamilton heeded the warning, and retracted his earlier statement, assuring the Secretary that he meant no offence by his previous letter or by his conduct in Parliament.³⁸ With the large debt to his family still outstanding, he knew better than to alienate the Commissioner. Lauderdale was willing to let “bygones be bygones, and faire play in time to come,” and relations between the two improved to such an extent that by February, Rothes was able to declare that the mistakes between the two were now “abshulatlie teackin auay.”³⁹

Parliament adjourned on 20 August, again with the instruction that there were to be no new elections in the shires and burghs except in case of death. The session of 1670 had been another success for the Commissioner; there was once more no need to change the membership. A subsidy that far exceeded requirements, along with comprehensive legislation regarding religious dissent had both been easily passed. The next session to be held on 11 May 1671 was in fact postponed due to the failure of the union negotiations. Parliament was not to meet again until 12 June 1672.

³⁷ NAS Hamilton Papers, GD 406/1/8422, 26 November 1670.

³⁸ The draft of Hamilton's reply differs quite significantly from the copy that was actually sent (see *LP*, II, pp.209-10). In the draft he maintains that his actions in Parliament were nowhere near as serious as the Secretary had made out, and thus he deserved “not the Character of being other esteemed or called ane opposer of his Maties commands.” Hamilton must have had second thoughts and decided that accusing Lauderdale of over-reacting was not in keeping with a letter of apology, as his final letter makes no mention of this. NAS Hamilton Papers GD 406/1/2704, 10 December 1670.

³⁹ NAS Hamilton Papers GD 406/1/2706, 29 January 1671; *LP*, II, Rothes to Lauderdale, 2 February 1671, p.212. Rothes was not completely correct. Hamilton was following Moray's advice, which suggested that Lauderdale, if humoured, “will really apply himself to serve you.” Yet the Secretary must be carefully handled “els a very small provocation will certainly make him fly quite off the hindges.” Hamilton would only maintain the truce as long as it served his interests. NAS Hamilton Papers GD 406/1/6129, Sir Robert Moray to Anne, Duchess of Hamilton, 7 October 1671.

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It seems improbable that Lauderdale's marriage in February 1672 to Elizabeth Murray, Countess of Dysart would have serious political ramifications, but the match not only alienated the Commissioner's chief correspondent at Court, Sir Robert Moray, but also destroyed his friendship with the Earl of Tweeddale.⁴⁰ The Countess of Dysart was famous both for her great beauty and, as Burnet puts it, her "restless ambition." She lived "at a vast expense, and was ravenously covetous, and would have stuck at nothing by which she might compass her ends." She was rumoured to have been involved in 'intrigues' with Cromwell, in an attempt to save Lauderdale's life while he was in prison after the battle of Worcester.⁴¹ It was no secret that after his release she was Lauderdale's mistress, and indeed, Lauderdale's first wife, Anne Home, daughter of Alexander, first Earl of Home, moved to Paris in 1669 because her husband had by all accounts deserted her. After Anne's death in late 1670, Lauderdale announced that he was to marry his mistress, but this did not meet with universal approval.

Sir Robert Moray had already experienced a cooling of the friendship in 1668 when he chose his scientific studies in preference to a post in Scotland. His continued support in the union debate for a Commission under the Great Seal also angered Lauderdale.⁴² Yet it was Moray's disapproval of the marriage that finally severed relations. The Countess of Dysart's father, William Murray,

⁴⁰ Contemporaries attributed the Secretary's increasing belligerent behaviour and conduct to the marriage. "From this time to the end of his days," wrote Burnet, Lauderdale "became quite another sort of man than he had been in all the former parts of his life." Burnet, History of His Own Time, pp.438-9.

⁴¹ Burnet, History of His Own Time, I, p.437, p.438. Burnet was rumoured to have been infatuated with Elizabeth Murray in his youth, but his later breach, both with the Countess and the Earl of Lauderdale, clearly influences his description of both individuals.

⁴² See Chapter Four, pp.142-3.

first earl of Dysart, had tried some years earlier to secure a marriage agreement between his daughter and Moray, but Sir Robert spurned such advances, and he instead married a sister of Lord Balcarres. According to Mackenzie, Moray advised against the marriage, complaining that at an age of 44, she was too old for Lauderdale. Such advice fell on deaf ears, and Lauderdale, in an instant, "turned from being a friend, to be his mortal enemy."⁴³ The Countess seemingly took advantage of the breach between the once close friends, and she forged a new alliance with Lauderdale's brother, Charles Maitland of Hatton. She was later accused of forming a partnership with Hatton, securing bribes from the principal towns in exchange for giving warrants for illegal imposition.⁴⁴ It is probable that such allegations were nothing more than malicious gossip on the part of the Secretary's enemies, but it is clear that until Moray's death in 1673, Lauderdale remained hostile towards any attempted rapprochement.

The breach with Tweeddale was more complicated. The Earl was not only Lauderdale's deputy in Scotland, but also a member of his family: Tweeddale had secured his position by the marriage of his son to Lauderdale's only daughter, Anne. Apparently, Lauderdale's new wife was behind a plan to disinherit Anne so that the Maitland estates could pass to Lauderdale's nephew

⁴³ Mackenzie, Memoirs of the Affairs of Scotland, p.217. Mackenzie concludes "so foolish a thing it is for friends to interpose betwixt a man and his mistress," p.218.

⁴⁴ W. Mackenzie, The Life and Times of John Maitland, Duke of Lauderdale, (London, 1923), p.401. A contemporary satire also mentions this supposed partnership with Hatton:

She's Besse of the Church and Besse of the State,
 She plots with her tail, and her Lord with his pate
 ... The Nobles and Barons, the Burrowes and Clownes
 She threatened at home, e'en the principall townes,
 But now she usurps both the sceptre and crown
 And thinks to destroy with a flap of her gown.

(Charles Maitland of Hatton's son), who was engaged to marry the Countess's daughter. Yet this itself did not fully sever relations; Tweeddale did little more than protest at the plan, and it seems that he was unwilling to sacrifice his career in a vain attempt at securing his son's inheritance.⁴⁵ Nevertheless, Lauderdale had become increasingly concerned at the growing power of his deputy, and was determined to curtail his influence. Tweeddale's dominance of Scottish politics is made evident by Mackenzie's remark that, through the promotion of his friends and allies to key governmental positions, he was secure in all offices except the Chancellor's. Tweeddale had also been actively attempting to stop the new farm of the customs, at the request of his ally, Sir Patrick Murray. However, no doubt disturbed by his increasing isolation, Rothes, now Tweeddale's only rival, informed Lauderdale of the liberties his Scottish deputy was taking.⁴⁶ Lauderdale reacted angrily; he had always perceived such dominance of Scottish politics as a threat to his own standing, and as he had done to his rival, the Earl of Middleton nearly a decade earlier, he now sought to remove Tweeddale from power.⁴⁷

The first indication that Tweeddale received of his impending fall from grace was when enquiring if he may come to Court in early 1671, Lauderdale answered that he could come if he wished, but that "he would write for no

⁴⁵ For more on this, see NLS Ms 3134, Memorial regarding the Differences between the Earl of Tweeddale and the Duke of Lauderdale, f.119 and John Patrick, "The Origins of the Opposition to Lauderdale in the Scottish Parliament of 1673" in *SHR*, April 1974, p.12.

⁴⁶ As an example, Tweeddale's so called 'creatures' Sir Patrick Murray and Sir Archibald Murray of Blackbarony had won over John Murray, second Earl of Atholl, for whom Tweeddale interceded to secure for him the post of Captain of the King's Guard. Mackenzie, *Memoirs of the Affairs of Scotland*, pp.187-8.

⁴⁷ Burnet, *History of His Own Time*, I, pp.439-40; Tweeddale, in seeking the advancement of his friends, had done nothing that generations of politicians had not done before him. What had been more serious were his complaints when Lauderdale removed the right of farming of the customs from Tweeddale's allies. See NLS Ms 7023, Lauderdale to Tweeddale, 21 September 1671, f.264.

man.”⁴⁸ Publicly embarrassed by Lauderdale on his arrival in London, he returned to Scotland some weeks later with his political career in ruins.⁴⁹ Although Lauderdale continued to correspond with Tweeddale throughout 1671, occasionally asking for his advice in public affairs, it was never with the same regularity or candour. An attempt by Gilbert Burnet to bring the two to some kind of settlement failed miserably, with both men reluctant to admit responsibility for the quarrel.⁵⁰ By late 1672, any hope of reconciliation was lost when the Maitland estates were settled on the Secretary’s nephew.⁵¹ Correspondence between the two had long since ceased and after November 1673, Tweeddale no longer attended the Privy Council.⁵²

Charles Maitland of Hatton, Lauderdale’s brother, essentially filled Tweeddale’s place. Nothing could have been more insulting to Lauderdale’s fallen deputy, for, even before Hatton’s elevation to Treasurer-Deputy in late 1670, Tweeddale had expressed criticism of Hatton’s management of the Mint. Although he had long been guilty of paranoia over the elevation of others, especially those that represented a threat to his own influence, Tweeddale’s

⁴⁸ Mackenzie, *Memoirs of the Affairs of Scotland*, p.212.

⁴⁹ When Tweeddale asked if he could visit Lady Dysart to pay her his compliments, Lauderdale humiliated his deputy by saying “publickly at table that he could not go without his governor.” Mackenzie, *Memoirs of the Affairs of Scotland*, p.212.

⁵⁰ Lauderdale placed the blame for the quarrel squarely at Tweeddale’s feet. He claimed to be “wholly ignorant” of Tweeddale’s sufferings, certain that he had “neither been the occasion nor cause of them.” In reply to a letter proposing a truce, the Commissioner wrote that he was glad that Tweeddale’s “expostulating is at an end and perhaps it had been as easie for both of us if you had not continued it so long and so sharply, a faire telling of the suspicions yow tooke or were given.” Such an attitude was unlikely to win back Tweeddale’s support. SHS, *Miscellany*, Vol. VI, p.239; NLS Yester Ms 7023, Lauderdale to Tweeddale, 11 March 1671, f.267.

⁵¹ Soon after Lauderdale’s re-marriage, Lady Yester was called on to divest herself of all the rights she had acquired under the regnant of 1667. She and her husband refused, but they did not succeed in their defence to legal proceedings brought by Lauderdale. *Scots Peerage*, V, p.305.

⁵² John Patrick, “The Origins of the Opposition to Lauderdale in the Scottish Parliament of 1673”, p.13.

concerns over Lauderdale's brother were, however, well justified. Already there were suspicions that currency had been debased while Hatton was in charge at the Mint, and his later dishonesty as Treasurer-Deputy was to become well renowned. Hatton, despite his brother's influence, had largely taken no part in politics up until the late 1660s. Many contemporaries, his brother included, considered him a liability, motivated solely by greed. By Tweeddale's demotion, Lauderdale had lost a colleague who had governed the many competing interests in Scottish politics with some considerable success. In his place was elevated a man whose self-interest was greater than that which usually consumed the Scottish nobility. The result of all this: Tweeddale's exclusion from policy-making soon bred resentment, and he found sympathy for his plight in the Duke of Hamilton. It was a potentially formidable combination.

* * * *

The planned meeting of Parliament in May 1671 was adjourned principally because of the failure of the treaty for union.⁵³ With no agreement for the estates to ratify, the Parliament was postponed until June 1672 when the outbreak of the Second Dutch war necessitated a new session. Lauderdale, who had been rewarded for his loyal service with a Dukedom on 26 May 1672, had received a set of instructions from the King in May 1672.⁵⁴ In it, he was advised that on his arrival in Scotland, he was to call together some eminent persons "affectionat to our service" to discuss measures for ensuring the peace and security of the kingdom. To place the country on a war footing, the militias

⁵³ Lauderdale indicated to Tweeddale in March 1671 that there were no plans for the subsequent meeting. The Parliament would not be dissolved, but no date was yet to be decided on for its next assembly. NLS Ms 7023, 2 March 1671, f.266.

⁵⁴ LP, II, p.223.

should be capable of immediate service, for which necessary impositions may be raised. On the thorny issue of the Church, it was left to the Commissioner and his advisors whether to enlarge the Indulgence or to again begin a programme against nonconformity.

Parliament reconvened for its third session on 12 June 1672. 175 commissioners attended the new session: eight members of the clergy, 59 nobles, 49 shire and 59 burgh commissioners. It was a considerable turnout, the high attendance likely due to the long interval since the last session. The first measure undertaken was the nomination of new commissioners to the Lords of the Articles. Since the last session, the Bishops of Edinburgh and Brechin, the Earl of Dunfermline and Sir John Gilmour of Craigmillar had all died.⁵⁵ Places on the Articles were also left vacant by the advancement of Charles Maitland of Hatton to Treasurer-Deputy and Sir James Lockhart of Lee to Lord Justice-Clerk. Following the precedent set in the 1662 session (where Alexander Gibson, commissioner for Fife, was replaced without a formal election), Lauderdale as Commissioner simply chose replacement members. As would be expected, all the new personnel had impeccable crown credentials: for the clergy, the Bishops of Moray and Argyll were chosen, for the nobility, the newly elevated William Cochrane, Lord Cochrane, now the Earl of Dundonald. The Committee was completed with Sir James Dalrymple of Stair, Sir James Foulis of Colinton and the Justice-Clerk's brother, Sir William Lockhart of Lee.

⁵⁵ Predictably, this was an increasing problem as many of Lauderdale's most experienced allies gradually succumbed to old age. In addition to those named above, Sir John Home, Sir James Lockhart, Sir Robert Murray of Cameron, Lord Halkerton and Lord Bellenden all died between 1671 and the middle of 1674.

It had previously been noted how Lauderdale's marriage to the Countess of Dysart had alienated both Sir Robert Moray, and latterly, the Earl of Tweeddale. An incident on the first day of the new session did little to appease her enemies. To hear her husband's speech, some chairs were placed near the Commissioner's seat, in order for the Duchess and certain ladies of her train to observe events. Their presence in the chamber, a practice not even the Queen of the reigning monarch had ever attempted, caused great offence, raising the "indignation of the people very much against her." Again, her interference in political affairs heightened tensions, and those who found themselves wronged by her, did 'cry out' that the Scottish Parliament had but two Commissioners.⁵⁶

Both the King's letter and Lauderdale's speech itself were uncontroversial. The assertion that the King sought no direct subsidy from this session was greeted warmly. Instead, it was left to Parliament to make provisions to provide for the security of the country.⁵⁷ The King's letter ended with a resolute endorsement of Lauderdale's ministry, praising the "long and great sufferings he hath endured for us and the many and great services he hath done." Were it not for the care with which the King held his Parliament of Scotland, it would have been preferential if the Duke had stayed at Court, where his great skills would be invaluable in dealing with the Dutch crisis.⁵⁸ This was a strong recommendation indeed, perhaps intended as a warning to those who were expressing dissatisfaction at Lauderdale's long supremacy over Parliament. In many ways, the tone of the letter was similar to those written to Parliament

⁵⁶ Mackenzie, *Memoirs of the Affairs of Scotland*, p.220.

⁵⁷ To provide for the kingdom's defence, a subsidy would have to be raised; indeed, this was the reason for which a session had been called. The fact that the King's letter made no direct mention of this did not mean that there would be no attempt to secure a new levy.

⁵⁸ NAS PA 2/29, f.167 v.

during the Billeting affair. The King had looked very dimly on those attempts to pull his minister from under him, and his letter left no doubt as to how highly he regarded his Secretary, in spite of the growing animosity towards the Duke both in Scotland and in the House of Commons in England.⁵⁹ The Parliament's reply to the King made no mention of this. Instead, they congratulated the King for having seen fit to promote their Commissioner, assuring the King that Lauderdale's "usefulness" in the former sessions made his presence necessary for the carrying on of the crown's demands.⁶⁰

The first major legislation of the session was a new Militia Act, passed on 25 June. The act ordered all officers and soldiers to subscribe the oath of allegiance, and doubled (for the duration of the war) the financial penalties for failure to attend rendezvous and for desertion.⁶¹ This passed without issue, as did the legislation renewing the penalties against conventicles.⁶² A much more controversial matter was the suggestion, first made in the Articles by John Murray, second Earl of Atholl (apparently at Lauderdale's insistence), that a subsidy should be levied to provide for the country's own defence during the war. This was despite the King's letter making no direct request for a new imposition. Robert Milne, commissioner for Linlithgow, enthusiastically

⁵⁹ A number of pamphlets critical of Lauderdale's behaviour in the previous sessions had recently been circulating. One, "An Accompt of Scotland's Grievances by reason of the Duke of Lauderdale's Ministrie, Humbly tendered to his Sacred Majesty" (c.1674), written by Sir James Stewart, author of the notorious "Naphthali, or the Wrestlings of the Church of Scotland for the Kingdom of Christ (1667), caused such offence to the government that it was immediately banned. It attributed the "hyperbolicall commendations" of the King's letter to an attempt to impress Lauderdale's new wife, who was present at its reading.

⁶⁰ NAS PA 2/29, f.167.

⁶¹ NAS PA 2/29, f.168-9.

⁶² NAS PA 2/29, f.193. Very little correspondence or accounts of this session survive. The Lauderdale Papers, which usually provide a full description of events, are seriously lacking, as are the Yester Papers. Mackenzie and Burnet, both usually very detailed sources, do not mention certain acts. For example, the Militia Act and the legislation concerning dissent receive only scant consideration, yet it is unlikely that they would be considered inconsequential acts by any means.

seconded Atholl's suggestion and suggested a sum totalling 12 months' cess.⁶³ After some debate, this sum (totalling approximately £72,000) was agreed upon, the amount to be collected in four instalments over a period of two years.⁶⁴ The proposal proved highly unpopular even amongst the nobility and gentry in the Articles, and partly to appease this landowning group, a clause was inserted that allowed debtors to retain one-sixth of the interest they owed for one year.⁶⁵ A similar proposal made in 1670 had been voted out due to the opposition of the burghs, but in order to ensure it passed successfully this time around, another clause was proposed which planned to tax personal property as well as land. In order to gain the support of the burgh members, who were almost certain to oppose the debtor clause once more, Lauderdale made known his opposition to the taxation of financial assets. Playing off the different interest groups was a clever move. In the end, the majority of the debate in Parliament was taken up with a squabble between the nobility and the burghs, and the subsidy passed with both the controversial proposals intact.

It was clearly in the Commissioner's advantage to get the above act through Parliament without too much opposition. However, Lauderdale's obvious over-reaction to an objection made against the raising of the cess by William Moir, advocate and commissioner for Kintore, only heightened ill feeling. Moir suggested that members might be allowed some time to consult

⁶³ This was the same individual who in the last session had proposed a similarly excessive sum in the debate for the supply to the Union commissioners, in order to gain favour with the Commissioner.

⁶⁴ Mackenzie, Memoirs of the Affairs of Scotland, p.228. This is the only source that details the passage of the subsidy.

⁶⁵ Mackenzie declares that Lauderdale at first refused this sum as being too excessive, and holding up his five fingers to Atholl as a sign, the offer was reduced from 12 months' cess to a more realistic five months. It is impossible to ascertain if this is indeed what occurred; if so, the Commissioner must have changed his mind, for, the final act authorised a sum of 12 months. NAS PA 2/29, f.171-172; Mackenzie, Memoirs of the Affairs of Scotland, p.228.

with their constituents as to the proposed supply (as was the custom in England). According to Mackenzie, Lauderdale misheard and immediately accused the hapless gentleman of trying to subvert the constitution of the Scottish Parliament and of trying to impose the customs of the English Parliament upon the institution, an offence for which he should be sent to the bar. Lauderdale's accusation was met with stunned silence, until Sir James Dalrymple of Stair, President of the Session intervened. Accepting his suggestion of imprisonment, Moir was sent to the tolbooth until Parliament had time to consider his conduct. For many in Parliament, it seemed that Lauderdale was behaving exactly as he pleased, no matter how intolerable such behaviour might be.

Although many lawyers had offered to appear in his defence, on 10 July, the next day Parliament sat, Moir chose to submit to Parliament. Brought to the bar, and then to his knees before the Commissioner, he craved pardon in order to be readmitted to his place. Most were certain that Moir had done nothing wrong, and that Lauderdale had acted hastily and in an entirely arbitrary manner. Among the lawyers in the house, some feared that the whole episode would serve as an unwelcome precedent, for Moir had been punished in Parliament without a vote from the members of that Parliament.⁶⁶

More trouble was in store with the passage of an act redefining the privileges of the royal burghs. An action brought in the Court of Session by the council of Stirling against Falkirk for infringing the royal burghs trade monopoly spilled over into Parliament. Under an act passed in 1633, only royal burghs could import and export certain commodities. This was now considered an anachronism, detrimental to the economy of the kingdom, and the new

⁶⁶ NAS PA 2/29, f.172; Mackenzie, Memoirs of the Affairs of Scotland, pp.230-1.

legislation put before the Articles proposed that burghs of regality and barony would have the right to export corn and to trade in a number of raw materials. The obvious benefits to the landowners that held these burghs, the Earl of Callander and Lauderdale among them, did not go unnoticed. It passed easily when it came before the full Parliament, but, although it was never intended as an intentional attack on the Royal Burghs, the new legislation did little to secure their future support.

What was regarded by the burghs as an assault on their privileges did not stop there. On 6 September an Act against Ajudications, regulating the rights of creditors, proved to be unpopular amongst those burghs represented by merchants.⁶⁷ In addition, since many advocates had been elected as burgh representatives, a series of measures regulating the justice courts sparked great concern. A protest by the advocates had been continuing since late 1670 against new regulations, many refusing to swear a new oath restricting the fees they received from their clients. Although some in the Articles opposed the new regulations (including Hamilton and Sir James Dalrymple of Stair, President of the Session), it was sent unchanged into the full Parliament. Here, protests were lodged that the regulations were not one law, but a series of laws; as such, they should be voted on separately. Every act was read separately, but in order to secure the passage of the whole series, they were voted on as one. It was an obvious ploy to ensure that the most controversial aspects of the new legislation were approved. Sir George Mackenzie made an immediate protest at these

⁶⁷ NAS PA 2/29, ff.196-7.

irregularities, criticising the government for allowing inexperienced noblemen with no experience of legal matters to draw up the new guidelines.⁶⁸

There was no deliberate agenda against the burghs. Reducing the cost of employing lawyers and shortening the length of court cases was most probably a popular move. Likewise, the abolition of the privileges of the royal burghs was not intended to threaten their ancient liberties, but was a means of opening up trade opportunities in other areas. No matter the good intentions behind the legislation, for the burghs, the above acts were perceived as nothing less than a violation of their interests. More importantly for Lauderdale was that these events in this third session certainly lost him the support of the majority of burgh representatives. This would prove crucial at the next meeting of Parliament, when such discontent towards the Commissioner was galvanised under the leadership of the Duke of Hamilton.

A matter that received much consideration, yet was never enacted, was the overture to abolish the summer session of Parliament. Under a scheme proposed by Kincardine, Parliament would sit in an extended winter session to compensate. It was a popular suggestion, especially amongst the nobility and shire commissioners, the landowning classes. They had long complained that the months of June and July, the only months, they argued, for the improving of their gardens and land, should be spent in the "most unwholesome and unpleasant town in Scotland." Lauderdale was at first sympathetic to the idea,

⁶⁸ Mackenzie, *Memoirs of the Affairs of Scotland*, pp.234-8.

and authorised a debate which was held in the Exchequer chamber.⁶⁹ Those in favour of an extension to the winter session argued that the present system of two sessions meant that the shires and burghs had to bear the cost of double travelling expenses for their commissioners. And when those commissioners reached Edinburgh, unless they sat on the Articles, much of their time was spent idle. Thus one session would avoid the interruptions that invariably took place at the beginning and end of each session. It was a convincing argument, one that supposedly had the support of the majority of Parliament. The opposition had little to counter with. Their argument that the courts of justice would run uninterrupted for up to six months without the interval of a summer session, thereby wearying judges and advocates seemed weak by comparison.

These were the arguments used in public, but privately, interested parties whose livelihood depended on the continuance of a summer session prevailed with the Commissioner. Charles Maitland of Hatton, Treasurer-Deputy, who had represented Edinburghshire in the previous session, informed his brother of the great harm the abolishment of the summer session would do to the economy of the capital.⁷⁰ When the Commissioner's decision to keep the sessions as they were was announced, rumours began circulating that the town of Edinburgh had come to an arrangement with Lauderdale's wife to oppose the design.

⁶⁹ It is unclear why this debate was not held in Parliament. Perhaps this was because it had not been suggested before the Articles and was not part of the formal legislative programme. Mackenzie says that the motion was part of the Commissioner's instructions, but the copy in LP, II, p.223 makes no mention of the proposal.

⁷⁰ The sitting of the parliament and the influx of its members into Edinburgh did not just provide financial reward for the city and what would be classed today as its 'service industries.' Farmers in the North whose corn was used and those in the South whose meat was eaten by the new inhabitants were all benefiting. The argument that more provisions would be needed at a winter session was dismissed; summer was the season of 'prodigality' according to Sir George Mackenzie. Memoirs of the Affairs of Scotland, p.225.

Some were reluctant to let the issue go. Sir Colin Campbell, burgess for Inverary, tabled the motion again, this time before the full Parliament. It was an unwise move to oppose the Commissioner, as those who had felt the full force of his anger in previous sessions could have testified. At Campbell's suggestion, Lauderdale grew "huffy" and swore that the summer session would never be taken away, "except [if] his Majesty nam'd another commissioner; and none should carry it, except over his belly."⁷¹ The inconsistency in his remarks was clear for all to see. It had after all been at his suggestion that the matter had been taken into consideration; now, Lauderdale refused to have anything to do with the idea.

Lauderdale was behaving in an increasingly arrogant manner, as his treatment of Campbell and of William Moir in the subsidy debate had shown. His short temper was rapidly gaining notoriety, but many regarded his behaviour as showing contempt for the institution of Parliament. Burnet asserts that Lauderdale adjourned the chamber for two weeks in order to go on a sightseeing tour with his new wife. The nobility were supposedly 'enraged' as Lauderdale attended lavish party after party, amassing a huge bill along the way. It is a nice anecdote, but there is no evidence that this actually happened.⁷² Yet it seems that Lauderdale's unruly conduct in Parliament provided ideal material for inclusion in the propaganda of the opposition.

The session was adjourned on 11 September. Again, despite some initial difficulties, it had been another triumphant session for the Commissioner. A generous supply had been raised; further laws against religious dissent had been

⁷¹ *Ibid.*, p.226.

⁷² Burnet, *History of His Own Time*, I, p.617. It is most likely that Burnet's source for this was a contemporary pamphlet, "An Account of Scotland's Grievances by Reason of the Duke of Lauderdale's Ministry," (1674), p.10.

successfully implemented; and, to the dismay of the Royal Burghs, their monopoly over trade had been abolished. Opposition had been kept to a minimum. Hamilton in fact received a letter from Lauderdale congratulating him on his behaviour for the session, and telling him that the King was “exceedingly satisfied” with his conduct.⁷³ Left firmly in control of domestic affairs in Scotland was the Commissioner’s brother, Hatton. He would ensure that affairs would run smoothly in Lauderdale’s absence.

As Hatton had done, one who had gained through Lauderdale’s friendship was Sir Andrew Ramsay of Abbotshall, Provost of Edinburgh. He had been one of four ‘ignorant’ men controversially appointed as an Ordinary Lord of Session in November 1671 by Charles Maitland of Hatton. The four, Sir Andrew Ramsay, Sir Robert Preston, Sir Richard Maitland of Pittrichie and Hatton himself were all admitted despite having no formal legal experience.⁷⁴ According to Sir George Mackenzie, Ramsay’s promotion, with that of the three others who like him “had not been bred lawyers,” rendered the Court of Session “the object of all men’s contempt.”⁷⁵ The fact that the President of the Session, Sir James Dalrymple of Stair, sided with Hatton did little to boost his popularity. Further disobliged by the new regulations, the advocates had much to complain about at the close of the third session.

The story behind Ramsay’s promotion is an interesting one. He had first insinuated himself into Lauderdale’s favour by prevailing on the city of Edinburgh to give £5,000 to the government for the superiority of Leith, and

⁷³ NAS Hamilton Papers, 21 November 1672, GD 406/1/2716.

⁷⁴ For more on these appointments, see Sir David Dalrymple, A Catalogue of the Lords of Session, from the Institution of the College of Justice in the year 1532, with Historical Notes, (Edinburgh, 1794).

⁷⁵ Mackenzie, Memoirs of the Affairs of Scotland, p.240.

another £5,000 for a new imposition granted to the town by the King on wine and ale.⁷⁶ Ramsay had continued in his post of Provost for ten successive years, and by having the leading vote for the burghs in Parliament, he had proved very useful to Lauderdale. In recognition of Ramsay's services to the government, Lauderdale prevailed on the King to settle on the provost of Edinburgh a pension of £200 a year. Yet Ramsay's long stint as Provost was the subject of much disquiet within the council of the city and a motion to supersede him in March 1672 was lost by only two votes. Complaining of a 'tumult' in the town, Ramsay persuaded representatives of the Privy Council to investigate the incident in November 1672. They found no evidence of any wrongdoing. Nevertheless, to secure his election in September the following year, Ramsay received through Lauderdale a letter from the King charging James Rothead, Clerk of the Council with the disturbing of elections. To serve as a warning to others, Rothead was immediately removed from office, and Ramsay was again re-elected as Provost.⁷⁷

To the dismay of their opponents, Lauderdale and his allies seemed perfectly secure in their offices. Indeed, it is difficult not to see appointments such as those made to the Court of Session as evidence of their continued (and expanding) domination. Yet Sir Andrew Ramsay's long supremacy in the city of Edinburgh was to take on a new importance when he was formally accused of corruption in the next session of Parliament, and Lauderdale, his altruistic benefactor, was shown to be behind his long continuance in office. It was to be

⁷⁶ Part of the deal was the sale of the Bass rock to the King. It was for the mutual benefits of both parties – Ramsay received a large monetary payment of £4,000; Lauderdale was placed in command of the small garrison that was stationed there.

⁷⁷ Sir John Lauder of Fountainhall, *Historical Notices of Scottish Affairs, 1661-83*, I, (Edinburgh, 1848), pp.53-58, pp.81-82.

the beginning of an extraordinary series of events, which threatened to oust the Commissioner from his indomitable position of power.

* * * *

The fourth session of the second Restoration Parliament began on 12 November 1673. 151 were in attendance: eight members of the clergy, 54 of the nobility, 44 shire and 45 burgh commissioners. Again, this was a very respectable attendance, although there had been a slight drop since the last session. This was to be expected, certainly when we consider that this Parliament was now entering into its fourth session and its fifth year.

The reason Parliament had been summoned was to deal with the ever-present problem of religious dissent. Kincardine had previously written to Lauderdale in September, explaining that his presence was necessary "to set coucell business in a better condition then they have been of late." The reason that the Privy Council was in turmoil was due to the failure of the Indulgence that had been granted in 1672 and the sudden upsurge in conventicles this had brought about. The problem had grown so severe that Kincardine believed that it would be "very hard (at best) to curb them without something be further done by the Parliament." Kincardine's suggestion that the expense of controlling conventicles ought to be placed on those that were the cause was in fact taken up in the King's instructions issued to the Commissioner in October. Lauderdale was instructed to bring in a motion that would in effect make heritors responsible for any offences committed by their tenants or servants, in much the same way that clan chiefs were held liable for any disorders in the Highlands. Garrisons were to be placed in those areas where heritors refused to provide

such security, with the local community providing the total cost of the soldiers' maintenance.⁷⁸ The proposals contained in the Instructions represented a hardening of the government's approach towards religious dissent.

However, Parliament never got round to authorising this new series of ecclesiastical legislation, for, on the first day of the new session, an event occurred which effectively negated Lauderdale's planned legislative programme. Upon his arrival in Scotland, Lauderdale had been hearing complaints as to the series of monopolies that he had granted to a number of individuals in previous years. The 1663 session of Parliament had determined that the King might impose as much custom duty on foreign commodities as he pleased or he may discharge the importation of such goods as he thought fit. Lauderdale took full advantage of the ruling, rewarding his loyal allies with lucrative contracts and monopolies.⁷⁹

With the importation of salt banned except for use in the fishing industry, Kincardine, granted the sole franchise to farm all Scottish salt was making huge profits, yet supplying what was regarded by many as a vastly inferior product.⁸⁰ After the prohibition of the importation of brandy, John Elphinstone, eighth Lord Elphinstone, Hatton's son in law, was granted the gift of seizures. Much to the chagrin of the people, however, Elphinstone set up, as Mackenzie saw it, his own 'Exchequer', selling import licences and flooding the market with cheap

⁷⁸ LP, II, Kincardine to Lauderdale, 20 September 1673, p.233; Private Instructions to Lauderdale, October 1673, pp.234-6.

⁷⁹ In England, monopolies were regarded as prerogative taxes, and had been highly unpopular since ship money in the 1630s. Throughout the Restoration, and especially after 1688, there was a more positive commitment to the principle of parliamentary grant. This increasing willingness was associated with increasing power to supervise the disposal of funds and to audit the accounts. M. Braddick, The Nerves of State: Taxation and the Financing of the English State, 1558-1714, (Manchester, 1996), pp.198-200.

⁸⁰ For the details surrounding the passage of this act in the 1669 session of Parliament, see Chapter Four, pp.146-7.

liquor. Sir John Nicolson, commissioner for Edinburgh, benefited too. As a reward for the services of his grandfather, Sir William Dick who had lent large sums to the nobility in the 1640s, Nicolson was granted a duty on imported tobacco in recompense of outstanding debts.⁸¹ There were real fears that further monopolies would be imposed on an already impoverished population.

Tweeddale compared the situation to that of 1667 when Rothes had been in control of the Scottish administration.⁸² Yet the corruption that had tarnished Rothes' period in office seemed to be positively trivial when compared to the present situation. Lauderdale, Hatton, Atholl and Kincardine divided 18 major offices between them, the Commissioner holding eight of them himself.⁸³ The controversial promotion to the Court of Session of Andrew Ramsay, the immovable Provost of Edinburgh, and Hatton, who had long been suspected of corrupting the coinage as Master of the Mint, had only angered those individuals, such as Hamilton, who were languishing without any major office

The first business on the first day of Parliament was the reading of the King's letter. In it, the King spoke of the necessary continuation of the war against the Dutch, the confidence that he had in his Commissioner, and the need for Parliament to draw up effective measures against conventicles. Next came Lauderdale's speech in which the Commissioner spoke of the crown's determination to protect its Bishops. Lauderdale then proposed that the Articles should immediately convene to draw up the Parliament's answer to the King's letter. At this point, the Duke of Hamilton rose and made an extraordinary request: that Parliament should first consider the grievances of the country

⁸¹ Mackenzie, *Memoirs of the Affairs of Scotland*, pp.244-6.

⁸² NLS Yester Ms 7025, Tweeddale to Moray, 15 April 1673, f.106.

⁸³ This was one of the key complaints of Stewart of Goodtrees' pamphlet, "An Accompt of Scotland's Grievances." For the full list of the offices each held, see p.18 of that pamphlet.

before business proceeded. Before Lauderdale had any time to reply, 20 more members rose and seconded Hamilton's proposal.⁸⁴ A number of speeches were made on the same lines as Hamilton's until the Earl of Dumfries' proposal that a formal Committee of Grievances should be appointed finally spurred one of Lauderdale's allies into making a response. Kincardine accused those who had supported Hamilton of being disrespectful to the King, and of attempting to introduce innovations; parliamentary business could only be introduced through the Articles, by no other means, he argued. It seems Hamilton had opened the floodgates, however, and more rose to air their grievances. Sir Francis Scot of Thirlestane, commissioner for Selkirkshire, made a long speech condemning the war with Holland, claiming it was only for the benefit of England, for their trade and plantations from which Scottish merchants were excluded. He was finally articulating the feelings of what so many had complained of over the years. After this, Sir Patrick Home of Polwarth, the commissioner representing Berwick, moved that a "Committee might be named [which] he stiled Lords of the Bills."⁸⁵ Failing the implementation of this, he proposed that the whole

⁸⁴ Mackenzie, *Memoirs of the Affairs of Scotland*, p.256. The identities of all 20 are unknown, although a number have been identified. William Douglas, eighth Earl of Morton, John Kennedy, seventh Earl of Cassillis, William Drummond, first Earl of Roxburgh, Hugh Montgomerie, seventh Earl of Eglington, and William Douglas, third Earl of Queensberry were certainly involved. *LP*, II, p.242. The group possibly included Charles Erskine, Earl of Mar and James Ogilvy, third Earl of Findlater. NLS Yester Ms 7034, f.31. That such a large number supported Hamilton indicates considerable levels of organisation and co-ordination between opposition members.

⁸⁵ *LP*, II, pp.241-2. Such a committee had first been constituted in November 1640 to deal with private petitions. Rait tells us that the committee was a means of superseding the ordinary courts of justice, in the interest of litigants who were supporters of Parliament. Yet the committee was not merely a device used solely in the covenanting period. On 8 January 1661 a Commission for Bills and Trades was set up by Parliament with powers similar to the 1640s Committee for Bills. Since the Court of Session had not yet been restored, there was a large amount of private business. One of the remits of the reconvened Committee was to hear private complaints between parties, thereby freeing the Articles to deal with public business. The restoration of the Court of Session rendered this device unnecessary, and it was never re-appointed in later sessions. Rait, *Parliaments of Scotland*, p.377 and p.384.

house be admitted into the meetings of the Lords of the Articles so that they could have their input into the reply to the King's letter.

Lauderdale evidently was so taken aback with the whole episode, that he sat in stunned silence ("struck as one dead," says Burnet) throughout the above exchanges. Writing to his brother the following day, Lauderdale freely admitted that he had been surprised by "such a spirit as I thought never to have seen heir."⁸⁶ After hearing the complaints, Lauderdale declared that he had only referred the letter to the Articles, and that there was no intention of surprising Parliament. Yet still the protests continued. Hamilton answered that the overture was just, and was seconded by Polwarth and Sir George Mackenzie. The Commissioner roundly condemned a proposal supported by the President of the Session, Sir James Dalrymple of Stair, and first suggested by two advocates, Robert Dickson of New Galloway and William Moir of Kintore, that members might be admitted to the Articles.⁸⁷ It seems that Moir's imprisonment in 1672 for his factious behaviour in that session of Parliament had proved no deterrent to voicing such controversial opinions.

The Earl of Argyll, showing his support for the Commissioner, argued that all would be able to have their say when the reply had been drafted, and was brought into Parliament for approval. Tweeddale, in his first explicit act of opposition against his old master, claimed that because most of those that spoke were not members of the Articles, it appeared that they had something to offer to the debate, which ought to be represented to the King. Lauderdale, despite his appalling treatment of Tweeddale, must have been amazed at his involvement.

⁸⁶ Burnet, History of His Own Time, II, p.39; LP, II, p.241.

⁸⁷ NLS Yester Ms 7034, f.31.

Indeed, it seems that Lauderdale temporarily lost his composure and “answered stormingly” that if “any such thing were further prest he wold interpose his ‘No.’”⁸⁸ In response, Polwarth argued that there should be an immediate vote on whether it was a free Parliament or not, an accusation which Lauderdale demanded was recorded in the official record. Polwarth refused to back down, declaring that he would stand by his assertion. He had the full support of the Duke of Hamilton who angrily defended Polwarth when Kincardine and Atholl urged the Lord Advocate to take action. Parliament could be the only judge in the matter, Hamilton insisted.⁸⁹ To bring an end to the exchanges, Lauderdale accepted the Earl of Dundonald’s motion of an adjournment, and Parliament was postponed until the following Monday.

Perhaps the most pertinent question is whether the opposition that displayed itself was part of a planned and organised design? Mackenzie states that a number of commissioners had met the previous night, and had resolved that when it came to the answering of the King’s letter, they would first urge that their grievances might be considered, so that the Parliament’s reply would reflect the predicament of the kingdom.⁹⁰ This may be so, but it seems that some sort of strategy had been formulating over a period of some months previous to the sitting of the Parliament. Among the Hamilton papers survives numerous policy papers (see Appendix III for the full list), many of which are attributed to Mackenzie himself, which, amongst others, list the grievances that were set out in Parliament. It is clear that Hamilton was being recognised as the

⁸⁸ *Ibid.*, f.32.

⁸⁹ *Ibid.*, f.32.

⁹⁰ Lauderdale told his brother that he had received information regarding frequent meetings that were held by his opponents at Masterton’s tavern. This was the same public house at which the Billeting plot in 1662 had first been devised. See Chapter Two, p.70; *LP*, II, 18 November 1673, p.245.

leader of the opposition, and one who was receptive to such material. It is possible that these were used to formulate some kind of concerted address in Parliament.⁹¹

Tweeddale, who in February 1673 had finally given up all hope of reconciliation with Lauderdale, was in frequent correspondence with Hamilton from that period onwards. Yet, it can be argued that Hamilton's opposition was never a certainty until a few months later, for, although the relationship between the two was often strained, Lauderdale was doing everything in his power to secure the Duke's future support. He had, without success, been attempting to obtain for Hamilton the Order of the Garter ("the blew ribban" as Lauderdale calls it).⁹² The lack of success was to cost Lauderdale dear, for, Hamilton felt woefully undervalued. He was conspicuously underemployed, and increasingly anxious to be placed in some significant office. Yet the position that was eventually found for him was not by any means his preferred occupation.

What finally forced the Duke into opposition was a disastrous miscalculation made by the Archbishop of Glasgow, Robert Leighton, which was supported by Lauderdale. In June 1673 Leighton had suggested to the King that a small number of Privy Councillors, headed by Hamilton, should be commissioned to enforce the laws against religious dissent in the diocese of Glasgow.⁹³ Lauderdale consented to the Archbishop's suggestion, and granted the Commission. Yet Hamilton greeted the proposal with horror. Recognising the futility of the fight against conventicles, he believed that it was merely a

⁹¹ The majority of the papers are directed against the government of the Duke of Lauderdale, and some bear similarities to "An Accompt of Scotland's Grievances by reason of the Duke of Lauderdale's Ministrie, Humbly tendered to his Sacred Majesty" (c.1674), attributed to Sir James Stewart of Goodtrees.

⁹² HMC Hamilton Papers, 14 January 1673, p.143.

⁹³ HMC Hamilton Papers (Supplement), pp.86-7.

ploy to ruin him. He was perhaps guilty of over-reaction, but Hamilton knew better than to risk being made the scapegoat for the failure of the Indulgence, and he refused to undertake the Commission.

It is most likely that it was after this point that Hamilton moved into a resolute course of opposition against Lauderdale. The situation was not helped by an investigation into the Duke's taxation accounts, undertaken by Hatton, which Hamilton feared would be used to "misrepresent" him at Court.⁹⁴ In an attempt to appease Hamilton, Lauderdale finally secured payment of the final amount owed to him by the crown – a sum in excess of £13,000.⁹⁵ The blatant attempt to win back the Duke's support failed spectacularly: now that he had been finally recompensed, Hamilton had nothing left to lose by openly opposing Lauderdale.

Perhaps Lauderdale had warning of what was to come by events at the Convention of Burghs, held only a few days before the Parliament. James Rothead, clerk of Edinburgh council who had been ousted by the Provost some months earlier, was elected Clerk to the Convention, despite Ramsay's vehement protests. On his defeat, Ramsay stormed out, and by rights the Convention should have broken up since the Provost of Edinburgh, leader of the burghs, was vital to proceedings. Instead, "without stirring" the burghs chose another to sit in Ramsay's place. When the Convention met again on 13 November, the day after the protests in Parliament, they were in a defiant mood. They proceeded with business, ignoring Lauderdale's complaints:

After yesterday's sitting in Parl[iament] His Grace is come so low that wee are carest with all the humeletie wes could wisch ... wee

⁹⁴ NAS Hamilton Papers, GD 406/1/2724, Hamilton to Lauderdale, 18 August 1673.

⁹⁵ HMC Hamilton Papers, Draft discharge granted in the year 1673, p.146.

know the interest of his Maj[esty] and the good of this Kingdome so weel that naither his Comm[issioner's] fight nor his lawes will make us move in the least to that prejudice of what may be good for both his Maj[esty] and this kingdome.⁹⁶

It was extraordinary rhetoric. Lauderdale was facing a potentially formidable body of discontent, greater in number than at any time since the Restoration.

The widespread nature of the opposition was no happy accident, and indeed, had taken some months to organise. Both Tweeddale and Hamilton had a wide circle of supporters, with whom they kept in close contact. From October 1673 when it was announced that Parliament was to meet in November, Tweeddale's correspondents included Sir Patrick Home of Polwarth, Sir Archibald Murray of Blackbarony and Sir John Harper (shire commissioners for Berwick, Peebles and Lanark). Hamilton claimed to have the support of the earls of Queensberry, Rothes, Dumfries, and Morton.⁹⁷

It is unclear if either Hamilton or Tweeddale had dealings with burgh representatives, but because of the conduct in the Convention of Burghs, it seems more than likely that they were at least aware, if not involved, in Hamilton's plan. Possibly Sir John Harper, one of Tweeddale's correspondents and a leading advocate, had been involved in discussions with his colleagues who represented many of the burghs. It was unlikely that they would need much persuasion to join with the opposition, for, after the measures passed in the last session, the Commissioner was not short of enemies within that estate.

After the dramatic events on the first day, the problem facing the opposition was how to maintain that momentum. Soon after Parliament had adjourned,

⁹⁶ NLS Yester Ms 7006, Patrick Murray of Pitdunnes to Lord Yester, 13 November 1673, f.64.

⁹⁷ NLS Yester Ms 7006, 7025, 7034; Burnet, *History of His Own Time*, II, p.38.

Lauderdale called representatives of each estate to a conference to discuss their particular grievances. Somewhat surprisingly, Lauderdale spoke of his willingness to repeal the three monopolies of salt, brandy and tobacco, and proposed a new meeting the next day to discuss the particulars. Hamilton protested, and urged that any proposals should be first heard in Parliament. The meeting broke up without agreement.⁹⁸

Abolition of the monopolies was little more than a pretext and when Parliament reconvened on 17 November the opposition had come prepared with a number of speeches which set out their true objectives: that the courts of judiciary be purged, the Mint be reformed, the acts of the previous session concerning the burghs and the advocates be immediately repealed and all old public debts be discharged.⁹⁹ Yet they never had the chance to articulate these demands. Lauderdale, after speaking of his willingness to deal with all complaints in an orderly manner, remitted the repeal of the monopolies to the Articles, and adjourned Parliament.¹⁰⁰ The Duke of Hamilton immediately complained, but Lauderdale refused to listen to any further debate, and left the chamber.

It was not the end of the protest. Hamilton continued to remonstrate against the adjournment when he and some of his supporters met with Lauderdale in his private room adjacent to the chamber. Hugh Montgomerie, seventh Earl of Eglinton declared that there were no Articles to which the acts could be remitted since they had not yet reconvened. Some said they would refuse to take their seats, others that they would attempt to enter the proceedings and see

⁹⁸ LP, II, Lauderdale to Hatton, 13 November 1673, p.244; NLS Yester Ms 7006, Sir Francis Scot of Thirlestane to Lord Yester, 15 November 1673, f.66.

⁹⁹ Mackenzie, Memoirs of the Affairs of Scotland, p.260.

¹⁰⁰ NAS PA 2/30, f.45.

who would dare throw them out. Lauderdale calmly replied that he would try those who withdrew from the committee, and that he himself would stop any unauthorised personnel from violating proceedings. It seems that the Commissioner was unfazed by the opposition's attempts at intimidation. "I shall never suffer anything to be put to a question to shake the foundation of the Articles, or such a thing as may force me to give a negative," Lauderdale told his brother. What was to prove more serious for the opposition was that the Commissioner had the decisive advantage: "the King hath allowed me by my instruction to adjorne the parl^t as I shall thinke convenient, and I will thus use it."¹⁰¹

What would also have been of great concern to Hamilton and Tweeddale, the noble leaders of the opposition, was an order made in the Convention of Royal Burghs on 22 November which sent a delegation to the Commissioner giving "their humble and heartie thanks for his cheerfull assistance and great and good progress he has made towards the repairing and redressing" of the monopolies. In a thinly veiled reference to recent events in Parliament, the delegation promised that "nothing shall cool the zeall of the royall burgesses to the crown." What would have been of the most concern to the opposition was that this was by no means a minority action. According to the order, the delegation was to consist of the burgesses of Edinburgh, Perth, Dundee, Glasgow, St Andrews, Linlithgow, Culross, Pittenweem, Inverary, New Galloway and Kinghorn. It is unclear, however, how many did attend the Commissioner since the official record makes no mention of the delegation.¹⁰²

¹⁰¹ LP, II, pp.242-3.

¹⁰² NLS Yester Ms 7034, f.48.

But it may have been that now their principal grievance had been redressed, they were unwilling to continue in opposition.

When Parliament next met on 24 November, the Earl of Queensberry gave in a complaint against John Paterson, Dean of St Giles in Edinburgh for remarks made in a sermon. Paterson had accused the opposition of seeking redress of the grievances simply for their own selfish ends, an accusation which would have no doubt delighted Lauderdale who was present in the congregation. His only response was to send the complaint to the Bishops for their consideration.¹⁰³ The following day, the Earl of Eglington gave in a paper accusing Sir Andrew Ramsay, Provost of Edinburgh, of corruption. This seems to have caught Lauderdale by surprise, and he refused to hear the full paper until the act on the salt monopoly was ratified. This was agreed to, and after the act had been successfully passed, the matter was returned to. As the seriousness of the allegations contained in the paper became apparent, there was an attempt by Kincardine, Dalrymple of Stair, and Sir Peter Wedderburn of Gosford (commissioner for Haddington and a prominent advocate) to have the proceedings discontinued. They argued that such accusations must be at first subscribed by the accusers. Mackenzie of Rosehaugh suggested that the Lord Advocate should draw up a formal indictment, but the Commissioner refused, stating that he would not apply the King's assent as he was not instructed to do so. Argyll suggested that the matter should be remitted to the Articles and Parliament was again adjourned until the following Monday.¹⁰⁴

¹⁰³ NLS Yester Ms 7006, Sir Francis Scot of Thirlestane to Lord Yester, 4 December 1674, f.68; NAS PA 2/30, f.45.

¹⁰⁴ NLS Yester Ms 7034, f.22. This is a full account of the proceedings on 25 November, but I have been unable to identify the author. See also NLS Yester Ms 14414, No.35, William Hay to Lord Yester, 23 November 1673.

The opposition regarded Lauderdale's discomfiture over the Ramsay affair as a small victory, and when Parliament reconvened they planned to raise the subject again. Yet they were denied the opportunity to do so. When Parliament met on 1, and then 2 December, the only discussion was about the monopolies. Two acts relating to the brandy and tobacco, and another redressing some difficulties caused by the Act of Apparel of the last session, were passed before there was another adjournment, this time to 28 January 1674.¹⁰⁵

* * * *

Lauderdale wrote to the King immediately after the session rose, telling him of the adjournment to January. There had been no less than six adjournments in a period that spanned only three weeks. The sole reason was that the Commissioner had found a successful device for stifling debate. As he told the King, "I have beat doune (not using your authority but with right reason and reasonable adjourneings) all extravagant motions and all manner of vote except to those acts which I moved and caryed on my self."¹⁰⁶

The long adjournment had caught the opposition by surprise. Hamilton feared that Lauderdale would use the delay to turn the King against them, and so he, Tweeddale and some others resolved to go to Court.¹⁰⁷ The omens were not good, however. Tweeddale's son, John Hay, first Lord Yester (later, second Marquis of Tweeddale), had written to his father acquainting him with the

¹⁰⁵ LP, III, Lauderdale to Charles II, 1 December 1673, p.4; NAS PA 2/30, f.46-46 v.

¹⁰⁶ LP, III, p.3.

¹⁰⁷ Hamilton feared that the "malice of some who wold have our actings to be understood as disservice to his Majestie (when truly it is but ther desing to keep in the dark the management of affairs here)" would threaten his position with the King. HMC, Report on the Laing Manuscripts I, Hamilton to Mr Andrew Cole, one of his Majesties equerries, 2 December 1673, p.391. Sir John Harper, commissioner for Lanarkshire, and Sir William Drummond of Cromlix, member for Perth and Lieutenant General of the armed forces, were the others who journeyed to London.

outcome of a conference he had with the King. Upon offering the King an account of the proceedings of the Parliament, Lord Yester was informed that the King had "sufficient accounts already" of all that had passed. The King told Lord Yester that he deeply resented Tweeddale's involvement in the overture for a committee of grievances, and that he regarded his father's actions as an attempt "to overturn the foundation of the Parliament." His "greatest resentment" was, however, reserved for the Duke of Hamilton, to whom he said he had done considerable kindness, yet had been rewarded by treachery.¹⁰⁸

With the other members of the opposition, Hamilton left for London on 8 December. Lauderdale remained in Scotland, but immediately sent Kincardine as his agent to Court. On his arrival, Kincardine immediately began to familiarise a number of public figures with Lauderdale's version of events. Thus, on 18 December he, along with Hatton, presented to the Duke of York a 'memorandum' which explained all of the proceedings of the Parliament.¹⁰⁹ Meanwhile, Hamilton and his retinue had arrived, although there are many differing accounts of their reception.¹¹⁰ They eventually had a formal meeting with the King on 28 December, at which they presented their case. The King asked if they had put their complaints down in writing: they had not, Hamilton answered. Charles then asked whether they had discussed their grievances with their Commissioner, and again they admitted that they had not done so.

¹⁰⁸ LP, III, Intercepted letter from Lord Yester to the Earl of Tweeddale, 4 December 1673, pp.6-8.

¹⁰⁹ LP, III, p.10. For those points that the Duke failed to understand, Kincardine happily obliged and explained them to him. Kincardine would certainly not have dwelt on the validity of the opposition's grievances.

¹¹⁰ There were rumours that the Duke of York had sent his coach to meet the Duke, others that their reception was not as auspicious. NAS Hamilton Papers, GD 406/1/2777, the Earl of Arran to James Johnstone, 7 January 1674.

Hamilton was finally given leave to explain the opposition's actions to the Duke of York, but he was as uninterested as the King had been.¹¹¹

Although disappointed with their initial meeting with the King, Hamilton and Tweeddale remained in London, hopeful for another audience. Some historians have suggested that both men were involved in aggravating opposition in England, culminating in the address against Lauderdale made in the House of Commons on 13 January 1674.¹¹² The attack on Lauderdale was part of a wider hostility in England directed against the continuance of the Dutch war and against James, Duke of York's Catholicism. The King had dismissed the Lord Chancellor, Anthony Ashley Cooper, first Earl of Shaftesbury in November 1673 because he was suspected of being behind the opposition's attack on the King's ministers in the Commons in October of the same year. Shaftesbury remained active in London, and it was widely believed by contemporaries that Hamilton and Tweeddale must have met with the Earl to discuss a joint strategy.¹¹³ There is no evidence of this, but the moves in England to remove Lauderdale must have given the opposition in Scotland fresh hope of success.

Indeed, preparations for a further attack on Lauderdale at the next session of Parliament were well underway. On behalf of the opposition, Lord Dunfermline had been sent to the burghs of Fife to secure their support, though somewhat

¹¹¹ Hamilton's case mainly consisted of those grievances that had previously been aired in Parliament, but additionally he complained of Lauderdale's long tenure as Commissioner, and the great charge that the maintenance of a commissioner cost to the Kingdom, a sum he calculated at an exorbitant £18,000 a year. *LP*, III, Kincardine to Lauderdale, 29 December 1673, pp.18-20.

¹¹² O.Airy, Introduction to *LP*, III, p.ii; Hutton, Charles II, p.311. The Commons alleged that Lauderdale, "that foul-mouthed Scot, Master of the Prerogative Office," had treated the English Parliament with disdain and contempt. For a pamphlet outlining the English case, see *CSPD* (1673-75), p.131.

¹¹³ Hutton, *Charles II*, pp.308-9.

disappointingly he was only able to persuade John Geddie of St Nicolas, commissioner of St Andrews to join them. The Earl of Kinghorn was employed in Angus to perform a similar task, although he too was not expected to have much success. The opposition remained optimistic, however, and at a meeting before Christmas had drawn up a number of various strategies, each aimed at recruiting more supporters.¹¹⁴ “Our next meeting of Parliament will certainly be very full and well convened,” wrote Polwarth to Lord Yester, “and our strength will be faire greater than it was the last session.” Such a statement revealed that the parliamentary opposition, far from being a disorganised group centred on the leadership of the Duke of Hamilton, had ambitions to grow into a body with a broad support over all three estates. Polwarth envisaged the opposition representative of the kingdom as a whole, and he remained confident that “the hearts of Scotland long and pant after us with the kindness wishes and expressions imaginable, and expect that the interest of this poore and helpless kingdome ... shall be faithfully represented to his Maties and repared by the medication of his parliament.”¹¹⁵

Yet those hopes were soon to be dashed. The day following the Commons’ address, the King wrote a letter of encouragement to Lauderdale, assuring him of the “continuance of his kindness, which nothing shall alter.”¹¹⁶ Following this, Parliament was adjourned from January to March, despite the fact that Lauderdale had never left Scotland. The reason was due to the turbulence of English affairs; at no time should there be “troublesome business” in both

¹¹⁴ NLS Yester Ms 7006, Sir Francis Scot of Thirlestane to Lord Yester, 6 January 1674, ff.70-2.

¹¹⁵ NLS Yester Ms 7006, Polwarth to Lord Yester, 7 January 1674, ff.78-9.

¹¹⁶ LP, III, Charles II to Lauderdale, 14 January 1674, p.22.

kingdoms, warned the King.¹¹⁷ Hamilton and Tweeddale eventually were forced to return to Scotland at the end of February, in time for another session of Parliament on 3 March.

There is no official record of what happened at this session – only the minutes of the parliamentary register mention that a meeting took place – but it seems that Parliament was adjourned to 14 October immediately after the rolls and prayers were read.¹¹⁸ Again the Duke of Hamilton was caught cold, and his request to make a statement was refused by Lauderdale who declared that no petition could be received after an adjournment. It was an entirely unexpected and, for the opposition, devastating turn of events. Lauderdale had simply denied them a forum in which to express their discontent, and there was nothing they could do in response.

Lauderdale returned to a hero's welcome at Whitehall in April, greeted warmly by both the King and the Duke of York. In May the English Privy Council declared Lauderdale innocent of all charges brought against him by the Commons, and to further consolidate his position, Charles bestowed on him an English earldom, guaranteeing him a seat in the Lords and the legal protection that came with it.¹¹⁹ The opposition in Scotland remained in anticipation of a new session, and Lauderdale knew that the intrigues against him would continue if it were believed that they would have another opportunity to oust him as Commissioner. Thus, Charles was persuaded to issue a proclamation dissolving the Parliament.

¹¹⁷ LP, III, Kincardine to Lauderdale, 20 January 1674, p.23.

¹¹⁸ The reason that Parliament actually met, albeit for such a short and worthless session, was due to fears that if it had been dissolved at this time it may have been thought that it was done to "lay aside the Commissioner." Thus, the opposition might actually claim victory, when none was intended. LP, III, Kincardine to Lauderdale, 10 February 1674, p.29.

¹¹⁹ Hutton, Charles II, p.322.

Partly as a means of pacification, a subsequent proclamation was issued which discharged the exacting of all bygone maintenance, cess and public impositions, and suspended the payment of all annuities until further notice.¹²⁰ In the Privy Council, the only remaining power base for Hamilton, arguments continued as to the sudden dissolution of Parliament. Hamilton, Dumfries, Roxburgh, Morton, Queensberry and Lieutenant General William Drummond all defiantly refused to subscribe to a letter of thanks to the King containing a clause praising Lauderdale for the willingness he had shown in redressing the country's grievances. The opposition protested that there were still serious issues that remained outstanding, issues that should be dealt with at a new meeting of Parliament. In response, Lauderdale simply procured another proclamation dissolving the Privy Council also.¹²¹ When the Council was reconvened, the membership had been thoroughly purged. Only Hamilton, Dumfries and Morton kept their seats.¹²² Following his victories in Parliament and at Court, it was a move that served to underline Lauderdale's complete control over the Scottish administration.¹²³

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The Commissioner's actions had in effect killed off all of Hamilton's future plans. With no Parliament in which to voice his discontent, and now isolated

¹²⁰ According to Mackenzie, Hamilton's opposition to the proposed discharge of the 1633 taxation (to which he had a claim), which forced the council to abandon that measure, lost him the support of the people. Mackenzie, Memoirs of the Affairs of Scotland, p.266.

¹²¹ LP, III, Hamilton to Tweeddale, 24 March 1674, pp.38-40; NLS Yester Ms 14414, No.37, William Hay to Lord Yester, 26 March 1674; RPCS, IV, pp.168-9.

¹²² Those left out of the new Privy Council were Robert Carnegie, third Earl of Southesk, Tweeddale, his son, Lord Yester, Queensberry, Roxburgh, Cassillis, Eglington and Sir William Drummond. RPCS, IV, pp.195-7.

¹²³ See Appendix IV for 'A Dialogue between Hamilton and Lauderdale,' a satirical poem giving a contemporary judgement of the events of the 1673 session.

within the Council, Lauderdale hoped that he would have little opportunity for further mischief. Ultimately, the opposition had failed to dislodge Lauderdale because he possessed the greatest advantage: he alone controlled the flow of information to the monarch. Through his letters sent during the Parliament's duration, and then by using Kincardine to affirm this version of events at Court, Lauderdale was able to persuade the King that the opposition was all organised from London. The Earl of Shaftesbury, the key figure behind the attack on Lauderdale in the Commons, proved to be the ideal scapegoat. Even the crown's enemies in Holland may have been involved, surmised Lauderdale.¹²⁴

As would be expected, at no time did Lauderdale admit that his own management of Parliament might have been the true cause of the opposition. Lauderdale governed in a different manner than his predecessors, a fact that had been apparent since the first session in 1669. He had no patience, no desire to hear lengthy debates in Parliament, or to cultivate the different interest groups. Instead he often exploited these differences, playing one estate off against the other. It was a strategy that achieved initial success. The problems began, however, when the nature of the opposition changed, when it became widespread with support over all three estates.

Lauderdale's packing of offices with his allies rewarded a few, but disappointed the majority. Indeed, Hamilton may have been won over if he had been found a position in Lauderdale's administration; being snubbed only pushed him further into opposition. The Commissioner's appalling treatment of the Earl of Tweeddale, who was punished solely for his success in office, was the motive behind his involvement with Hamilton. Thus, disappointed members

¹²⁴ LP, II, p.237, p.241 and p.245.

of the nobility joined with, and provided leadership for the other estates, which each had their own grievances. Bitterness against the Commissioner was the common ground that they shared.

At all times the opposition remained consistently loyal to the crown: the problem for them was that the crown remained similarly loyal to its Commissioner. Lauderdale's reliance both on the King's favour and on the crown's prerogative powers were the decisive factors in his eventual success. His attempts to rule by brute force alone after 1673 only inflamed the opposition, so much so that he could risk no more meetings of Parliament. Denied a forum in which to express their grievances, Lauderdale possibly hoped that the opposition would largely disband. However, events throughout the next four years revealed that there were many other public arenas in which the parliamentary opposition could continue to operate.

The Duke of Lauderdale was never to preside over another Parliament. Despite allegations that he had ambitions to remain as Commissioner long into the future, Lauderdale had never been all that enthusiastic about the job, and recent events had done little to convince him of the desirability of the office. Famously, he remarked to the King after the final session in 1674, "yow shall find me readier then all your Enemies to rid yow of the trouble of the Scots Parliaments, which I swear are now useless at the best."¹²⁵ By this he did not mean that Parliament was unnecessary, just that it was more trouble than it was worth. A Convention of Estates was called in 1678, purely to vote on a new tax, and by the time Parliament met again in 1681, Lauderdale had resigned from office. It was to be the beginning of a new era in Scottish parliamentary politics.

¹²⁵ LP, III, 5 March 1674, p.36.

Chapter Six

The Convention of Estates, 1678

The adjournment of the Scottish Parliament in March 1674 had been a calculated political manoeuvre. The Duke of Hamilton was left isolated on the Privy Council, and, deprived of a platform from which to air his grievances, it might have been thought that the opposition that had emerged in the Parliament of 1673, of which he was the leader, might abate, if not entirely disappear. Yet the years preceding the next meeting of the estates in 1678 saw a number of crises that the opposition attempted to use to discredit the Duke of Lauderdale in the eyes of the King. First, the Faculty of Advocates, then the Convention of Royal Burghs, were involved in brazen displays of defiance to crown commands. Hamilton and his allies, far from being silenced, made frequent journeys to Court and colluded with the Secretary's enemies there.

Although repeated demands for another meeting of Parliament were soundly rebuffed, it was apparent in the spring of 1678 that a meeting of the estates could be avoided no longer. After lengthy preparations to ensure a compliant membership, a Convention of Estates was summoned in June of that year to vote a supply of money for that other perpetual problem, religious dissent. Yet the Convention merely carried on from where the 1673 session of Parliament had left off. Hamilton and his supporters again consistently blocked Lauderdale, present as Commissioner, at every turn, and what had been intended to be a relatively short meeting (such as the Convention of 1665 which sat for only two days), turned into a lengthy two-week argument over elections. The supply for which the Convention had solely been summoned turned out to be the

least controversial measure. Despite this, the extensive government interference in the Convention's elections, the subject of so much of the discussion, was ultimately a success. The opposition was never as widespread as it had been in the previous Parliament, and therefore lacked the numerical supremacy necessary either to challenge the settling of the electoral disputes, or to block the planned legislative agenda. Despite this, once more Hamilton and his supporters were able to voice their discontent and opposition, particularly towards the conduct of the Commissioner himself. This proved as damaging as any defeat over the passage of an act.

* * * *

Despite victory over the opposition in the 1673 session of Parliament, there were the usual casualties amongst Lauderdale's allies. Alexander Bruce, second Earl of Kincardine met the same fate as his predecessor, the Earl of Tweeddale, and by the end of 1674, he too had been cast aside, and replaced in Lauderdale's confidence by John Murray, second Earl and first Marquis of Atholl. Certainly for Kincardine, a quarrel with his generous patron was by no means desired, for he had much to thank his master for. When Kincardine first entered office, his estate was on the brink of ruin and his marriage did not bring the fortune he expected. Thus, he depended upon public office to keep him financially afloat. And he had done rather well: the much-maligned salt monopoly, that had proved one of the key grievances that was brought before the 1673 session of Parliament (which he had been rewarded with in 1669) had been a substantial money-spinner.

There remains some mystery as to the true cause of the breach, with Mackenzie and Burnet both offering different accounts. There is no evidence of Kincardine wavering in his devotion to the government, and he certainly made no overt objections to policy when he sat in the Privy Council. Mackenzie's account is probably the most accurate. He tells of how the Marquis of Atholl and Charles Maitland of Hatton conspired to remove Kincardine from his position of trust, thus opening up new career opportunities for themselves. Again, the Duchess of Lauderdale, the supposed driving force behind so many of her husband's actions, was involved. She desired to match her youngest daughter to Atholl's eldest son, and as Kincardine "stood chiefly by her favour," she too was induced to assist in a conspiracy to bring about his downfall. "She was a violent friend, but a much more violent enemy," wrote Gilbert Burnet. Kincardine's fate was a convincing example of just how correct Burnet's assertion was.¹

The ideal opportunity arose in early 1674 when Kincardine travelled from Edinburgh to London, hoping to help defend Lauderdale against the addresses made against him in the House of Commons. The Duchess allegedly persuaded her husband that Kincardine was coming to aid his enemies to bring about his fall, with ambitions to succeed to his post. Lauderdale's suspicions were heightened by Kincardine's friendship with Gilbert Burnet, whom the Duke suspected of being involved with the English opposition in the Commons. Rather than take Burnet's involvement seriously, Kincardine foolishly refused to end his friendship with Burnet. Such suspicions were all Lauderdale needed,

¹ Mackenzie, Memoirs of the Affairs of Scotland, p.315; Burnet, History of His Own Time, III, p.138.

and as he had with Tweeddale five years earlier, he succumbed to paranoia. Kincardine, like Tweeddale, had been perhaps too able and successful. Soon a small rift grew into an open rupture, and by the end of 1674, Kincardine had moved into opposition against Lauderdale, making as much trouble as he could possibly muster for the Duke's allies on the Privy Council. It was tremendous news for Hamilton who desperately needed all the support he could gather.

In 1674 the Privy Council had been thoroughly purged to remove a potential powerbase for Hamilton and his allies. Before it was reconstituted, Lauderdale was forced to recruit new men to restore his support on the Council. Two lawyers, Sir Thomas Wallace of Craigie and Sir James Foulis of Colinton, were appointed to the Council for the first time, bolstering links with the Court of Session.² Joining the lawyers on the new Council were William Fleming, Earl of Wigton, George Ross, Lord Ross and Patrick Lyon, third Earl of Kinghorn. After the fall of Kincardine, both Atholl, and his great rival, Argyll, began to play a more prominent role in public affairs. However, even though he had been one of the conspirators against Kincardine, Hatton's influence began to subside. Disregarding their blood ties, Lauderdale must have finally realised that his brother was a liability.³

² This had begun with the controversial appointment of the four non-lawyers to the Court of Session in 1671. See Chapter Five, p.183.

³ Mackenzie provides another account, which may go some way to explaining the cooling of relations between the two brothers: jealous of Hatton's position, Atholl, with the assistance of the Duchess of Lauderdale (so often at the centre of these factional disputes, it seems), hatched a scheme to tarnish Hatton's reputation. The Duchess successfully persuaded her husband that Hatton had refused to marry her eldest daughter, and instead had designs of a marriage to Rothes' daughter. This evidently enraged Lauderdale who with no male heirs would see his estate carried into "the family of him who had so ingratly ... deserted, if not betray'd, him." Mackenzie, *Memoirs of the Affairs of Scotland*, p.320. Confirmation of Mackenzie's account is scanty, and it may be little more than contemporary gossip in which the Duchess is frequently portrayed as the ultimate 'evil councillor.'

In England, Lauderdale astutely aligned himself with Sir Thomas Osborne, created Earl of Danby in June 1674. Danby was soon to become the most powerful politician at Court, and his membership of the English arm of the Scottish Privy Council did Lauderdale no harm at all. Despite the efforts of the Earl of Shaftesbury, who attempted to represent Hamilton and Tweeddale in a favourable light to Charles, Lauderdale was comparatively secure at Court. Due to his new alliance with Danby the Duke remained a powerful figure on the committee for Foreign policy and in British affairs in general. As a bonus, the new personnel who found themselves promoted were almost falling over themselves in gratitude to send messages of their support and loyalty to Lauderdale.⁴ Yet, as the Secretary was soon to discover, his position was perhaps not as secure as he would like it to have been.

The adjournment of Parliament in May 1674 did not have the desired effect that the government had immediately hoped for. Parliament had been adjourned purely because it had become a platform from which the opposition could voice their discontent, yet it did not silence the Duke of Lauderdale's critics. Indeed, as one contemporary put it, "the disease ... burst forth" in a number of other arenas, and 1674 saw a number of crises, which combined, left the government in as precarious a position as it had been when Hamilton and his allies challenged the Duke's supremacy in Parliament.⁵ As Lauderdale was to find out, there were plenty of other opportunities in which the opposition could cause trouble.

⁴ RPCS, IV, pp.vi-viii; Hutton, Charles II, p.322.

⁵ NLS Ms 9375, 'Complaints against Lauderdale,' c.1674, unpublished, f.7.

* * * *

In February 1674 a dispute arose between the Lords of Session and a number of advocates. It stemmed from a lawsuit between James Seton, fourth Earl of Dunfermline, and Lord Almond (latterly the Earl of Callander) for breach of his matrimonial contract with the Countess of Dunfermline. After the Lords of Session announced an interlocutor in favour of Dunfermline, Almond's advocate, Sir George Lockhart of Carnwath, advised him to appeal to Parliament in its capacity as the highest court. It was a move that displeased many, for in referring the matter to Parliament, Lockhart inadvertently ignited a political storm. Questioning the authority of the Session in such a manner was to set a dangerous precedent, and Lauderdale for one saw it as further evidence of opposition activities.⁶

It was not a popular move amongst some lawyers either. Mackenzie of Rosehaugh complained,

that by this method, the nobility who always govern'd Parliaments would thereby too much influence private causes; and that ignorant members of Parliament would have an equal vote in the subtlest cases of law, with those whose breeding and experience had rendered them fit dispensers of justice.⁷

Lockhart possibly hoped that Parliament would be glad to be recognised as the final Court of Appeal; the King, of course, would not. As Lauderdale made clear to him, he chose the judges, but not the members of parliament. It would clearly be dangerous to allow this case to set a precedent.⁸

⁶ Mackenzie, Memoirs of the Affairs of Scotland, p.268; NLS Ms 9375, 'Complaints against Lauderdale,' ff.7-10.

⁷ Mackenzie, Memoirs of the Affairs of Scotland, p.268

⁸ A. Lang, Sir George Mackenzie, His Life and Times, 1636-1691, (London, 1909), p.114.

After they expressed discontent at Almond's action, the King, in an instruction to the Court stated that he upheld the authority of the Session. At a subsequent inquiry, Lockhart and three other advocates, Sir John Cunningham, Sir Gorge Mackenzie and Sir Robert Sinclair refused to testify whether they disowned the appeal.⁹ After a few months of impasse, in May 1674 the King decreed that no action would be taken against those who gave in the appeals, or against their advocates, if they would repudiate the action. Still the advocates refused, claiming that Almond's petition was not strictly an appeal to Parliament, but was a lawful protest for the remedy of law. When Almond's four lawyers were debarred as punishment, most of the Faculty of Advocates joined with them and walked out of the Session House in protest.¹⁰ What had started out as a relatively small-scale dispute had rapidly turned into full-scale mutiny.

The reason for the government's tough stance was due to the connections the advocates had with the Duke of Hamilton and his opposition party. Lauderdale was not far off the mark when he surmised that the whole dispute was connected to the opposition's rancour over the adjournment of Parliament. Mackenzie states that many in the Faculty of Advocates owed their employment to the leaders of the opposition and were 'pushed' by them into taking such an

⁹ Mackenzie's involvement is puzzling to say the least. In his memoirs, he labels the whole affair as part of an intrigue of Lockhart to become President of the Court of Session. Why, then, does he play such a central part? It is possible that his memoirs may have been written some years later, and with the benefit of hindsight, Mackenzie may have thought his own involvement not such a wise move.

¹⁰ *Ibid.*, p.278. For the "Humble address of the Advocates Debarred from Employment to the Privy Council" and "Defences for the Advocates against lyball at instance of his Majesty's Advocate," see *RPCS*, IV, pp.630-45.

extreme stand.¹¹ There was more specific evidence for linking at least three of the advocates to members of the parliamentary opposition. Sir George Lockhart was in correspondence with the Earl of Tweeddale while the latter was at Court in London, and Lockhart, Sir John Cunningham and Sir George Mackenzie had advised Hamilton over his right to the 1633 taxation.¹² Callander, the instigator of the appeal, had more significant connections: he was son-in-law of the Duke of Hamilton.¹³ It was conclusive enough evidence for Lauderdale. He believed the opposition, buoyed by their success in the last sessions, orchestrated the advocates' dispute in order to demonstrate the necessity of Parliament.¹⁴

The advocates' dispute rumbled on through the summer of 1674 without any real indication that it was going to be resolved. However, events at the Conventions of Royal Burghs, at the centre of which were supposedly the debarred advocates, brought the issue to the forefront once again. Although the estate as a whole had seemed unwilling to formally join with Hamilton in the last session of Parliament, a blatant disregard of crown demands at the Convention held in August 1674 convinced both Lauderdale and the King that dissent was spreading. At the first sitting of the Convention, a letter was read from the King that called for a review of current voting qualifications. The Convention was directed to consider how their interests had been prejudiced by the recent election of gentlemen and, in some cases, noblemen as their

¹¹ Mackenzie, *Memoirs of the Affairs of Scotland*, p.278; another contemporary complained that in the Court of Session, "there is so many Maitlands," a reference possibly to those unqualified men, including two of Lauderdale's relatives, who had been added to membership in November 1671. NLS Ms 9375, 'Complaints against Lauderdale,' f.22. See Chapter Five, p.183 for more on this. Despite Mackenzie's assertion that members of the parliamentary opposition persuaded the advocates into taking such a stance, resentment over these appointments may have also contributed to the dispute.

¹² NLS Ms Yester 7006, Sir George Lockhart to Tweeddale, f.115,121,137.

¹³ Callander's disputant, the Earl of Dunfermline was the uncle of the Duke of Lauderdale.

¹⁴ British Library Lauderdale Papers, Ms 23126, f.173.

parliamentary representatives. Only residents and those with an economic interest in the burgh were eligible for election, the King reminded the Convention. The letter claimed that the burghs were not now a separate estate, but were wholly dependent on the nobility and the shires that were representing their interests in Parliament.¹⁵

The probable design, as some have claimed, was to remove certain individuals who had been rebellious in the last sessions of Parliament. The Convention was less than obliging, however, and an intense debate arose as to the content of their reply. Their concerns rested not on the fate of certain individuals who may have been singled out for removal, but on the implications for the estate's voice in Parliament. The weakness of some of the current representatives had clearly been shown in the debate redefining the ancient privileges between Royal Burghs and burghs of Regality and Barony in July 1672; able men were needed to fight the burghs' corner.¹⁶ Due to the inadequacies of some commissioners, the Convention therefore allowed the elections of "those who were not actual residents" since "they might be upon other accounts serviceable to their interest."¹⁷ On matters of trade, economic concerns and in other areas in which a candidate might lack experience, suitably qualified individuals would advise them as to their course of action.

The majority of commissioners agreed that a letter should be sent outlining the reasons why they would not renew the acts. The Convention's reply stated

¹⁵ J.D Marwick (ed.), Extracts from the Records of the Convention of Royal Burghs of Scotland, 1615-1676, (Edinburgh, 1878), 17 August 1674, pp.640-1.

¹⁶ See Chapter Five, pp.178-9.

¹⁷ Records of the Convention of Royal Burghs of Scotland, 1615-1676, 17 August 1674, p.641; NAS Biel Muniments, GD 6/994, 'Copy of sederunt of the Convention of Royal Burghs concerning their insolent letter to the King and Observations thereon by Sir John Nisbet, King's Advocate,' f.2.

that burgh elections to Parliament had never and should not in the future be subject to limitations.¹⁸ Non-residents were especially devoted to the King's service, they argued, and they had always been recognised as lawful commissioners "notwithstanding of any acts formerly made."¹⁹ The true cause of the decay of the royal burghs was due to the debilitating effects of the recent legislation that destroyed their ancient privileges, not to the election of unqualified commissioners, the letter explained. For the speedy redress of the present situation, a new session of Parliament must be summoned as soon as possible, the burghs concluded. Sir Patrick Thriepland, Provost of Perth, James Curie, Provost of Edinburgh, the commissioners of Haddington, Banff and the three commissioners for Edinburgh were the few who refused to subscribe the defiant letter.²⁰

It was at this point that the debarred advocates took advantage of the situation. According to Mackenzie of Rosehaugh, it was he that drew up the first draft. It was then passed on to Sir George Lockhart, the Dean of the Faculty of Advocates and his colleague, Walter Pringle, who altered Mackenzie's "discreet and dutiful letter" into "a most unpolisht and indiscreet paper."²¹ Mackenzie had mostly lost the support of his fellow advocates after he had shown signs of hesitation about their walkout. Suspicions arose that he had deserted Hamilton and his supporters in favour of a pact with Lauderdale. Although by no means an impartial observer, Mackenzie states that Lockhart's

¹⁸ The burghs' argument centred on the shortage of suitably qualified commissioners, especially those smaller burghs at a greater distance from Edinburgh, which had a smaller 'pool' to choose from. For the full text of the argument, see NAS Hamilton Papers, GD 406/2/M1/225, "Reasons why the Burghs should not be restricted in the election of their commissioners to Parliament and Convention of Estates."

¹⁹ *Ibid.*, p.640; Rait, Parliaments of Scotland, p.297.

²⁰ *Ibid.*, p.641. See also NAS Hamilton Papers, GD 406/1/2758, James Johnstone to James Hamilton, Earl of Arran, 20 August 1674 describing the disagreements over the draft letter.

²¹ Mackenzie, Memoirs of the Affairs of Scotland, p.275.

design was to alter the letter to such a degree so as to make him 'unpardonable.'²² Certainly, there may have been some bitterness remaining from the advocates' dispute that influenced Lockhart. Essentially, the whole affair was a reaction to the legislation passed against the burghs in the last sessions of Parliament; the letter was probably intended as little more than a display that their privileges could not be so easily removed. The advocates, currently at a deadlock in their own dispute, had no doubt seized the opportunity of making their voices heard once more, and had capitalised on the ill-feeling against the government in the burghs. They had provided the leadership that was lacking when the Convention had challenged Lauderdale previously in 1673.²³

Yet the burghs also had genuine grievances that they wished to have rectified. As they made clear in their controversial letter to the King, they traced their decrease in prosperity back to the passage of the act redefining Royal Burgh privileges in July 1672. Certainly, the granting of importation and retailing rights of certain goods to burghs of regality or barony, manufacturing companies and private persons destroyed the old monopoly under which the royal burghs had flourished. It was the cause of constant complaint amongst the burgh estate. The situation had become so desperate for some burghs that they attempted to resign their status, leading to a situation where the Convention of

²² *Ibid.*, pp.275-6. This is backed up by the investigation by the Privy Council into the origins of the letter. Those being examined also indicated that Mackenzie had written the first draft, thereby implicating him in the whole affair. It was an accusation that alarmed Mackenzie who was said to be anxious to present his side of the story to the Council. NAS Hamilton Papers, GD 406/1/5974, James Johnstone to the Earl of Arran, January 15 1675.

²³ See Chapter Five, pp.192-3. The government recognised the connection between the advocates' dispute, and the outbreak of dissent in the Convention of Royal Burghs. In the investigation into the letter, those advocates that were involved were to receive especially harsh treatment. They were to be deemed incapable of public trust, thereby debarring those individuals from future Parliaments and Conventions. NLS Lauderdale Ms 597, f.265.

Royal Burghs now had real difficulties in maintaining the existing numbers. Kilrenny and Anstruther Wester waged a battle for 20 years to escape from the Roll of Royal Burghs on the grounds of poverty. Cromarty made similar appeals, and was the only burgh that succeeded, but the Convention continued to pursue payment of arrears some four years after it had resigned its status.²⁴ Under such harsh circumstances, it was possibly only a matter of time before the burghs made such a prominent display of their antagonism towards the government.

The Convention's show of defiance was nevertheless short lived. In January 1675, under increasing pressure from the government, the next meeting of the Convention passed an act disowning the letter sent to the King.²⁵ There was no question that they would fail to back down, since the Convention had been thoroughly purged since the last meeting.²⁶ Of the 23 who had signed the insolent letter to the King, only two remained. The new commissioners, hoping that "the King would "not impute the failings of a few to the whole bodie of your royall burrows," declared the letter the work of some 'turbulent' persons who had infiltrated the Convention.²⁷ A new act enforcing the limitation on

²⁴ Rait, Parliaments of Scotland, pp.259-61.

²⁵ Even after they had submitted to the King's demands, the Convention continued to protest against the loss of their privileges. Indeed, the next motion after their apology to the King for their past behaviour was for a memorial to be despatched to the Duke of Lauderdale acquainting him of the "heavie burdeens the borrowes lyes under" because of the "continued trading in burghs of barronie and regalitie." Records of the Convention of Royal Burghs of Scotland, 1615-1676, 14 January 1675, p.645.

²⁶ Yet even with a purged membership, there was still opposition to the restricting of elections. According to a contemporary letter, the commissioners for Ayr, Dumbarton, Edinburgh and two others not identified "debated strongly" against the submission to the King's demands. If passed, they argued, it would "cutt off [or] at least render this state insignificant in Parliament in regard most of the Burghs in the kingdome either are not able to maintain a Commissioner or have not a man capable of that trust." Nevertheless, it was believed prudent that an apology should be offered. NAS Hamilton Papers, GD 406/1/2827,? to the Earl of Arran, July 10 1675.

²⁷ Records of the Convention of Royal Burghs of Scotland, 1615-1676, 13 January 1675, pp.643-4.

elections was passed at a meeting of the Convention the following July. As the King had requested, the selection of non-resident commissioners was prohibited as a practice destructive to the interest of the burghs and detrimental to their position as "a third distinct estate of the kingdom."²⁸ However, the issue of non-residents representing burghs was far from resolved, and indeed would crop up again at the Convention of Estates in 1678.

The events at the Convention in 1674 convinced the government that the burghs could prove a problem unless more care was taken over the representatives that were elected. Excluding non-residents from standing for selection was only the first step; in the major towns, at least, a campaign of direct interference in elections was to begin. Thus, in Edinburgh, the election for the Council of 1674-1675 was disallowed simply because it had been held on the wrong day. This enabled James Currie, one of the few members of the Convention of Burghs to dissent from the infamous letter to the King, to continue as Provost for another year.

What surprised the government was the strength of feeling that erupted when the election was disallowed. Robert Baird, Dean of Guild refused to acknowledge Currie's authority and amassed a large opposition party who waited anxiously for the opportunity to cause trouble.²⁹ This arose in mid-1675 when Charles Maitland of Hatton, Lauderdale's brother and deputy in Scotland, agreed that a new election could be held if the Council's support could be

²⁸ *Ibid.*, 8 July 1675, p.649.

²⁹ Baird and his adherents immediately sent Sir Alexander Bruce of Broomhall, a relative of the Earl of Kincardine who was soon to become one of Hamilton's most conspicuous followers, on an abortive mission to Court to treat with the Duchess of Lauderdale. However, the design was opposed by Atholl and Hatton, and Bruce returned "very discontent and imputed his want of success to his want of that money which the Duchess expected." Mackenzie, *Memoirs of the Affairs of Scotland*, p.311

counted upon in the Convention of Burghs. As part of the agreement, the Council would agree to take the 'advice' of the King's ministers when choosing candidates for a new election.³⁰

James Rothead, who had stood for election against Sir Andrew Ramsay in 1673 but had since transferred his allegiances, had been authorised to propose his father-in-law, Francis Kinloch as Provost. Baird and his party, however, had the numerical advantage: they refused to support Kinloch, and proceeded to a new election, ignoring the terms set out by Hatton. In response, the King simply expelled Baird and 11 others from office for being 'factious.' They were joined by Robert Petrie, Provost of Aberdeen, William Anderson, Provost of Glasgow and Andrew Ainslie, Provost of Jedburgh who were all fined and debarred from office following a Privy Council investigation into their involvement in the drafting of the burghs' letter to the King.³¹

A similar fate would meet those who refused to back down in the continuing advocates' quarrel. Anxious to bring an end to the long and drawn out dispute, the government set a deadline of 28 January 1675 for those willing to return.³² Rather than submit, however, most of the advocates subscribed a number of petitions addressed to the Privy Council and Court of Session.³³ Although processes were about to begin against them, the advocates sent in

³⁰ *Ibid.*, p.311.

³¹ Mackenzie, *Memoirs of the Affairs of Scotland*, p.310-11. The investigation into the letter concluded that Anderson, Petrie and Ainslie had met in various taverns without the rest of the committee appointed for drafting the letter. With a number of other members they had, through devious means, managed to secure the passage of the letter through the Convention. *RPCS*, IV, pp.367, 469-71, 475. The opposition expressed delight when it became apparent that the sentence against the three Provosts was only carried by one vote. NAS Hamilton Papers, GD 406/1/2843, James Johnstone to the Earl of Arran, 5 March 1675.

³² It had been rumoured for some months that this was to be offered. NAS Hamilton Papers, GD 406/1/5905, James Johnstone to the Earl of Arran, December 20 1674.

³³ *RPCS*, IV, pp.350-6.

another petition denying that they had been factious. Again the negotiations reached a stalemate, and it was only broken by Sir George Lockhart and Sir John Cunningham's journey to Court. They had hoped to gain an audience with the King, but their very presence in London at a time when the House of Commons were preparing another address against him was extremely dangerous for Lauderdale. Although the Duke's fears were to prove groundless, Lockhart and Cunningham successfully secured an end to the legal process against them.

Most of the other advocates stayed resolute in their opposition until the end of the year. Finally, in December 1675, the advocates' chief negotiator, Sir George Lockhart and Lauderdale came to a deal, and the dispute was ended. No one was able to claim victory. Rumours abounded that Lauderdale, fearful of the advocates joining up with his enemies at Court, had simply given in to stop the dispute escalating further. The advocates meanwhile had been damaged by the defection of one of their most significant members, Sir George Mackenzie of Rosehaugh, to the government's side.³⁴ Yet what the events in the Convention of Royal Burghs and the advocates' disputes had shown was that, far from being quietened by the adjournment of Parliament in 1674, opposition, especially to government interference in the various national institutions, had, if anything, grown stronger.

³⁴ Mackenzie decided to submit in June 1675. Rumours of his "wavering" had been spreading since January, although he had since proven himself "steadfast to the rest of the advocats and hath given them fresh assurances that he will goe along with them in all things." NAS Hamilton Papers, GD 406/1/2886, James Turner to the Earl of Arran, January 21 1675. Yet, it seems Mackenzie had become increasingly disturbed at Lockhart's attempts to place the blame for the dispute on him. At one point Lockhart and Sinclair had gone in to hiding, from where they would observe the fate of Mackenzie. If he was found innocent, they too would be secure; if he was found guilty perhaps "the malice of the pursuers would be blunted before it reacht them." In his petition submitting to the King, Mackenzie bitterly complained that some of his own number "had been greater tyrants over them [the advocates] than the worst of Kings, and had deserted them as cowardly rogues." Mackenzie, *Memoirs of the Affairs of Scotland*, pp.308-9.

* * * *

Predictably, the Earl of Kincardine had not taken Lauderdale's earlier snubs lightly and he had increasingly moved into an alliance with members of the opposition. Yet he still stubbornly held onto a number of influential positions, chiefly as a member of the Privy Council, a fact which Lauderdale was keen to rectify. An ideal opportunity arose when the Council undertook an investigation into a street fight that followed the arrest of a suspected conventicle attendee, the Reverend James Kirkton. Kirkton's brother-in-law, Robert Baillie of Jerviswoode, had, on hearing of his arrest, arrived with some friends and rescued Kirkton. In an angry debate in the Council chamber, Dumfries, Hamilton, Kincardine and the Earl of Dundonald took the side of Jerviswoode. The majority of the Privy Council, however, found him guilty of resisting a lawful arrest, and Jerviswoode was subsequently fined and imprisoned.³⁵ Hatton immediately drafted a report to the King, complaining that Kincardine and Hamilton persistently retarded the King's service and promoted the interests of fanatics. On 12 July 1676, Charles sent notice to Hatton to remove Kincardine, Hamilton and the other two dissenters from the Council.³⁶

In order to extend his control over the Council, Lauderdale prevailed on the King to send notice that all officers of state were to renounce their right to hold office for life; rather they were to continue in office only during his Majesty's

³⁵ Burnet, History of His Own Time, II, pp.105-6; Mackenzie, Memoirs of the Affairs of Scotland, pp.317-8.

³⁶ Lauderdale wrote triumphantly to Archbishop Sharp trumpeting the "effectual purge" of the Council. "Thirty Four Letters written to James Sharp by the Duke and Duchess of Lauderdale" in SHS, Miscellany, I, p.274. "Now there is no more danger of clamorous debate at that board, which only served to encourage the disaffected," he wrote in a separate letter. LP, III, p.84.

pleasure. Mackenzie claims that the measure was directed only against the Earl of Rothes, but it was probably intended as part of a wider attack on the Secretary's enemies since it ended the need to reconstitute the Privy Council.³⁷ Opponents could now be easily removed without such action being necessary.

The new act was soon used to oust Sir John Nisbet of Dirleton from his position as King's Advocate, principally because he was suspected of being a sympathiser with Presbyterians.³⁸ On 4 September 1677, his replacement, Sir George Mackenzie was elevated to the post, ushering in a regime noted for its severity against religious non-conformity. Since the advocates' dispute, Mackenzie had become increasingly distant from his fellow lawyers, and although he had once been a fervent opponent of the government, he forged a new alliance with the royalist administration. The uncompromising policies he now pursued would see the new King's Advocate being branded for posterity with the sobriquet, 'Bloody Mackenzie.'³⁹ However, the hardening of attitudes to religious dissent had actually begun in 1674. The previous Indulgences had proved unsuccessful, and as Sharp had persuasively argued to Lauderdale, there was no reason to suppose that they would have any effect now. Faced with the increasing spread of conventicles, the Privy Council instituted a new series of measures aimed at rooting out the ringleaders. A Commission was given to Archbishop Sharp authorising him to use standing forces and militia to put the policy into force. An act was passed by the council that ordered landlords to ensure that their servants and tenants subscribed a bond ensuring they did not

³⁷ Mackenzie, *Memoirs of the Affairs of Scotland*, pp.325-6.

³⁸ Burnet, *History of His Own Time*, II, p.137.

³⁹ See D.Allan, *Philosophy and Politics in Later Stuart Scotland: Neo-Stoicism, Culture and Ideology in a Crisis, 1540-1690* (East Linton, 2000), especially Chapter V, "Reconciliation or Retirement? Philosophy and Political Activity in Restoration Scotland," pp.176-214, for a study into the philosophical reasons behind Mackenzie's shift in allegiances.

attend any illegal religious gatherings. In burghs, local magistrates were made liable for conventicles held within their boundaries. Further measures were taken in 1675, when the use of a standing army to garrison certain areas of the countryside began.⁴⁰ This demonstrated an increased readiness to use force to crush the long-standing problem of dissent.

These new measures coincided with the trial of James Mitchell, the man who had attempted to assassinate Sharp in July 1669.⁴¹ The authorities now intended it to be a show trial to act as a warning against dissent, but it rapidly turned into farce. When Mitchell had been arrested in February 1674, the Privy Council had promised that his life would be spared if he made a full confession. However, as part of the new hard-line policy, the Council rescinded on that promise, and Mitchell was asked to renew his confession, this time without any possibility that he would not be condemned to death. Mitchell refused, and although he was subject to the most brutal forms of torture his captors on the Bass Rock could devise, he refused to acknowledge his guilt.⁴² At Mitchell's trial in January 1678, Lauderdale, Rothes, Sharp and Hatton testified that no promise of life had been made to the defendant, yet when the Privy Council registers were mistakenly read out in Court, all were publicly shown to have committed perjury.⁴³ The trial was hurriedly completed, and Mitchell was put to death.⁴⁴ However, the case had demonstrated to Lauderdale's enemies just how arbitrary the government could be.

⁴⁰ Buckroyd, Church and State, pp.114-7; RPCS, IV, pp.186-191.

⁴¹ See Chapter Four, p.137.

⁴² Buckroyd, Church and State, p.118; Ravillac Redivivus, GUL Sp Coll Ferguson AK-x.15.

⁴³ Rothes' defence was that he often signed entries by the clerk made in the Council record without actually reading them. Burnet, History of His Own Time, II, p.140.

⁴⁴ Ravillac Redivivus; Mackenzie, Memoirs of the Affairs of Scotland, pp.328-9; Fountainhall, Historical Notices of Scottish Affairs, 1661-83, 2 vols. (Edinburgh, 1848), I, pp.183-6.

Lauderdale, accompanied by his wife, was on a rare visit to Scotland in 1677 when Mitchell's case was underway.⁴⁵ Previously (and with some reluctance) he had only journeyed north in his capacity of Commissioner to attend sessions of Parliament, but on this occasion he had come to deal with a personal matter. Partly to cement ties with his allies, it had been agreed that the Duchess's daughters would marry into two of the great families of Scotland. Thus, the eldest, Elizabeth, was contracted to Lord Lorne, afterwards first Duke of Argyll, the younger, to James Stewart, Lord Down, eldest son of Alexander Stewart, fourth Earl of Moray.⁴⁶

When Lauderdale arrived in Scotland, he found himself again faced with the seemingly intractable problem of religious dissent. The measures enacted by the Privy Council had largely proved ineffectual, and Lauderdale hit upon an idea that would, he thought, end the problem of the dissenters once and for all. After exaggerating the risk of rebellion in the western shires, Lauderdale was given leave by the King to enact what later became known as the Highland Host: an army of some 8,000 men were recruited predominantly, but not exclusively, from the Highland clans and were sent to quarter upon the west.⁴⁷ As well as ending the spread of conventicles in the area, Lauderdale, by

⁴⁵ Mackenzie asserts that all except five members of the opposition had been part of the Duke's welcoming party at Berwick because the King made clear that he would 'own' him against all opposition. Certainly, Tweeddale's son, Lord Yester was said to have been "publicly well received" by Lauderdale, so much so that Andrew Hay advised the Earl of Tweeddale that the time might be right for a 'reconciliation' with the Duke. NLS Yester Ms 7008, Andrew Hay to the Earl of Tweeddale, 21 August 1677, f.56.

⁴⁶ Burnet, *History of His Own Time*, II, p.137. The marital arrangements for the Duchess's daughters seem to have been the reason for the breach with the Marquis of Atholl. It had been initially envisaged that Atholl's son would be given the hand of one of the daughters, and when this plan fell apart, Atholl joined with the opposition at the beginning of 1678. Atholl's reaction gives increasing weight to the suggestion that the marriages were part of a political agenda.

⁴⁷ A third of the army was actually drawn from the Lowland militia. For a study of dissent and military activity in the Highlands during the Restoration, see A.I Macinnes, "Repression and Conciliation: The Highland Dimension, 1660-1688" in *SHR*, 65 (1986), pp.167-195.

quartering troops on lands and tenants, could also use his Highland forces to wreak personal revenge on the Duke of Hamilton.⁴⁸ Lauderdale envisioned that the Host would not only destroy religious nonconformity, but also his key opponent, in one fell swoop.⁴⁹

The Host was a huge disaster for the government. From January 1678 until April when the troops were sent home, the soldiers ran riot, plundering and molesting the western shires without restraint.⁵⁰ Hamilton was furious at his own personal loss, and he journeyed to Court to make his complaints to the King himself.⁵¹ Yet Hamilton was met with a sadly familiar situation: Charles remained steadfast in support of his Secretary. Indeed, the King went as far as to associate the Duke and his associates with the religious troubles, telling Lauderdale's ally, Sir James Foulis of Colinton that "they intend ... nothing

⁴⁸ It was a considerable risk that Lauderdale was taking, for, the King had already given notice that if his actions provoked full rebellion, and it should spread "into England, and that England should turne Commonwealth, Scotland wold be a province nixt summer after." The Earl of Arran to Lauderdale, 28 March 1678, LP, III, pp.101-2. The Host provided ammunition for the Duke's enemies in London because they feared that his true purpose in assembling such a large army was to invade England. Finally, the true purpose of the Militia Act that was passed at the Restoration had become clear, they claimed.

⁴⁹ Buckroyd, Church and State, pp.124-129. Buckroyd provides the best account of the Host, and earlier accounts are better disregarded. For example, J.R.Elder's, The Highland Host of 1678 (Glasgow, 1914) is written from a decidedly pro-dissent viewpoint.

⁵⁰ Later, it was suggested that Lauderdale, in return for their allegiance, had struck a bargain with various landlords to keep the soldiers off their lands. "Some Particular matter of Fact relating to the administration of Affairs in Scotland under the Duke of Lauderdale, Humbly Offered to Your Majesties Consideration, In Obedience to Your Royal Command," GUL Sp Coll Mu 29-f.23.

⁵¹ Among others, Hamilton was accompanied by Robert Ker, third Earl of Roxburgh, Charles Hamilton, Earl of Haddington, Atholl (who, with James Drummond, fourth Earl of Perth, had deserted Lauderdale after the Host) and Lord Cochrane. LP, III, pp.107-9. John Kennedy, seventh Earl of Cassillis, branded a rebel for his failure to comply with the government, went separately. He denounced the free quartering of the Host as contrary to law, and set in motion a debate on the legality of the government's proceedings. NLS Yester Ms 7008, f.101. Sir George Mackenzie, King's Advocate, was subsequently sent to explain how the government's actions had been lawful. Tweeddale had refused to accompany his allies, and the Duke of Hamilton was forced to write to him defending his own decision to come to London: "the journey wee have made heer ... was so much against your judgement, but what ever be our success I am not convinced of the unfittnes of it." Hamilton was critical of Tweeddale's stance, arguing that "iff our measures had continued all one I am confident it had gone better with all of us" and he berated Tweeddale for judging his own private interests over public concerns "which should be first preferred." NLS Yester Ms 7008, 15 May 1678, f.129.

mor then the subversion off the government off the church ... and the alteration off the constitution off the parliatt, especiallie off the Articles.”⁵² Facing such opinion, Hamilton was unlikely to get any sympathy from the King.

It was while Hamilton and his allies were at Court in May 1678 that Lauderdale, who remained in Scotland in the face of another attack against him in the House of Commons, ordered elections for a Convention of Estates where he had again been appointed Commissioner. Summoned solely to provide money for the support of troops against dissent, and prohibited from discussing any other matter, a Convention prevented the opposition from launching an attack on government policy as they had done in the last session of Parliament.

Rumours of a meeting of the estates had been rife since 1677 when there seemed to be increased government interference in the annual Michaelmas (September) elections. Lauderdale’s brother, Charles Maitland, accompanied by his son, went to Fife “to use their interest for the Electors” but they could only secure one additional vote, and “they were treated by the gentlemen with very little respect.”⁵³ The opposition suspected that Lauderdale’s arrival in Scotland was precisely because a meeting of Parliament was imminent, and when the elections were held, Hamilton ordered his allies to make a special effort in areas where they had influence.⁵⁴ There had been few years since the adjournment of Parliament that there had not been great contest over candidates in local elections. In 1676, for example, the opposition tried unsuccessfully to prevent

⁵² LP, III, Sir James Foulis to Lauderdale, 18 April 1678, p.115.

⁵³ William Fraser (ed.), The Stirlings of Keir and their Family Papers, Lieutenant George Murray to Sir John Stirling of Keir, 30 June 1677, pp.513-4.

⁵⁴ Drumlanrig Castle, Transcripts of Queensberry Letters, No.13, 16 April 1678 (former NAS reference - GD224/171/4/13). Hamilton thought it necessary that his allies “must meet and be clear in it, and lay all other things aside,” a reference to recent disagreements between Atholl and Kincardine and Queensberry and Annandale.

the President of the Session, Sir James Dalrymple of Stair from being returned for Wigtownshire. "I never saw a man more generally hated than he is ther," wrote Hamilton to Queensberry, yet Stair was successfully re-elected.⁵⁵ Hamilton likewise told Queensberry that he "had taken all the pains I can about the election of Galloway ... you have done all that can be in it." He added that Sir Thomas Wallace of Craigie and William Blair of that Ilk, the two previous parliamentary commissioners for the shire, "were doing what they could to make friends to gett themselves chosen for Air at the next head count."⁵⁶

Elections for the Convention in those shires without current representation and in all the Royal Burghs were held on 7 June, when many of the leaders of the opposition were still in London. This was part of a strategy for securing a compliant membership. Lauderdale realised that no demonstration of opposition could be tolerated, since he was in an even more precarious position than in 1673. Burnet tells of how he "issued out the [election] writs, while they [the opposition] were still in London knowing nothing of the design, and these being returnable in three weeks, he laid the matter so, that before they could get home, all the elections were over."⁵⁷ Hamilton and his allies were caught out by the speed at which the elections had been called, and they had little time to organise their supporters. Many key men remained with the Duke of Hamilton in

⁵⁵ HMC, Fifteenth Report, appendix, part viii, Mss of the Duke of Buccleuch and Queensberry preserved at Drumlanrig Castle (London, 1897), p.217.

⁵⁶ Drumlanrig Castle, Transcripts of Queensberry Letters, No.18, 19 September c.1676, (former NAS reference - GD224/171/4/18).

⁵⁷ Burnet, History of His Own Time, II, p.149. In 1678 a rule requiring 20 days notice of an impending meeting of the estates came into force, but the growing approximation of a Convention to Parliament produced the impression that the period of notice ought to have been 40 days. Rait, Parliaments of Scotland, p.288; Lord Fountainhall, Historical Selections from the Manuscripts of Sir John Lauder of Fountainhall, Volume First, Historical Observations, 1680-86, (Edinburgh, 1837) Appendix II, p.264.

London, and were hurriedly sent northwards when the news of the Convention became public.⁵⁸

The opposition were well aware of the attempts to keep them from influencing the elections to the Convention. William Douglas, third Earl of Queensberry, had heard that “no radical will be suffert to elect or bee elected members of this Convention, but how legall this can be done I know not.” Queensberry had raised a good point: how could the government legally exclude opposition (but otherwise valid) candidates? In fact, the bond against conventicles proved to be the ideal measure. Many of Hamilton’s supporters in the localities had refused to subscribe it, and they were now declared incapable of holding positions of public trust, leading Hamilton to complain that “the design is to keep us as criminalls that wee may not be admitted to the Convention of Estates.” In addition, special efforts were undertaken to secure the key seats that were under the influence of the opposition nobility. Thus, Queensberry was not surprised to “find opposition against me in the election of this shyr [Dumfries],” although he assured Hamilton that he was actively “doing what is possible to render it ineffectual.”⁵⁹

The Duchess of Hamilton had written to her husband giving an account of the Haddingtonshire election. “Many letters” had been written and “many employed to sollicite” the electorate on behalf of the government, the Duchess informed the Duke. On the day of the election, Lord Belhaven took “severall of

⁵⁸ “The envoy of ... our own shire and the gentlemen of Linlithgow shire that is heer, we are hasting them home,” wrote Hamilton to his wife. NAS Hamilton Papers, GD 406/1/8095, 28 May 1678.

⁵⁹ NAS Hamilton Papers, GD 406/1/2965, Queensberry to Anne, Duchess of Hamilton, 3 June 1678; Hamilton had previously advised Queensberry to “have a caire that fitt persons be chosen for the little brouchs in Annandale.” NAS Hamilton Papers GD 406/1/8095, 28 May 1678.

the gentlemen aside and spoke to them for such tuos being chosen as my Lord Commissioner had delivered.” Not to be outdone, Hamilton’s son, the Earl of Arran, also made appeals to the several gentlemen, hoping to secure their vote for the opposition candidates.⁶⁰ There was “great heat and contention” in sundry other elections, according to Lord Fountainhall, and “much bringing to mold them to the Duke of Lauderdale’s stamp.”⁶¹ Offers were made also to members of the opposition nobility. James Drummond, fourth Earl of Perth was “mightly courted and great friendships promised him,” but Hamilton was relieved that this did not “prevail to make him change his former principles or friends.”⁶² The Bishop of Edinburgh also paid a visit to Hamilton to try and arrange reconciliation between him and Lauderdale prior to the Convention. Hamilton rejected the offer, and continued his campaign in the localities to secure electoral victories.

The opposition had clearly taken on some form of structure, and regular meetings had been held, mainly among the noble members, since the beginning of the year. Planned at these meetings was active involvement in the elections of Stirling, Linlithgow, Renfrew, Dumbarton, Ayr and Dumfries and Galloway.⁶³ With Lauderdale expected in Scotland, Hamilton and his supporters were forced to conduct their business with increasing secrecy. Previously, they had met in Edinburgh, but this, Hamilton told his colleagues, was now impossible. Lauderdale’s arrival severely restricted the opposition’s business prior to the Convention. The noble members could not all leave

⁶⁰ NAS Hamilton Papers, GD 406/1/8678, 15 June 1678, f.1.

⁶¹ Fountainhall, *Historical Observations*, p.265.

⁶² Drumlanrig Castle, Transcripts of Queensberry Letters, No.19, 20 September 1677 (former NAS reference - GD224/171/4/19).

⁶³ Drumlanrig Castle, Transcripts of Queensberry Letters, No.19, 20 September 1677 (former NAS reference - GD224/171/4/19).

Edinburgh without raising suspicion, yet Hamilton thought it appropriate that “we dissipate before their [Lauderdale and his wife’s] arrival, for to meet when they are there will not be so fit.”⁶⁴ As the existing correspondence indicates, this was now the method by which Hamilton’s supporters communicated with each other.

Despite the increasing secrecy with which the opposition operated, Lauderdale had been receiving accurate reports about the activities of Hamilton and his associates. The sophistication of their structure also drew attention, with Alexander Stewart, fifth Earl of Moray describing the parliamentary opposition as the ‘Party’.⁶⁵ The connotations of this term are critical. Labelling Hamilton’s supporters as a political party, a Scottish equivalent of the developing Whig and Tory political parties which were forming in response to the Exclusion crisis in England, indicated just how seriously the threat to Lauderdale’s supremacy was being regarded.

* * * *

The Commissioner’s instructions for the Convention, issued on 13 June, left no doubt that any opposition was to be thoroughly purged. His first task after the calling of the Rolls was to “name a Committee to consider of Elections of Shires and Burroughs,” to oust those Party candidates who had successfully been elected to the Convention. Thus, on 13 June (only five days after the elections were held), even before the results could possibly have been known,

⁶⁴ Drumlanrig Castle, Transcripts of Queensberry Letters, No.36, 6 September 1677 (former NAS reference - GD224/171/4/36).

⁶⁵ See LP, III, p.127, p.149, and p.151. The term ‘Party’ is also used by Mackenzie throughout his Memoirs of the Affairs of Scotland to refer to the parliamentary opposition centered on the leadership of Hamilton.

the government were planning precautionary measures against a possible opposition influence in the chamber. Their strategy was not to remain secret for long, however, for on 15 June, the Duchess of Hamilton wrote to her husband in London telling him of the rumours that “befor the Convention sit down ther will be a comatie apointed to conseder of the elections wher ther is doubell commissioners chosen and to admit only of such as pleases them.”⁶⁶

Prior to the full meeting of the estates, a Convention of Royal Burghs was held in Edinburgh. On 20 June, six days before the Convention of Estates convened, a representative group from the meeting of the burghs was sent to pay their respects to the Commissioner. When they were admitted to the Duke of Lauderdale’s lodgings, the group received a long lecture in which Lauderdale represented to them the “several favours conferred on that estate” by King James, and especially, the present King. The Commissioner then told the burgh members that he hoped that the estate as a whole would, through their actions in the ensuing Convention, “testify their loyalty to his Majesty”, but Lauderdale’s address received a silent response.⁶⁷ Hamilton also met with the Commissioner the day before the Convention sat, and passed some pleasantries on the weather and the state of the highways. A more meaningful exchange occurred in a meeting with the Archbishop of St Andrews, when Hamilton complained about the short notice given in the calling of the Convention, especially when many of the nobility were absent from the kingdom. Hamilton also expressed concern about the “many prelimitations [that] were used at the elections” and he alleged that the “lieges” had been “menaced and frightened by the bond.” Yet Hamilton

⁶⁶ NAS Hamilton Papers, GD 406/1/8678, f.2.

⁶⁷ CSPD (1678), Newsletter from Matthew Mackail to Sir John Frederick, 20 June 1678, p.234.

remained confident that such issues would be taken into consideration by the Convention itself.⁶⁸

In the 1673 session of Parliament, the level of preparation that Hamilton and his party had undertaken had surprised the Commissioner; they had obviously been meeting outside the parliamentary chamber to decide on their tactics, as they had been recently. For the Convention of Estates, Lauderdale was ordered to 'remind' the gathered estates that "in pursuance of the 4th and 11th Act of the 1st session of the 1st Parliament,⁶⁹ [it was] illegal to convene and determine any matters of state before or during the Convention." Any members, who were found to be guilty, were to be tried under the full force of the law. If discord still arose, if "any Lords or others shall ... appear in opposition to our service, so as the design for which wee have called the Convention may thereby be in any hazard of being frustrated," Lauderdale was authorised by the King to "adjerne the Convention until further notice."⁷⁰ It was an extraordinary set of Instructions. The King had given his Commissioner the authority to quibble any commission, eject any members he saw fit, and adjourn the meeting if the crown's opponents got too volatile.

Significantly for Hamilton, many of his noble supporters decided not to attend the Convention. Kincardine stayed in London, much to the fury of others in the Party.⁷¹ Atholl, who had recently defected to Hamilton's side after his son was snubbed in marriage negotiations with one of the Duchess of

⁶⁸ *Ibid.*, Newsletter from Matthew Mackail to same, 25 June 1678, p.243.

⁶⁹ The Act for His Majesties Prerogative in the Making of Laws and the Act anent Conventions and Public Meetings, both of which prohibited external discussion on matters of state without crown permission.

⁷⁰ British Library Lauderdale Papers, Ms 23242, 'Instructions to Lauderdale for the Convention of Estates,' 13 June 1678, f.64

⁷¹ For Hamilton's reaction to this, see NAS Hamilton Papers, GD 406/1/8096, Hamilton to Anne, Duchess of Hamilton, 13 June 1678.

Lauderdale's daughters, also stayed away.⁷² However, Hamilton too was extremely nervous about returning to Scotland, fearing that he would be punished for his past defiance. He was caught in a quandary: staying at Court would discourage his supporters at home and give the Commissioner free reign in the Convention, yet returning risked imprisonment. After discussion with his wife and other members of the Party, Hamilton finally resolved to make the journey to Scotland to attend the meeting "whatever be my danger either to my health or liberty, rather than desert my friends or the business I will hazard on it."⁷³

* * * *

The Convention of Estates assembled on 26 June 1678. The Rolls record a membership of 187: ten members of the clergy, 55 nobles, four officers of state, 51 shire commissioners and 67 burgh commissioners.⁷⁴ It was a respectable figure, matching exactly the number who attended the 1670 session of Parliament, and a moderate increase on the 150 who had attended the last Convention in 1667. The membership, as planned, had been carefully purged of many of the opponents that had attended the last session of the full Parliament in 1673. There were 11 new shire commissioners, including, in the influential

⁷² See p.223 for more detail on Atholl's defection.

⁷³ Hamilton was convinced that as soon as he had arrived back home, he would be immediately thrown in prison: "I stand denounced ... and I find the King will not so much secure me against those hazards." As always, Hamilton was planning to turn this state of affairs to his advantage. His plight could be turned into political gain, inspiring sympathy among the gathered estates, so that "if the Convention be able by a vote to bring me out of prison if I wer in it, they may more easily refus money." NAS Hamilton Papers, GD 406/1/8095, Hamilton to Anne, Duchess of Hamilton, 28 May 1678. Hamilton and his associates need not have worried, because the King had given orders that no opposition noblemen were to be troubled for their arms or horses on their return, nor were any to be imprisoned or fined for their past actions. *LP*, III, p.153.

⁷⁴ NAS PA 8/1, ff.175-6.

position of commissioner for Edinburgh, Robert Maitland of Gogar, a direct relation of the Duke of Lauderdale.⁷⁵ The membership of the burghs had been massively altered since the last session. The dissension in the Convention of the Royal Burghs had provided the perfect excuse to exclude those prone to such 'factious' behaviour, and those individuals were prevented from seeking election to the Convention. 31 new members were recorded in the Rolls, 46% of the burgh representation as a whole.

However, the Rolls do not appear to be particularly accurate for this session. In the many shires and burghs with double commissions, up to four commissioners turned up on the first day, all claiming that they had been elected. Some were allowed to take their seats until their case was examined.⁷⁶ This fact is not officially recorded, and it is possible that the Rolls were only written down in the final form that survives in the record after the disputed elections had been dealt with. Of course, controverted elections were expected, and this is why the Commissioner had been authorised to set up a separate Committee to deal with extra business. What Lauderdale had probably not foreseen was that the arguments over the settling of these electoral disputes would take up a period of two weeks.

After the Rolls had been taken, the Oath of Allegiance signed and the Declaration confirmed, the Commissioner rose from his chair, and from his

⁷⁵ Richard Maitland of Gogar was son and heir of Lauderdale's brother, Charles Maitland of Hatton, and had held jointly with his father the office of General of the Mint in 1668. As part of Lauderdale's campaign to secure links with his allies, Richard married Anne, daughter of Archibald Campbell, ninth Earl of Argyll on 1 July 1678, while the Convention was sitting. M. Young (ed.), *Burgh and Shire Commissioners*, II, p.467. His election was to be disputed in the Convention.

⁷⁶ NAS Biel Muniments GD 6/1108, f.25 and f.30 records that those members whose commissions were in dispute were allowed to appear to argue their case before the Committee. In the handwriting of Sir John Nisbet of Dirleton, who had been recently ousted as King's Advocate, GD 6/1108 is a 46-page manuscript recording in exceptional detail the events at the Convention. Much of what follows has been taken from this source.

pocket produced a list of names which he announced were nominations to the Committee to consider debatable elections. Halfway through the list, he was interrupted in his reading by the Duke of Hamilton, who voiced suspicions that this "way of procedure was very unusual." Lauderdale called for Hamilton to remain silent until he had finished his announcement, and so he continued to read out the membership of the committee. As soon as the Commissioner had taken his seat, Hamilton once again stood up and spoke against the nominations for the committee, and its very legal basis. "He looked upon it," writes Nisbet in his account of proceedings, "as one undoubted right of the bodie of the Conventione to name their own committee." In addition, Hamilton expressed reservations that not only were some of those included incapable of sitting in the Convention, but were perhaps also ineligible for holding any position of public trust.⁷⁷ This initial exchange set the pattern for almost the whole Convention: it was to be a battle over membership, played out over the decisions of the Committee for Disputed Elections.

Lauderdale attempted to assure Hamilton that the Committee only had the power to report, and he was seconded by Sir George Mackenzie, King's Advocate; Charles Maitland of Hatton, Treasurer Depute; Sir Thomas Wallace of Craigie, Justice Clerk and Sir James Dalrymple of Stair, President of the Session who all made 'long speeches' arguing that the naming of Committees was a Commissioner's privilege. Sir George Mackenzie claimed that because the Commissioner was the representative of the King, he enjoyed such liberties. "It is a strange thing to see this controverted," declared the King's Advocate,

⁷⁷ NAS GD 6/1108, 'Minutes, 1678,' ff.10-11; LP, III, p.155.

“for, if his Majesty were here in person, who would deny him the privilege?”⁷⁸

Sir George Mackenzie of Tarbat, commissioner for Ross-shire, asserted that the Act of 1661 reserving the right of nomination of Officers of States and Judges to the crown, could be applied to this case.⁷⁹

Hamilton listened to the speeches, but he remained unconvinced by the legal arguments. Seeing that the Committee only had the power to report, why even bother setting one up, he argued? It would mean that all the particulars regarding each election would have to be first considered in the Committee, and again in the full Convention. He claimed that in 1661, disputed elections were dealt with in the full Parliament.⁸⁰ After arguments refuting this, the records were brought out and consulted, and the Duke was found to be correct. The production of the parliamentary record for 1661 brought about an extraordinary set of exchanges between the two opposing groups. Realising that Hamilton had historical precedent on his side, Argyll retorted that the Restoration Parliament was a “lame Parliament ... being in its infancy.” Archbishop Sharp agreed that the Parliament of 1661 was a weak session because there had been no members of the clergy present. It was a dangerous route to take, and Hamilton seized upon their statements. Were not Argyll and Sharp’s remarks seditious? To

⁷⁸ CSPD (1678), Newsletter – ‘A True account of what passed in the Convention,’ 27 June 1678, p.249.

⁷⁹ Tarbat had been a vehement opponent of Lauderdale in the very Parliament he spoke of and had colluded with Middleton to have the Duke billeted (see Chapter Two, p.69). He had recently switched allegiances with his cousin, the King’s Advocate, Mackenzie of Rosehaugh. Tarbat’s about-turn had not been so easily forgotten by the opposition, who greeted his speech with “laughter” which, as Nisbet tells us, “discovered the excessive flatterie and disingenuite of his temper.” NAS GD 6/1108, ‘Minutes 1678,’ f.11.

⁸⁰ Lieutenant General William Drummond and Sir Alexander Bruce of Broomhall seconded Hamilton. Hatton immediately declared that Broomhall had no right to speak in support of the Duke, for his commission was controverted. Broomhall contended that this could not be true, because the town of Culross had handed in no complaints about his election, nor had there been a double election in the burgh. CSPD (1678), Newsletter, 27 June 1678, p.450. Indeed, this was true, but, as Hatton had indicated, it seems to have been decided even before the Committee for Disputed Elections had investigated any cases, that the elections of vocal opponents were to be put under scrutiny.

question the Parliament wherein "his Majesties rights and prerogatives were more enlarged and fully cleared than at any time befor or after" was surely to set a dangerous consequence, complained Hamilton? He was seconded by Sir Alexander Bruce of Broomhall, one of Kincardine's kinsmen, who added that the committee ought not to be named until the full Convention had decided which elections were to be brought into question. That right alone belonged to the Convention.⁸¹

The opposition's arguments were to no avail, however, and Lauderdale insisted that his initial list of commissioners be accepted. The official record states that the Convention did "humbly desire" the Lord Commissioner to appoint the committee, although it is clear that the suggestion originated with Lauderdale himself. Thus, it set the precedent that the naming of committees in Parliament or Convention was a privilege of the Commissioner, and was only granted "out of favour or respect." This crucial meeting of the Convention was, by implication, not one of those occasions.⁸²

After all the effort to exclude them from partaking in the elections to the Convention, there was little doubt that Hamilton and his allies would also be omitted from the Committee set up to debate the double commissions. Lauderdale's list of committee members was made up of six members of the clergy, 13 nobles, 11 shire and nine burgh commissioners. Among those entrusted with settling the electoral disputes were Lauderdale's relatives, Richard Maitland of Gogar and John Drummond of Lundin; Francis Kinloch, Provost of Edinburgh, who had been a crown sponsored candidate at the council

⁸¹ NAS GD 6/1108, 'Minutes 1678,' f.12; *LP*, III, p.157.

⁸² *Ibid.*, f.12. Rait, *Parliaments of Scotland*, p.84.

election; and Sir James Foulis of Colinton, a frequent correspondent of the Commissioner. None of Hamilton's associates were included. After the membership had been announced, the Convention was adjourned to allow the Committee to get down to work.

The report written by the Committee for Disputed Elections was produced before the full Convention on 29 June. The Duke of Hamilton immediately stated that he wished to declare his own objections to several shire and burgh commissioners before the Committee's report was read. The Committee, Hamilton argued, had only considered elections with double returns, but there were also substantial doubts over the eligibility of representatives in the shires of Sutherland and Kirkcudbright, and in the burghs of New Galloway and Lanark, all of whom had not been considered by the committee.⁸³ Therefore, until these cases had been considered, the report should be held back. Hamilton was not the only one with concerns over the eligibility of fellow members. Charles Erskine, Earl of Mar harboured suspicions that William Erskine, second Earl of Buchan was incapable of taking his seat as he was still a minor, and he demanded that he be removed from the chamber. Buchan was only allowed to remain after he gave his 'word of honour' that he was the required age.⁸⁴

Realising their numerical handicap, the Party supporters made various attempts to use the disputed elections to their advantage. Both the Earls of Dunfermline and Perth voiced their opinion that it would be an 'absurditie' if

⁸³ There were rumours that Hamilton also had objections to some of those who had been appointed to the committee, principally Sir James Dalrymple of Stair, elected for Wigtownshire although he did not have the necessary 40-shilling qualification. He was also said to have objected to Sir George Mackenzie's presence as King's Advocate because he had been appointed during the time of the advocates' dispute, and his letters sounded "little from treason." Fountainhall, *Historical Observations*, pp.269-70.

⁸⁴ NAS GD 6/1108, 'Minutes, 1678,' ff.14-15.

those commissioners who were in dispute should be able to vote. They obviously intended to disqualify almost a quarter of the Convention from voting, thereby increasing opposition influence. The suggestion forced a ballot, at which it was decided that those who had not yet been considered by the Committee could still vote. Sir George Mackenzie of Tarbat was heard to complain that any one out of "ill humour" could make objections to any commission, and that the Convention would never get down to the business for which it had been summoned.⁸⁵ Of course, this is exactly what Hamilton and his allies had been planning. If they did not have the numerical supremacy necessary to stop the raising of the supply, they would at least make life as difficult as they could for the Commissioner.

The Commissioner authorised the elections for New Galloway and Culross to be remitted to the Convention of Royal Burghs for their consideration, and then the report of the Committee was read to the gathered commissioners. The election in the shire of Selkirk was the first under consideration. The principal complaint was that James Murray of Philiphaugh had given only two hours' notice of the election. This was true, the Committee found, but as there had been "timely notice given by letter," it was concluded that the election could stand.⁸⁶ Hamilton immediately claimed that the Committee had the remit only to advise, not determine the outcome of each dispute. After all, this is what the Commissioner had consented to when the committee had been chosen, Hamilton explained. The papers therefore should be made available to the chamber; the members could then assess each case and come to their own conclusions.

⁸⁵ *Ibid.*, f.15.

⁸⁶ NAS Supplementary Parliamentary Papers PA 7/22/127, ff.253-4.

Hamilton's request was not a surprise to the Commissioner. The day before, Lauderdale had called Hamilton, Queensberry, Robert Carnegie, second Earl of Southesk, Perth and Drummond to a private conference. Lauderdale, according to contemporary reports, asked Hamilton and his allies "to acquiesce in their opinion and not to press a public debate in the Convention." In hope that an accommodation might be reached, Lauderdale had delayed the start of the next day's session to 4 o'clock, but Hamilton and his allies refused to back down.⁸⁷ Because they had failed to secure any role in the Committee for Disputed Elections, the parliamentary opposition at least hoped to have some input in the subsequent discussions in the full Convention. When the debate began afresh, Lauderdale replied that this method would only "make infinite labour and retard the King's service." James Ogilvy, second Earl of Airlie, David Wemyss, second Earl of Wemyss, Charles Gordon, first Earl of Aboyne, and David Falconer, Lord Halkerton all urged an immediate vote on the committee's decision, and, according to John Nisbet, "seemed to be much scandalised at the retarding of the King's service."⁸⁸ Hamilton, Perth, Dumfries, Queensberry, Tweeddale and others of the Party proclaimed it impossible to "vote in a business of which they know nothing of the grounds." Despite frequent outbursts from the Commissioner who "diverse times thundered with great passion from the Throne against what was desired," it was at last decided that the Convention could hear in more detail the particulars of each election.⁸⁹ If the contemporary report of a private meeting between Hamilton and the

⁸⁷ CSPD (1678), Newsletter from Matthew Mackail to Sir John Frederick, 29 June 1678, pp.257-8.

⁸⁸ NAS GD 6/1108, 'Minutes, 1678,' f.16.

⁸⁹ *Ibid.*, f.16.

Commissioner is correct, it represents a significant concession on the part of Lauderdale. Only once before (after the unprecedented revolt against him in the parliamentary session of 1673) had he thought it necessary to seek private bargains with the opposition. Although there is no doubt that the government had a large numerical superiority in the Convention, Lauderdale must have realised how damaging Hamilton's constant questioning of his conduct was becoming.

The Convention began a debate into the disputed elections in the shires of Selkirk, Cromarty, Berwick, Perth and Kirkcudbright. The decision in Selkirk was irregular, admitted the Commissioner, but this was no reason as to why the commission was not reliable. Because the electors had been notified by letter, they had been given ample notice of the election. The ballot that was held after the details of Philiphaugh's election had been discussed overwhelmingly supported the Committee's decisions. Again, the crown's superiority in numbers proved to be the decisive factor. Hamilton and his allies were easily outvoted by approximately 50 or 60 votes.⁹⁰ Indeed, perhaps the government's involvement in the manipulation of elections had been a bit too conspicuous. It seems that Lauderdale's every action was enthusiastically "seconded by a great many others whose constant course it was in such turns to call incessantly for a vote as if they had been sett there for no other purpose."⁹¹

⁹⁰ Fountainhall estimates that the "most that syded with Duke Hamilton were about 39 in number, and about 100 with the Commissioner. 30 is probably a more accurate estimate of the opposition's strength. Among those allied to Hamilton were the Earls of Buchan, Dumfries, Perth, Roxburgh, Southesk, Tweeddale, John Hamilton, second Lord Bargany and Alexander Stewart, fourth Lord Blantyre. Among the shires, Hamilton had the support of Adam Cockburn of Ormiston and James Fletcher of Saltoun (both Haddingtonshire), Cromwell Lockhart of Lee and Sir Robert Hamilton of Silvertonhill (both Lanarkshire), Sir Archibald Murray of Blackbarony (Peeblesshire), and Lt. General William Drummond of Cromlix (Perthshire). Among the burghs, John Anderson of Dunfermline, Patrick Hay for Perth, and Sir Alexander Bruce of Culross. Fountainhall, *Historical Observations*, p.270-1.

⁹¹ NAS GD 6/1108, 'Minutes, 1678,' f.17.

The Convention proceeded to analyse disputed elections in the shires of Cromarty, Perth, Berwick and Kirkcudbright. The election in Cromartyshire was endorsed without lengthy debate and that of Perthshire was referred back to the Committee for further consideration.⁹² In Berwickshire there had been fierce competition between the opposition and government candidates. Sir Patrick Home of Polwarth, one of Hamilton's most conspicuous allies in the previous session of Parliament, had collected 20 votes in comparison to his competitor's, Sir Roger Hog, Lord Harcarse 39.⁹³ However, of these 39, Polwarth argued, 25 were ineligible to vote.⁹⁴ Lauderdale refused to hear any more of the argument, stating that it was not the Convention's role to study the eligibility of electors: if they did, "all the Barrons of Scotland shall be forced to bring in their charters and evidents to Edinburgh to the Convention; and the Convention shall never fall to their business." Indeed, the debate had already begun to tire the Commissioner, and he was heard to complain, "When shall we

⁹² In the case of Perthshire, the annual election had been held in September 1677 and John Graham of Fintry had been elected. Yet when the Convention was announced, another vote was taken at which another commissioner was chosen. The decision of the Committee was that, in accordance with the Commissioner's instructions, no new election could be held except in the case of Fintry's death or resignation. Rait, Parliaments of Scotland, p.222. See also NAS Supplementary Parliamentary Papers PA 7/22/125, Report of the Committee of Debatable Elections, ff.249-253.

⁹³ Polwarth had been declared incapable of public trust and had been imprisoned for a time in 1675-6. The minutes taken at the election are extant, and protests as to the eligibility of voters were aired at the time of the actual election. "Minutes of a meeting of the freeholders of the Sheriffdom of Berwick for electing a Commissioner to the Convention, June 1678," NAS Supplementary Parliamentary Papers PA 7, volume X, Item 43.

⁹⁴ What is of interest about this particular case is that Polwarth asked if his advocate could speak for him, since Lord Harcarse seeing he was a "known practitioner of the law" would have an advantage. When this was refused, Hamilton claimed that in the 1661 session of Parliament, advocates were allowed to plead the case of the shire of Dumfries. Some demanded to see the proof in the Registers, although Hamilton doubted that such a detail would have been written down. The request was put to the vote and refused. To have allowed complex legal argument to decide the outcomes of the electoral disputes may have extended the Convention by weeks, something the Commissioner would never allow. NAS GD 6/1108, 'Minutes, 1678,' f.21-3; Fountainhall, Historical Observations, pp.274-5.

show our zeall for his Majesties service! When shall we fall to the work for which we met!"⁹⁵ After a vote, Polwarth's election was declared void.

The Earl of Dumfries vehemently objected to the election of Richard Murray of Broughton as the sole commissioner for Kirkcudbright on the grounds of a Court of Session decree of infamy against him. Although he had been given the King's remission, Dumfries proclaimed that it was absurd that a man convicted of so "abominable a crime should be admitted among so many peers and worthy gentlemen." Lieutenant General Drummond, commissioner for Perthshire, declared that if he had been Broughton's friend, he would have advised him not to stand and "expose himself to the shame of ... such objections." Drummond was sure that in less civilised settings, "a man guiltie of such a crime would have been ... kicked downstairs if he had offered to come in the companie with Gentlemen."⁹⁶ At the vote, Lauderdale reminded the commissioners that the King had seen fit to grant a remission, and this should be taken into consideration. Again the vote was in the government's favour and Broughton was allowed to take his seat.⁹⁷ The Convention then adjourned.

When the members reassembled on 1 July, it became apparent that some commissioners were absent. The Commissioner announced that the members for Sutherland, New Galloway, Lanark and several others who remain unidentified had been excluded until their elections had been considered. Sir

⁹⁵ Fountainhall, *Historical Observations*, p.275.

⁹⁶ NAS GD 6/1108, 'Minutes, 1678,' ff.20-1. There remains some doubt as to the criminal charge made against Broughton. Fountainhall declares he had been imprisoned for bigamy, Nisbet, that he had been found guilty of forging wills. After the Convention had ended, Broughton was implicated in another case of forgery. *CSPD* (1678), p.295.

⁹⁷ Fountainhall alleges that Lauderdale threatened to inform the King if any should question his remission by voting Broughton incapable. The members were so overawed by the Commissioner's boast that not a man voted in the negative. Because the remission was legally viable, Hamilton and his allies for once voted with the rest of the chamber. Fountainhall, *Historical Observations*, pp.273-4.

Alexander Bruce complained that this was contrary to the vote taken at the last session, which allowed those commissioners whose elections were in dispute to play an active role in the Convention until their cases had been reviewed. Lauderdale was reluctantly forced to acknowledge the validity of Bruce's complaint, and the absent members were ordered to be called at the next voting.⁹⁸

The first election under discussion was that of George Dickson of Bughtrig for the burgh of New Galloway. Dickson admitted that he was not a resident of the burgh, and indeed that "he professed himself commonly among the barons." As heir to his brother, Robert Dickson, a commissioner of Parliament twice since 1660, he claimed that he had inherited a number of houses within the burgh.⁹⁹ The King's Advocate, Mackenzie of Rosehaugh claimed that the King's letter to the Convention of Royal Burghs now enforced the restrictions on election, and, although the President of the Session admitted there were some contradictions, Dickson's election was declared invalid.¹⁰⁰

Further objections had been made to the Committee concerning various other shires and burghs. Hamilton and his allies had clearly been busy. Out of

⁹⁸ NAS GD 6/1108, 'Minutes, 1678,' f.24.

⁹⁹ It was relatively uncommon for a 'baron' to stand for a burgh seat. Much more prevalent were cases of members of the lesser nobility being elected as shire commissioners, and this was not prohibited by either the Franchise Act of 1661 or 1681. However, in 1678, in circumstances that have not been recorded, the King's Advocate made a ruling that a nobleman's eldest son and heir, although he may possess 40 shillings of land in a shire, "cannot be chosen because he is of the Estate of the Nobility, and not of the small barons, and one man cannot be of two Estates." It is possible that the ruling was part of the electoral management for the Convention. Fountainhall, *Historical Observations*, pp.276-8; Rait, *Parliaments of Scotland*, p.288.

¹⁰⁰ Much to his chagrin, Sir Alexander Bruce of Broomhall was mistakenly not asked for his vote. He immediately remonstrated to the Chancellor that it had been agreed that until his election had been discussed, he was eligible to vote. When Lauderdale told the Register to record Bruce's vote, he cried out, according to Fountainhall, "in a very rude way, 'My vote is No! viz. I disapprove.'" The Commissioner was swift to respond: "Weel then, Sir, your No does not praeponder ; but I pray you, My Lord Register mark heirafter that Sir Alexander's vote be not forgot to be asked, but wryt doune his name in capitall letters." Fountainhall, *Historical Observations*, p.271.

the 31 shires that were represented in the Convention, there were complaints made against representatives of 21 of them.¹⁰¹ The burghs fared slightly better. Out of the 66 in attendance at the meeting, objections were handed in against 18 of them.¹⁰² There is an obvious geographical basis to the pattern of these disputed elections. Although there were complaints against elections in almost all parts of the country, by far the majority of cases were centred in the south-west and central belt, the Duke of Hamilton's area of influence, and the Borders, the stronghold of both Queensberry and Tweeddale. In addition, such a number of complaints indicate that the parliamentary opposition had considerable organisation outside the chamber.

There is an obvious difference between the elections in the shires compared to the burghs. Indeed, it seems that Hamilton's party had been more successful in electing candidates in shires, than they had been in the burghs. One possible reason for this is that the burghs and their town councils had been thoroughly purged after the dispute in the Convention of Royal Burghs in 1675. They were most probably staffed with loyal government supporters. Of course, shire elections had always been under the influence of the local nobility, as Queensberry had noted before the Convention had sat. This also may be a valid reason for the Party's success in these areas.

When studying the details of each electoral dispute, it becomes apparent that both rival factions in the Convention used them to further their influence. As we have seen in the cases already studied, there were various outcomes.

¹⁰¹ The shires were Stirling, Perth, Berwick, Dumfries, Ayr, Renfrew, Cromarty, Inverness, Fife, Edinburgh, Selkirk, Wigtown, Bute, Linlithgow, Argyll, Banff, Kirkcudbright, Elgin, Orkney, Clackmannan and Ross.

¹⁰² The burghs were Edinburgh, Aberdeen, Linlithgow, St Andrews, Glasgow, Inverness, Tain, Banff, Whithorn, Rothesay, Rutherglen, North Berwick, Cullen, Lochmabben, New Galloway, Culross, Queensferry and Fortrose

Broughton and Philiphaugh's elections were allowed to stand, no doubt because they were government candidates. Hamilton and his allies therefore must have been the ones who handed in objections against their election to the Committee. Likewise, Polwarth and Dickson were excluded most probably because they were opposition candidates. Thus, the crown must have been the driving force behind the complaints made against their election.

In some shires there had been blatant government interference. In Fife, John Drummond of Lundin, married to one of the Duke of Lauderdale's nieces, was elected despite the fact that he had no interest in the shire. In Edinburgh, Charles Maitland of Hatton's son, Richard, was chosen to represent the shire at the Convention, although he too did not have the necessary qualification of 40 shillings of land. After the election, a signature was hurriedly passed which granted him the lands of Gogar. Similar action was taken in Argyll, where Alexander Campbell of Glenstrae was granted his title only after the election had been held. Hamilton was right to be suspicious about the election of Sir James Dalrymple of Stair. The President of the Session was elected as commissioner for Wigtownshire, yet his 40 shillings of land was held as kirklands, and this made him ineligible for election.¹⁰³

A separate report had been commissioned to address these concerns, and this was produced before the Convention. It was not to be read in its entirety to save time, Lauderdale declared; only the conclusions were to be heard. Predictably, the opposition immediately complained. Sir Alexander Bruce declared that it was nonsense to "offer that general report if notwithstanding of it

¹⁰³ NAS GD 6/1108, 'Minutes, 1678,' ff.3-4. Stair had also been successfully elected for Ayrshire. Thus, he had the pick of which seat to represent.

the consideration of the particulars were reserved.” Even Rothes, the Lord Chancellor, admitted that it was highly unsatisfactory not to hear the details of the report. Hamilton had suspicions that he was “highly injured by several expressions contained in that paper” and asked if he might scrutinise a copy, but Lauderdale refused.¹⁰⁴ In the end the Convention was only able to vote on the conclusions of the report. Not surprisingly, all the electoral disputes under question were decided in the government’s favour.

Lauderdale had evidently begun to tire of the protracted discussions over the disputed elections. The Commissioner addressed the chamber, telling the commissioners that several objections had been given in without any corresponding evidence, and this had seriously slowed down the business of the Convention. Thus, it had been decided that, except in cases of double returns, no objection could be handed in that had not first been made at the time of the election. It was clearly an attempt to prevent the opposition from using the process of electoral disputes as a means of stalling the supply.

When the Convention reconvened on 2 July, there was an additional surprise for the opposition. Polwarth, whose election had earlier been disallowed, had been arrested in his night-clothes in a midnight raid on his lodgings. Supposedly, Polwarth had been involved in some ‘factious’ behaviour, and the warrant for his arrest, issued in Whitehall on June 27, alleged that he “had been of late very much endeavouring to create disturbances in some of the King’s affairs.”¹⁰⁵ The authorities made a very public search of all his papers, “thinking to make it appear that he has been tampering and keeping

¹⁰⁴ *Ibid.*, ff.30-1.

¹⁰⁵ *CSPD* (1678), ‘Warrant to apprehend Polwarth,’ p.254.

correspondence with some members of the House of Commons.”¹⁰⁶ The Commissioner obviously had had enough of the opposition’s actions. Lauderdale made a speech warning the that “he knew very weel many honest men in the house wer infected with malicious and scurrilous reports, as unreasonable as false.”¹⁰⁷ The remaining double elections still to come before the Convention were to be dealt with swiftly, so they could proceed to the business of the supply.

Before the discussion of the double elections got under way, there was one unusual item to be dealt with. At the session held on 29 June, it had become apparent that there were a number of interlopers present in the chamber. Indeed, Fountainhall claims that a “great throng” had entered to hear the result of the disputed elections, so much so that an order was issued that allowed only elected members entry to the room.¹⁰⁸ This, it seems, did not prove much of a deterrent. On 2 July, Henry Fletcher, brother of James Fletcher of Saltoun, commissioner for Haddingtonshire, was ‘observed’ in the chamber and was immediately sent to the Tolbooth. The Commissioner was now fairly confident that only the elected members remained.¹⁰⁹

The double election of Ayr was the first to be discussed. Four commissioners had been elected to the seat: Sir John Cochrane and Sir John Cunningham, and in the other commission, William Blair of that Ilk and Sir James Dalrymple of Stair (who also had been elected as commissioner for

¹⁰⁶ *Ibid.*, Newsletter, 2 July 1678, p.270.

¹⁰⁷ NAS GD 6/1108, ‘Minutes, 1678,’ f.32.

¹⁰⁸ Fountainhall, *Historical Observations*, p.277. If such a number had entered into the chamber, and were mingling with the commissioners, it begs the question: could some have actually taken part in the voting?

¹⁰⁹ The following day, possibly in retaliation, James Fletcher of Saltoun complained that ‘little William Talmush’ was present, although he too was not a member. Lauderdale claimed that the man in question was one of his personal servants, whom he had the privilege to bring in. Fountainhall, *Historical Observations*, p.277 .

Wigtownshire). The commission of Sir John Cochrane and Sir John Cunningham, despite having almost three times the amount of signatures as its rival, was found null, simply because the Clerk of the Convention had not signed it.¹¹⁰ There were immediate protests that this was an antiquated notion that had not been routinely practised. This was irrelevant, members of the committee replied: Cochrane would have been excluded anyway because he had not signed the bond against conventicles. Blair's election was confirmed, and he was to serve as the only commissioner for Ayrshire because Stair had been elected for Wigtownshire.¹¹¹

The election of Stirling was decided also in the government's favour. The commission of John Murray of Touchdam and Polmaise and Sir Charles Erskine of Alva was rejected in favour of Sir John Stirling of Keir and James Seton of Touch. The objection to the first commission centred on the ineligibility of the electors.¹¹² At this, the Duke of Hamilton rose and complained that this was contrary to the decision made regarding the Berwickshire election. The Convention had agreed in a vote that it was not viable to investigate individual electors, and yet this was why Alva and Polmaise were now being excluded.

¹¹⁰ NAS Supplementary Parliamentary Papers PA 7/22/130 and 131, ff.259-262. The future conduct of both men gives ample evidence of their political loyalties: Cochrane fought on the losing side at the battle of Bothwell Brig; Cunningham was to travel to Court with Sir George Lockhart in 1679 to support the charges made against Lauderdale. A newsletter sent from Edinburgh gave more details of the contest. Allegedly, a member of the Privy Council was sent to the election, and "made use of his authority" to cause the clerk to sign the commission for the candidates with the lesser amount of votes. CSPD (1678), Newsletter from Matthew Mackail to Sir John Frederick, p.252.

¹¹¹ Fountainhall, Historical Observations, p.267; NAS GD 6/1108, 'Minutes, 1678,' f.32.

¹¹² Hamilton had earlier asserted that "Stirlingshire has double elections, Alva and Polmaise and Keir and Touch, the last two will lose it, if it be judged in Parliament according to law, for they have many voices that was not capable to choose." Drumlanrig Castle, Transcripts of Queensberry Letters, No.20, 11 October 1677 (former NAS reference - GD224/171/4/20).

Hamilton seemingly received no answer, and the subsequent vote confirmed Keir and Touch as commissioners.¹¹³

The two remaining double elections were dealt with the following day. In the Renfrewshire election, Sir John Shaw of Greenock and Sir George Maxwell of Nether Pollok were preferred over the second commission. However, after Lord Ross complained that Sir George Maxwell had refused the bond against conventicles, he too was excluded.¹¹⁴ In the case of Dunbartonshire, the Committee's opinion was that the commission to Sir Patrick Houston of that Ilk and William Hamilton of Ormiston should be preserved, and that of John Smollett was rejected.¹¹⁵ Immediately, Alexander Stewart, fourth Lord Blantyre protested that Houston and Ormiston's commission lacked the Clerk's signature, and therefore, considering the decision of Cochrane and Cunningham for Ayr, should be disallowed. If they proceeded differently, the Convention "would destroy this day what they had built the day befor," Blantyre argued. When the vote was held, though, Blantyre was totally disregarded, and Houston and Ormiston were confirmed.¹¹⁶ Yet still Blantyre protested: if the rejected commissioners for Ayr had not already left Edinburgh on their journey home, they too could have been admitted on the precedent set over the Dunbartonshire

¹¹³ NAS GD 6/1108, 'Minutes, 1678,' f.34.

¹¹⁴ *Ibid.*, f.35. In the election for Renfrewshire, Hamilton's associate, Lord Cochrane had written to Sir John Maxwell, Sir George's son, telling him to be careful that "such be chosen as ar honest men for the kings service and the countrey's true interest." Glasgow City Archives, T-PM 113/330, 28 May 1678.

¹¹⁵ NAS GD 6/1108, 'Minutes, 1678,' f.7; NAS Supplementary Parliamentary Papers PA 7/22/132, f.263. This individual is possibly John Smollett of Stainflett. His son, Sir James Smollett was commissioner for Dumbarton at the session of Parliament in 1685-6. M. Young (ed.), *Burgh and Shire Commissioners*, II, p.650.

¹¹⁶ Matthew Mackail, a writer of newsletters, claimed that Houston and Ormiston were followers of Hamilton, but even though their election was allowed, Hamilton and his supporters voted against their admission. A public demonstration, Mackail claimed, of "their opinion that thereby both the Convention and the Commissioner should make themselves ridiculous, having the former days of the trial of the members repelled very many in smaller grounds than could be alleged and were alleged against them." *CSPD* (1678), July 4 1678, p.274.

election. Lauderdale merely replied that the commissioners in question had gone home because they were "disaffected, and had refused to sign the declaration."¹¹⁷ The electoral disputes were finally completed. Now that the Convention was fully convened, the commissioners could proceed to the matter of the supply and the business to which they had been summoned.

The settling of the electoral petitions had taken almost two weeks. It had not been what the crown intended. The Committee was supposed to save time by dealing with the particulars of each individual case in private, and was instituted precisely to avoid the kind of lengthy arguments that had taken place. Hamilton had managed to debate each case in turn, although this made little difference to the outcome of the disputes. However, by making the Committee explain its decisions, it at least demonstrated to the gathered commissioners that it was only political considerations that determined elections. The discussions had been a huge embarrassment for Lauderdale, and as such, a major victory for the parliamentary opposition.

The Convention met for a short session on 4 July. The King's letter asking for a grant of supply to be raised through a cess was read, and then the Committee for the raising of the supply was selected. The Commissioner decreed that the membership should be the same as the Committee for Disputed Elections, with the additions of Robert Dock and Robert Watson for the burghs of Ayr and Dumbarton respectively. The Convention then adjourned for a period of three days to enable the committee to decide on the amount of supply and the method of raising it.

¹¹⁷ NAS GD 6/1108, 'Minutes, 1678,' f.35.

The commissioners reconvened on 8 July fully expecting to hear the report of the Committee for Supply. This was delayed, however, by further disagreements over the electoral disputes. During the calling of the Rolls, Hamilton interrupted by questioning the inclusion of William Blair of that Ilk as commissioner for Ayrshire; the committee had not yet reported on the legality of his election.¹¹⁸ The President of the Session, Sir James Dalrymple of Stair, who himself had been elected to the seat, immediately defended Blair's inclusion. He told Hamilton that it would be wrong to exclude Blair because the shire, having only one commissioner, would have no representation. It was not a particularly convincing argument. Indeed Sir Alexander Bruce of Broomhall, aware that many shires went unrepresented in the Convention, went as far as accusing Stair of stupidity. It was at this point that Lauderdale intervened. He was determined not to waste any more time discussing these tiresome electoral petitions, and he announced that all business regarding the elections was now over. Blair's inclusion in the Convention was put to the vote, and he was admitted by 140 votes. 30 voted against his election.¹¹⁹

The report from the Committee of supply was at last brought forth before the chamber. If the commissioner had thought that Hamilton's opposition would be centred solely on the disputed elections, he was to be immediately proved wrong. Barely had Lauderdale begun his reading of the report than the

¹¹⁸ There was one further membership dispute discussed in addition to this case. The Earl of Mar produced papers confirming his belief that the Earl of Buchan was under age, and that he was in fact three months short of his majority (see p.237). Yet the evidence was disregarded, and Buchan was thanked by the Commissioner for his determination to show his allegiance to the King. Hamilton and Dumfries apparently resented Buchan's presence "as a great indignity done to their estate." NAS GD 6/1108, 'Minutes, 1678,' f.38.

¹¹⁹ NAS GD 6/1108, 'Minutes, 1678,' f.37; British Library Lauderdale Papers, Ms 23242, 'Account of Convention of Estates, 1678,' Monday 8 July, f.75. This is the only detailed voting figure that exists, and it is almost certainly an accurate indication of the numbers allied to Hamilton and his Party. Fountainhall's estimate of 39 is therefore slightly inflated.

Duke of Hamilton intervened and demanded what use the government had for all the money that was to be raised - £150,000 to be collected five months of the year over a period of five years. The sum had been calculated to meet the necessary costs of raising troops to fight religious dissent, Lauderdale answered, and if Hamilton could suggest another sum that would cover all the expenses, he, for one, would be glad to hear it. Hamilton's reply was that he did not doubt the calculation, only that he thought the sum too great for the country to bear. Broomhall, who also agreed that the sum requested was excessive, added his concerns. Lauderdale's response was typically abrupt: the King had decided that a regiment of Foot, three troops of Horse and three troops of Dragoons were absolutely necessary for the security of the kingdom. The committee had found that nothing less than £30,000 a year could maintain these troops. If this had been agreed as the absolute minimum payable, why should there be any more debate?¹²⁰

The Earl of Argyll, Archbishop Sharp, Sir George Mackenzie of Tarbat, Sir George Gordon of Haddo and Sir Thomas Wallace, Justice Clerk all spoke in support of the Commissioner.¹²¹ A vote was held on whether £6,000 a month for 25 months should be the supply. It passed easily enough, with only the Earl

¹²⁰ NAS GD 6/1108, 'Minutes, 1678,' f.40. The proposal to renew the burden upon annual rents was bitterly opposed by many in the Convention, not only those within Hamilton's party. It was contended that the Convention could not over-ride the Act of taxation of 1661, and the provision was not inserted in the Convention's act for a new supply. Rait, *Parliaments of Scotland*, p.501.

¹²¹ Archbishop Sharp's speech was not as complimentary as the Commissioner would perhaps have liked. According to Nisbet, Sharp "fell upon a discourse shewing that he had always been of opinion himself that four monthes supply a year might have done what was needfull, but that day he had been convinced that nothing less than five could doe it." The speech was going down rather well until the Archbishop foolishly admitted that the cess would be "a great burden" on the country. He dug himself a deeper hole by stating that if the forces failed to tackle the problem of conventicles, they would be disbanded and the cess revoked. "Whither he red another lesson from the Commissioner's face or not, he ended thus" and he hastily concluded his speech with the assertion that it was "good to be in the King's reverence." NAS GD 6/1108, 'Minutes, 1678,' ff.40-1.

of Haddington, James Fletcher of Saltoun, Adam Cockburn of Ormiston (the two commissioners for Haddingtonshire), Robert Gordon of Gordonstoun (Sutherland), and John Anderson of the burgh of Dunfermline voting against the sum.¹²²

The final draft of the act was produced before the Convention on 10 July. After being read in its entirety, a number of concerns were raised by three of the members that had voted against its enactment. One particular clause of the act declared that all existing Commissioners of Excise were to be appointed as Commissioners for uplifting the Cess. Yet Ormiston, Saltoun and the Earl of Haddington, despite being Commissioners for Excise in their respective localities, had been omitted from the act. Ormiston demanded to know why? Lauderdale had a simple answer: as King's Commissioner, he would allow no man to have any hand in regulating that supply which they had voted against. Lauderdale's announcement prompted a flood of protest. Hamilton claimed that the three commissioners were not against the supply *per se*, only against the quota being five months per annum when they believed four was sufficient. For that reason, "he judged it far from the purpose to put a Note of Infamy upon any gentleman."¹²³ Hamilton then raised his own objections to the Act. Why was it that in almost every shire in Scotland, Sheriffs and their deputies were nominated as convenors of the cess, except in shires where he and some others were Sheriffs? He was assured that there was no design. In 'sound' shires, Sheriffs had been given the office; in others, the Lord Commissioner had nominated others "without any prejudicial intent." The Commissioner's brother,

¹²² *Ibid.*, f.41.

¹²³ *Ibid.*, f.43; British Library Lauderdale Papers, Ms 23242, 'Account of Convention of Estates, 1678,' 10 July, f.75.

Charles Maitland of Hatton was a Sheriff, yet he had not been chosen as a convenor of the cess. This example was meant to invalidate Hamilton's claim of a conspiracy against him, but it only added fuel to the argument. Hamilton furiously replied that Hatton, as Treasurer Depute, had "greater matters to employ him and such as would not permit him to waste upon such mean things."¹²⁴ Hamilton took his omission as a "mark of disgrace," and he, supported by the Earl of Southesk, demanded that an immediate vote be held to decide whether all shires should have their Sheriffs as convenors.¹²⁵

There was some additional quarrelling between the King's Advocate, the President of the Session, and George Livingstone, third Earl of Linlithgow over the exact wording of the vote, until it was finally resolved that the question should be whether the Convention approves the nomination of the Convenors made by the Committee. Again, there was no real chance that the initial list would be rejected, and all except 27 voted in favour of the list as it stood.¹²⁶

The blatant exclusion of Hamilton and his allies from the list of cess convenors was a tactless move on behalf of the government, yet the only significant gesture the opposition were left to make was to withdraw from the Convention. After desiring that all traces of his name be removed from the list for the shire of Lanark, "for if he were not permitted to serve the King in the same capacity with others of the lyke office, he would keep none of their meetings to his ounè disparagement," Hamilton stormed out of the chamber. He

¹²⁴ It is important to note that Hamilton had no such office to keep him occupied. He had felt woefully undervalued for some years and, constantly overlooked for key positions, it was this that finally pushed him into a position of opposition.

¹²⁵ NAS GD 31/121 Fea of Clestran [Flett] Collection, A. Gibson to Henry Graham of Bracknes, 6 August 1678. This source states that Dumfries, Atholl and some Sheriffs of the Shires joined Hamilton and Southesk in the demand for a vote on the convenors.

¹²⁶ British Library Lauderdale Papers, Ms 23242, 'Account of Convention of Estates, 1678,' Wednesday 10 July, f.79. The 27 are not identified, but they were likely to have been Hamilton's core group of supporters.

was joined by the Earls of Southesk, Roxburgh, Tweeddale, Haddington, Viscount Kenmore, John Hamilton, second Lord Bargany, Adam Cockburn of Ormiston, James Fletcher of Saltoun (both Haddingtonshire), Cromwell Lockhart of Lee and Sir Robert Hamilton of Silvertonhill (both Lanarkshire). The full act was then presented before the remainder of the Convention, and just the Bishop of Dunblane and the Earl of Dumfries (who “approved what related to the King, but not the other circumstances”) voted against its enactment.¹²⁷

By their actions, Hamilton and his allies were unwittingly assisting the government’s agenda. For, although not all the Duke’s supporters had accompanied their leader from the chamber, there was little chance that any of the remaining opposition members would stand isolated against the rest of the Convention. Only one of the electoral disputes had been decided in their favour, despite the best efforts of all involved. The opposition’s objections raised to various clauses of the Act of supply were likewise ignored. One of the government’s allies writing from Edinburgh to London had confidently predicted as early as 29 June that “it matters not much tho they should oppose the matter of the supply since ... they can neither hinder nor stop any thing in this Convention.” Since the meeting of the estates had convened, Hamilton and his supporters “opposed every thing” that was brought before the chamber, yet, in this correspondent’s view, it was strikingly obvious “how little ther opposition signified.”¹²⁸

The parliamentary opposition, despite not having the numerical authority to challenge any of the decisions in the Convention, did, however, manage to

¹²⁷ NAS GD 6/1108, ‘Minutes, 1678,’ ff.43-5; British Library Lauderdale Papers, Ms 23242, ‘Account of Convention of Estates, 1678,’ Wednesday 10 July, f.79

¹²⁸ *Ibid.*, ‘Account of Convention of Estates, 1678,’ f.74.

mount a successful attack on Lauderdale. By constantly challenging his authority, Hamilton and his allies were making an overtly public statement: Lauderdale did not possess the absolute control that he liked to boast of. The Party mounted a successful challenge to the Commissioner's authority, in order to hear the details of the disputed elections in front of the full chamber. When the particulars of these cases were revealed, it was ample demonstration of the arbitrariness of those presently in command. Lauderdale recognised as much when he attempted to secure a private agreement with Hamilton to prevent these particulars becoming known.

* * * *

The one remaining item to be considered before the Convention's adjournment was the reply to the King's letter. According to Fountainhall, Sir George Mackenzie and John Paterson, Bishop of Galloway had penned the initial draft. The letter attempted to make light of the opposition in the Convention, and informed the King that although there were regrettably some disaffected subjects in his kingdom, there was no danger of rebellion. In a thinly veiled sneer at Hamilton and his supporters' impotence, the letter went on to assure the King that in the actual Convention, "the interest of those [disaffected subjects] appeared to be very small." The Duke of Lauderdale's "management of affairs in this Convention hath justified your Majesties choice of him," continued the letter. His sterling work as Commissioner would be a witness of his sufficiency.¹²⁹ The letter finally concluded with a comparison that some contemporaries regarded as blasphemous: "Your Majesty, who uses

¹²⁹ NAS PA 8/1, ff.190-1; NAS GD 6/1108, 'Minutes, 1678,' ff.45.

always to lessen our greatest guilt and to heighten the value of our meanest endeavours ... a King, who like God (from whom alone our Kings derive their power) never uses his power but to do good.”¹³⁰

With the majority of the earlier opposition absent, it was left to the Earl of Perth to make the lone complaint of the letter. After stating that he was as dutiful as any of the King's subjects and that he “took no reflection to himself of what was in that letter,” he declared that in reference to Lauderdale's tenure as Commissioner, he would “applaud nothing of his procedure.” It was a stance that Hamilton and his allies would certainly have approved of. The Commissioner merely replied that it was too late to discuss the letter, and he adjourned the Convention to the following day. At this session on the 11 July, the letter was twice read and, without a vote, was subscribed with a general assent.¹³¹ The Convention of Estates then formally dissolved.

* * * *

Lauderdale celebrated the end of the Convention in style by entertaining the remaining commissioners with “a most splendid dinner.”¹³² He returned to England to a tremendous welcome from the King, who gave his due thanks for what his Secretary had achieved in the Convention. Fountainhall was one contemporary forced to admit that the Duke of Lauderdale “had recovered any

¹³⁰ Rait believes that the language of the Convention's letter “represents the most complete domination obtained by the crown over the Estates.” This, I would question. Lauderdale was probably using the letter to proclaim his own victory both over Hamilton and his English enemies at Court. I doubt it was a considered treatise on the nature of kingship. Rait, *Parliaments of Scotland*, p.84.

¹³¹ NAS GD 6/1108, ‘Minutes, 1678,’ ff.45-6.

¹³² British Library Lauderdale Papers, Ms 23242, ‘Account of Convention of Estates, 1678,’ f.74.

thing he lost in the Parliament 1673.” Yet Fountainhall had similar praise for the parliamentary opponents of the Commissioner:

Duke Hamilton went away from the penult[imate] meeting in a passion; yet it cannot be denied but the Duke of Hamilton all alongs behaved himselfe very weel, and showed much acuteness and readiness of wit in his reasonings, and very prudently did tak the advantage to retort his adversaries arguments against themselves.¹³³

Here lay the Party’s success, for, although they did not have the numbers of supporters necessary to mount a serious challenge to measures such as the passage of the Supply, they successfully managed to discredit Lauderdale. Few would have agreed with the assertions made in the Convention’s reply to the King’s letter that Lauderdale had managed the Convention with justice and equity.

Prior to the Convention, the crown’s opponents had stood in good stead. They had successfully recruited some of Lauderdale’s key allies to their side, and after the debacle of the Highland Host they were certainly not short of sympathisers in the localities. However, some advantage was lost when men such as Kincardine and Atholl refused to attend the Convention. The unprecedented level of government interference in local elections certainly dented hopes of a significant opposition presence in the chamber, and Hamilton did not have the numerical supremacy that was needed to check the Commissioner’s agenda. Yet despite the early defeat over the membership of the Committee for Disputed Elections, the opposition successfully ensured that the particular cases considered by the Committee were heard before the full chamber. The contradictory nature in the outcome of many of the electoral

¹³³ Fountainhall, Historical Observations, p.279.

contests revealed to all that the decisions were dictated purely by political concerns.

Actively expressing any form of opposition could be considered an achievement in itself, considering the unprecedented management that had been taken over the membership. However, Hamilton was not able to take advantage of the other estates' grievances as he had done in 1673. The majority of the burghs remained unwaveringly loyal to the Commissioner, since they had learnt to their cost in the Convention of Royal Burghs how unwise it was to oppose the crown. Only a few opposition shire members had been elected in the face of the government's interference in the elections. The Duke of Hamilton did not have the breadth of support he had enjoyed in the last session of Parliament.

Ultimately, Lauderdale survived because he had the continued support of Charles II, and this was the crux of the problem for the opposition. The Commissioner represented the King, and it made no difference that many resented his long tenure and found his attitude to the Scottish Parliament offensive: this in itself was not enough to persuade the majority of the gathered estates to join forces against Lauderdale. It was likewise inconceivable that Hamilton and his allies would follow the example of the religious dissenters and actively resist the government, because they too remained consistently loyal to their King.¹³⁴ And as long as Lauderdale maintained the favour of his master, there was little chance that he would be removed.

¹³⁴ Matthew Mackail, a writer of frequent newsletters giving an account of events at the Convention, came to this conclusion: "Hamilton can make no interest in this kingdom unless he join with the Presbyterian interest, which hitherto he has always declined." *CSPD* (1678), 11 July 1678, pp.284-5. Such an alliance seemed impossible, however, because the parliamentary opposition did not wish to alienate themselves from the crown.

The Duke of Lauderdale's grasp on Scottish affairs began to loosen with the outbreak of rebellion in 1679, and with the arrival of James, Duke of York in Scotland in 1680, he was finally cast aside. Yet the opposition's grievances were not to be resolved simply by the political demise of Lauderdale. The political problems that plagued the years 1674-78 were not simply about the removal of one deeply unpopular minister. Beneath this often personal battle between the two Dukes lay a debate about the limitations of royal authority and the role of Parliament.

Very little actually changed after the Commissioner's fall, for, it was soon apparent that the Duke of York largely shared Lauderdale's attitude towards Parliament. The next session of the Scottish Parliament in 1681, held under the authority of a Catholic heir to the throne, would bring about a whole new set of problems.

Chapter Seven

The Parliament of 1681

The three-year interval between the Convention of Estates in 1678 and the next session of the Scottish Parliament in 1681 saw significant changes in the administration of Scotland. The political demise of the Duke of Lauderdale, arguably the most eminent Scot of the age, was overshadowed only by the elevation of James, Duke of York to the position of the King's chief Scottish minister. His inaugural period in command of the Privy Council was a resounding success, and when appointed Commissioner for the 1681 session of Parliament, the Duke of York had established a political alliance that encompassed crown supporters old and new. This he had achieved by treating Lauderdale's clients well, while also extending an olive branch to the Secretary's greatest enemies, Hamilton, Queensberry and the previous supporters of the Party.

The organised opposition that had plagued Lauderdale at every meeting of the Estates for almost a decade had largely been reconciled to the crown when the 1681 session of Parliament assembled. However, a vocal minority in the chamber voiced disquieting concerns about the spread of popery, and by implication, the rule of the Catholic Duke of York himself. The legislation of this session – an extension to the existing Supply, recognition of the Duke of York's claim to the throne, and a Test Act requiring fidelity to the King regardless of his religion - tested even the most moderate men. Skilful management of parliamentary time and procedures enabled the legislative

programme to pass relatively smoothly, but this too drew criticism. By the end of the session, it had become apparent that the Duke of Lauderdale and his much-maligned style of leadership had not been vanquished, only replaced.

* * * *

The formal adjournment of the Convention of Estates on 11 July 1678 did not see an end to Party activities to oust Lauderdale from office. Although, as one contemporary noted, in the days following the adjournment "both parties seem asleep, one having perfected his seven days' work, the other through the grief of his disappointment," it was widely believed that this was not the end of the political conflict; that "in a short time, both interests will awake and try the other's strength in further contests."¹ Observers did not have long to wait. When Lauderdale left Edinburgh for a short spell at his country retreat at Lethington, near Haddington, prior to proceeding to Court, Hamilton returned to the city, most probably for meetings with his supporters. By 23 July, hot on Lauderdale's heels, Hamilton too had left for London.²

Hamilton's journey south was not in vain, for unlike his visit in 1674, this time he was granted a personal audience with the King and James, Duke of York. At this conference, Lauderdale represented to his master the many "bad offices" Hamilton had done the King, especially in the last Convention where he had consistently brought the crown's prerogative powers into question. Hamilton defended his actions, declaring that he had only wanted to see the Convention conform to the laws and practices of the kingdom. He warned that

¹ *CSPD* (1678) (London, 1913), Matthew Mackail to Sir John Frederick, 16 July 1678, p.291.

² *Ibid.*, p.292; 312. "These two dukes," wrote Mackail, "are like two buckets in a well; when the one goes, the other comes."

“his Majesty’s government was destroyed and not supported by illegalities ... [which] left a stain and a blot on the government.” The King seemed unwilling to take any firm stand, and instead, postponed any action by ordering Lauderdale to put his complaints in writing.³

Hamilton must have been pleased to have finally represented his version of events to the King; Lauderdale was obviously less enthusiastic at the relatively warm reception his opponent had received. That very night, James Daes, one of the advocates who had followed Hamilton to Court, was seized and “clapt up à la mode of Sir Patrick Home of Polwarth” for alleged comments he had made regarding the power of the King over the estates.⁴ The imprisonment of the unlucky lawyer was no doubt intended to be a reminder of the power Lauderdale still possessed.

* * * *

In Scotland, Lauderdale seemed unshakeable. It was noted that all judicatories “are absolutely at [the] D[uke] of L[auderdale’s] beck, that in judgement a dog cannot move his tongue against him ... he is able to effectuate anything he pleases, and every day his hands wax more and more strong.” To sustain this superiority, great care was to be taken that no “Presbyterado creep into the government.”⁵ Thus, in December, a number of council officials in Edinburgh were ousted from their positions because of their refusal to subscribe the Declaration. Some members of the opposition were beginning to despair of

³ *Ibid.*, Matthew Mackail to Sir John Frederick, 19 October 1678, p.468.

⁴ *Ibid.*, p.468. Polwarth was arrested during the Convention of Estates in 1678, under suspicion of colluding with Lauderdale’s enemies in the House of Commons. He had earlier been imprisoned for a time from 1675 to 1676. See Chapter Six, p.246.

⁵ *Ibid.*, same to same, 22 October 1678, p.477; same to same, 7 December 1678, p.559.

ever regaining a position of authority in the government of Scotland. Tweeddale, one of Hamilton's most prominent supporters, attempted a reconciliation with Lauderdale: "If yow please to call to mind ... what yow self has som times said (let bygones be bygones), your Grace shall finds non more willing and ready to serve you than I," wrote Tweeddale in January 1679.⁶ The Secretary seems to have shunned Tweeddale's plea for a rapprochement, but the attempted defection of one of the Party's key figures indicated that some may have lacked the desire to persist in opposition.

It was events in England that eventually threatened Lauderdale's dominance. Implicated in the Popish Plot, Sir Thomas Osborne, Earl of Danby, one of the King's key supporters, had been impeached in December 1678 by the House of Commons, despite attempts by Charles to save him. The First Exclusion Parliament had shown itself to be less than supportive of the Court interest, and so when Lauderdale was attacked first on 25 March 1679 by Shaftesbury in the Lords and then on 8 May in the Commons, he could not expect the same degree of support from the King as in former times.⁷ Shaftesbury's address made blatant references to Lauderdale's policies in Scotland (and, for this, the Duke of Hamilton doubtless furnished him with information): in England, popery was to have brought in slavery; in Scotland, slavery went before, and popery was to follow. The Highland Host had proved

⁶ British Library Lauderdale Papers, Ms 23243, 19 January 1679, f.5. Tweeddale was possibly attempting a settlement for the benefit of his (and Lauderdale's) grandchildren. Relations between the two families had always been cordial until Lauderdale's marriage to the Countess of Dysart, but Tweeddale believed that his grandchildren had been virtually abandoned after the attempt to settle the Maitland estates on Hatton's son. See Chapter Five, pp.170-1 for the events surrounding the dispute.

⁷ Not only was Danby now imprisoned in the Tower, another of Lauderdale's main supporters, the Duke of York had been sent to Flanders to escape the fall-out over the Popish Plot. The King also seemed increasingly lukewarm in defence of his Scottish Secretary. Mackenzie, *Life and Times of Lauderdale*, p.461.

what the English had feared for years: that a standing army was ready and was likely to invade England, possibly at the behest of a Catholic monarch.⁸ It was looking increasingly probable that if opposition in England continued against Lauderdale, Charles would be forced to sacrifice his Scottish minister.

Not only under attack in England, the familiar problem of religious dissent north of the border made Lauderdale's position even less secure. The departure of the Secretary from Scotland in the summer of 1678 had been the signal for an increase in conventicles and religious unrest. Scuffles between troops and attendees at a large conventicle held at Lesmahagow began an escalation of violence that eventually culminated on 3 May 1679 in the brutal murder of Archbishop Sharp near St Andrews. Such an event called for immediate retaliation and was used by the Privy Council as justification for extreme measures of suppression. However, government forces met with an embarrassing defeat at Loudoun Hill in early June.⁹ The disorder in Scotland proved the ideal ammunition for Shaftesbury in England, and an opportunity for the opposition party in Scotland to perhaps gain the upper hand. Appendix V is a contemporary list of candidates sent from Scotland to the Earl of Shaftesbury of those suitable to replace Lauderdale and his associates once they had been removed from power. Written about this date, it seems that the opposition on both sides of the border was more confident than ever that this would be the outcome they had so long desired.

In response to increasing complaints from the Scottish nobility about the recent unrest, the King agreed to arrange a conference at Court. Hamilton and

⁸ *Ibid.*, pp.459-60.

⁹ Buckroyd, *Church and State*, pp.129-30; *RPCS*, VI, pp.160-7, 174-8, 180, 207-8.

various supporters, accompanied by four lawyers - Sir Archibald Primrose, Sir John Nisbet, Sir Robert Sinclair and Sir John Cunningham, who were required to give legal advice as to the present situation - met with the King in late June. A paper submitted by Hamilton asserted that "the present disorders and confusions in Scotland had been occasioned by the Duke of Lauderdale and others intrusted by him [in] their mismanagement of his Majesties government." The lawyers argued that for a number of years the administration of public affairs was both contrary to law and had infringed the rights and liberties of the nation's subjects. Lauderdale's ministry was the very cause of the present disquiet, but the situation could be resolved without interference from England if loyal persons were appointed to office.¹⁰ There was little time for such remedial action, however, because matters in Scotland had continued to escalate, with the Privy Council admitting in a letter to Lauderdale that Scottish troops would be unable to control an uprising. Thus, English troops under the command of James Scott, Duke of Monmouth were sent north and the rebels were defeated at Bothwell Brig on 22 June.¹¹

When the news of the insurrection reached England, there were immediate demands by the English Privy Council that Lauderdale be removed from power. Under increasing pressure, the King agreed to hold an additional conference at Windsor on 8 July. Hamilton, John Murray, second Earl and first Marquis of Atholl, and Sir John Cochrane, accompanied by their legal advisors, Sir George Lockhart and Sir John Cunningham, had never had a better opportunity to oust Lauderdale. But yet again they were disappointed. Sir George Mackenzie

¹⁰ Supplement to Hamilton HMC, pp.99-100.

¹¹ Buckroyd, Church and State, p.130; RPCS, VI, pp.218-9.

appeared on behalf of Lauderdale and the Privy Council, and single-handedly proved to the King that all charges made against the Secretary and the Council were false. Hamilton's two lawyers were forced to admit that, by law, the King's ministers had done nothing that was not within the crown's prerogative powers.¹² Lauderdale was secure in his office for the immediate future.

Hamilton's grievances were the basis for three pamphlets, published throughout 1679. 'An Account of Scotland's Grievances under Duke Lauderdale tendered to the King' largely drew on the particulars of Hamilton's presentations to the King throughout his stay at Court. The second published attack came in the 'Some Particular Matter of Fact relating to the Administration of affairs in Scotland, under the Duke of Lauderdale.' This specifically singled out the corruption that had flourished under Lauderdale's rule – the manipulation of the magistracy of Edinburgh, the illegal imprisonment of innocent people, and the bribery that had become endemic in Scottish society. Lauderdale made active attempts to suppress its distribution.¹³ The third pamphlet, 'Some farther matter of Fact relating to the Administration of affairs in Scotland, under the Duke of Lauderdale,' had a decidedly English partiality, suggesting that it was written to mobilise opposition south of the border. Although this attack touched on Scottish matters such as the Highland Host and corruption, it also addressed specifically English concerns – Lauderdale's

¹² Wodrow, Sufferings of the Church of Scotland, III, pp.168-71; Lang, Sir George Mackenzie, pp.177-8; Mackenzie, Life and Times of Lauderdale, p.473-4. After the opposition had returned home, the King wrote a letter to the Council exonerating the judicatories and especially the Duke of Lauderdale from the complaints raised against them by certain members of the nobility. That Lauderdale, who lived the majority of the time in London, should be blamed for all the actions of the Council, tended only "to defame your persons and administrations." RPCS, VI, pp.280-1.

¹³ RPCS, VI, pp.271-2. The Council called for the immediate apprehension and chastisement of the libel's authors.

popish tendencies, his contempt for the House of Commons, and his subservience to France.¹⁴

Hamilton and his supporters left the conference downcast, although it seems that they had been given private assurances that Lauderdale was to be forced into resignation from his post at some point in the near future.¹⁵ To silence the opposition in both kingdoms, new, more lenient policies were introduced under the supervision of the Duke of Monmouth.¹⁶ A Declaration of Indulgence was proclaimed on 4 July with an indemnity for the rebels involved at Bothwell Brig. On 13 August, at a special meeting of the Privy Council, a letter from the King was read which extended the indemnity to all past offenders that had been convicted of ecclesiastical offences. It was unlikely that Lauderdale was behind this obvious reversal of a policy he had so championed. It seems that decisions were now being made that bypassed the most senior Scottish minister.¹⁷ As such, it was becoming increasingly apparent that the King had finally decided to abandon Lauderdale in the interests of the crown's political fortunes in

¹⁴ 'Some farther matter of Fact relating to the Administration of affairs in Scotland, under the Duke of Lauderdale,' (1679), p.3.

¹⁵ Lang, *Sir George Mackenzie*, p.179; Hutton, *Charles II*, p.376.

¹⁶ Burnet claimed that the Indulgence and indemnity for the rebels involved at Bothwell Brig were Monmouth's own initiatives. Burnet, *History of His Own Time*, II, p.239.

¹⁷ One incident was ample evidence of Lauderdale's fall from grace. William Veitch, a conventicle preacher had been arrested in England, and sent to Edinburgh for trial. Veitch informed the Earl of Shaftesbury of his plight, who successfully persuaded the King that this was an infringement of the rights of an English subject, and the Privy Council was ordered to release the prisoner. The whole incident was an affront to Lauderdale's authority. Buckroyd, *Church and State*, p.131.

England.¹⁸ In October, Lauderdale's demotion was finally achieved when the Duke of York was sent in his place to oversee the administration in Edinburgh.¹⁹

* * * *

James, Duke of York was sent to Scotland largely to escape the Exclusion crisis unfolding in the English Parliament. He arrived in Scotland to an enthusiastic reception, but it was not long before the problem of his religion raised difficulties north of the border as well. On 6 November 1679, a number of Privy Councillors (including Sir George Mackenzie of Rosehaugh and Charles Maitland of Hatton) wrote to Lauderdale questioning whether the Catholic Duke could take his seat on the Council without first taking the oath of allegiance (and therefore the declaration against his religion). It would be impossible for the King to dispense with the oath by a simple letter because it was a statute and thus a "parliamentarie contract betwixt King and people." To ignore the oath and allow the Duke to take his place may have its own difficulties, since it would put in question the very validity of the declaration.²⁰

In response to the query, Lauderdale wrote to the Duke advising him that if he refused to subscribe the oath, he should not sit on the Council. To do so "would give too great advantage to your Enemies here and to that pitifull Cabal

¹⁸ Hamilton was understandably elated by the turn of events. Writing to Queensberry, he declared: "I hope Lauderdale's pretensions will trouble you no more when he has been so severely chequed; and I doubt not but so soon as the report comes to his Majestie, his brother's affairs will have the same success," Drumlanrig Castle, Transcripts of Queensberry Letters, No.56, 31 July 1679 (former NAS reference - GD224/171/4/56). Queensberry had been readmitted to the Privy Council in July 1679, although he did not attend regularly until September.

¹⁹ Buckroyd, *Church and State*, pp.130-1; Mackenzie, *Life and Times of Lauderdale*, pp.475-6. The Duke of York had hurriedly been summoned back to England in August after Charles suffered a short illness, heightening fears for the King's health. Charles revoked Monmouth's dual commission as Captain-General of the English and Scottish armies, and ordered him to return to England.

²⁰ *LP*, III, pp.181-2; British Library Lauderdale Papers, Ms 23245, ff.3-5.

in Scotland who wishes another person better than you,²¹ whatever their pretenses may be to you.” The Duke of York merely replied that he had sat on the Scots section of the English Privy Council without taking any oath. He strongly disagreed with Lauderdale’s advice that he should not take his place on the Scottish Council; to do so would only encourage any enemies. Again, York asserted that he would never take the oath. The Lord Advocate was drawing up a way around this mere technicality.²² Having first secured the King’s permission, York joined the other members of the Privy Council on 4 December without swearing the oath.

This was a unique situation. Whether or not the Duke of York’s presence on the Council was contrary to law, he was the heir to the throne. Who would dare question his decision? Lauderdale possibly hoped that it would be impossible for James to supplant him if he could not take up his place on the Council.²³ This moved failed, and James paid little attention to Lauderdale’s prophecies of doom concerning the factional divisions in Scotland. For the first short period of his attendance at the Council – December 1679 to February 1680 – James made several attempts at conciliation. Although the Duke of Hamilton remained aloof, sulking because many of his rivals were still in favour, his supporters, the Earls of Perth, Atholl and Queensberry, newly re-appointed as members of the Privy Council, were in regular attendance at sessions from December onwards.²⁴ The Earl of Dundonald, absent throughout much of 1679,

²¹ This refers to James Scott, Duke of Monmouth. The Duke of York was warned that he was to “expect no real duty, neither from the Party that opposed the King ... or the Phanaticks.” Lauderdale’s advice was little more than scaremongering. Indeed, despite his loyalty to the King, Lauderdale was probably not all that enthusiastic about York’s advancement to the position that he had held for so long.

²² *LP*, III, 18 November and 24 November 1679, pp.183-5.

²³ Buckroyd, *Church and State*, p.132.

²⁴ Hutton, *Charles II*, p.387.

also began to attend regularly once more. The Indulgence proclaimed by Monmouth after Bothwell Brig had been a great success, and the Duke of York was careful to ensure that the Council should use such moderation as would be conducive to the peace of the kingdom.²⁵ Although this suspension of widespread religious persecution was but a short one (the Indulgence was all but discarded by June 1680, when military force was again the favoured method of dealing with religious dissent), James' first period of office gave initial hope that the absolutism of Lauderdale's administration was over.²⁶

* * * *

In many ways, the personnel that governed Scotland under James, Duke of York remained similar to that under Lauderdale. James made up a "mongrell party of his owne in Scotland, partly composed of Lauderdale's friends and of other new ones whom York assumed."²⁷ Despite their inclusion on the Council, Atholl, Perth and other long-time Hamilton supporters were still very much on the sidelines. Mirroring English anxieties, many were privately concerned about the implications of a Catholic heir to the throne.

Nevertheless, it seems that some members of the opposition were unwilling to play the same role as they had against Lauderdale. In February 1680, Kincardine became dangerously sick, prompting another begging letter from Tweeddale to Lauderdale asking for possible advancement. He was again more

²⁵ RPCS, VI, p.273; p.393.

²⁶ Burnet tells of how the nobility and gentry, who had been "so long trodden on" by Lauderdale, were very impressed by York's government. He pursued moderate policies "for some time with great temper and as great success." Burnet, History of His Own Time, II, p.305.

²⁷ Fountainhall, Historical Observations, p.75.

than willing to discard his opposition politics for a return to office.²⁸ A more significant position was soon vacant, however. The Duke of Lauderdale finally resigned the post of Secretary in October 1680. He had recognised that the process to lay him aside was systematically being carried out, but also in latter months he had suffered from failing health due to a stroke. His last public act was a defiant one: voting for the condemnation of the Catholic Earl of Stafford.²⁹ This lost him the support of the Duke of York who, as Fountainhall records, "broke his power and his party all he could."³⁰ Alexander Stewart, fifth Earl of Moray, a close friend, was appointed Secretary of State in his place. Lauderdale approved of the choice, writing in a letter to Thomas Wallace of Craigie, Lord Clerk Register, "you may be sure my mind is, God be thanked, very much at ease."³¹

Re-organisation of the Privy Council had preceded Lauderdale's resignation. In May 1680, the Chancellor, the Earl of Rothes, was created a Duke, rewarded with a massive pension, and given the task of controlling Council policy. Many doubted whether he could stay sober long enough to fulfil his responsibility. Joining Rothes were the Earls of Argyll, Moray and Hamilton's ablest ally, William Douglas, third Earl of Queensberry. Sharp's replacement as Archbishop of St Andrews turned out to be Alexander Burnet, a staunch advocate of the policies of persecution that were now supposed to be ended. Instead, Burnet's appointment, along with a shift in Council policy against Indulgences, began a whole new cycle of religious repression, and James

²⁸ British Library Lauderdale Papers, Ms 23245, f.81.

²⁹ Mackenzie, *Life and Times of Lauderdale*, p.480.

³⁰ Fountainhall, *Historical Observations*, p.75.

³¹ Introduction to HMC, *Drumlanrig*, II p.5.

voiced his full support.³² Yet there was little evidence of an increase in dissenting activity. Instead, it seems that the policies of moderation were abandoned purely because James was intent on scoring political points in England. The Duke of Monmouth, Charles' illegitimate son and favoured candidate for the throne amongst the English opposition, was the architect of the successful initiatives regarding the Church, and so, by overruling his rival to the throne, James was making an overtly political statement.³³ More significantly for those in Scotland, another opportunity to finally settle the Scottish church had been allowed to slip away.

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Despite the Duke of York's supposed animosity towards Lauderdale, it was he whom he turned to for advice when appointed Commissioner of Parliament on 14 June 1681.³⁴ York was interested in mainly procedural matters; for example, the drafting of the private instructions that would be sent to the King prior to the first session and the procedure for choosing another President of Parliament (Roths, finally succumbing to his years of excessive drinking, was seriously ill and not expected to attend). Lauderdale's reply defended excessive government interference in parliamentary politics. It was vital for the government's interest that "the elections for shires and burroughs [be] secured, all the methods laid doune and a scheme drawn" before the meeting of Parliament. This enabled the Commissioner to "give more than a guess what

³² Hutton, *Charles II*, p.388.

³³ Buckroyd, *Church and State*, p.134.

³⁴ The King's solicitor, Sir William Purves, almost mistakenly proclaimed the meeting of Parliament on 13 June, but it being a Monday, and therefore not a market day or a day when the courts sit, there was no "confluence of people" in Edinburgh. The announcement was therefore postponed until the next day. Fountainhall, *Historical Observations*, pp.41-2.

would be the success" although he admitted that it was "impossible to foresee every particular [which] may be offered."³⁵ The appointment of the Duke of York as Commissioner caused some initial confusion. There was discussion as to whether the Duke should take on the title of Viceroy as it was "more august ... than that of Commissioner." Lawyers immediately rejected the notion, pointing out that a commissioner is tied to instructions, but a viceroy has no limitations at all."³⁶

Although Parliament had been called mainly to approve a new grant of taxation, the Duke of York's instructions dealt with a number of wide-ranging (and familiar) issues. New legislation was to be brought in to suppress 'fanatical schism.' Thus, specific acts were to secure the offices and liberties of the Bishops, and to prevent assassinations, further rebellion and conventicles. The current Act of supply was to be extended to fund additional standing forces. Legislation was to be put in place to assert the legal course of the descent and succession of the monarchy, "so that none may call the same in question."³⁷ Such a pre-emptive move would hopefully head off the kind of crisis that was gripping England.

The elections for Parliament were not as closely contested as in previous years, possibly because some of the opposition were unwilling to continue in that position. Indeed, it seems that the arbitrary decisions made in the Convention of Estates in 1678 concerning the many disputed elections had discouraged widespread opposition involvement in election contests in the localities. The annual Michaelmas elections of 1678 had been postponed, so

³⁵ British Library Lauderdale Papers, Ms 23248, f.14; 16-17.

³⁶ Fountainhall, *Historical Observations*, p.42.

³⁷ *CSPD* (1680-81) (London, 1921) 'Instructions to the Duke of York,' 4 July 1681, p.343.

“the whole shires of the kingdom [were] represented by the men they most abhor and the persons they entrust with their commission affronted and turned out of doors.”³⁸ New elections were, however, held for the Parliament, and, allowing for the usual fluctuations due to death and ill health, it seems that many of these men were replaced. 195 are recorded on the Rolls of Parliament: 12 clergy, 62 nobles, four officers of state, 57 shire and 60 burgh commissioners. Once again, the burgh membership seems to have been thoroughly purged. Of the 60 commissioners, 43 of those elected had no previous experience of serving in Parliament. It is likely that this was the result of the clampdown on the eligibility of candidates, and confirmed the burghs’ argument that if no non-residents were permitted to serve on their behalf, many burghs would be forced to send unqualified men in their place.³⁹ The shire membership seems to have escaped a widespread purge, although, 24 out of a total membership of 57 had never previously served in Parliament.

Only a small number of Hamilton’s staunchest allies from the Convention in 1678 managed to be successfully elected to Parliament. Among those who attended were Sir John Cunningham, who had gone to London with Sir George Lockhart (himself newly elected for Lanarkshire) to present charges against Lauderdale in 1679; Andrew Ainslie, Provost of Jedburgh, who had been banned from public office in 1675 for his involvement in drafting the dissident letter to the King from the Convention of Royal Burghs; and Andrew Fletcher of Saltoun, soon forced to flee to Holland due to his opposition to the current administration. Hamilton’s other main associates, Sir Patrick Home of

³⁸ CSPD (1678), Matthew Mackail to Sir John Frederick, 16 July 1678, p.291.

³⁹ For 28 of the 43 burgh candidates, this was their one and only appearance at a Parliament or Convention. The comparable figure for the shires was 14 of 24.

Polwarth, who was imprisoned for factious behaviour during the Convention in 1678, and Alexander Bruce of Broomhall, who vociferously heckled Lauderdale at every turn in the previous meeting of the estates, did not compromise their oppositional stance by attending. Both, however, were to return at the Revolution in the Convention of Estates in 1689 as prominent members of the Club.⁴⁰

Thus, it seems that there was a (albeit small) body of opposition candidates successfully elected to Parliament. However, from the outset, the Duke of Hamilton declared that he was unwilling to play the same role of leadership as he had formerly. As Burnet records, he said "that he had been in a storm of seven years' continuance by his opposing of Lauderdale and that he would not engage in a new one with a stronger party, unless he was sure of the majority, and they were far from pretending to be able to bring matters near an equality."⁴¹ It remained to be seen whether, without adequate leadership, those opposition candidates who had been successfully elected to Parliament could mount any successful challenge to the crown's legislative programme.

* * * *

The session formally opened on 28 July 1681, with the traditional 'riding of Parliament.' The format had changed somewhat at the instructions of the Duke of York, and this occasioned a number of protests to the Privy Council from

⁴⁰ Broomhall was described prior to the Revolution by Colin Lindsay, third earl of Balcarres as a leader of the Presbyterian and discontented party. Lord Lindsay (ed.), *Memoirs Touching the Revolution in Scotland by Colin, Earl of Balcarres*, (Edinburgh, 1841), p.12. Like all the Dumfries burghs that were heavily influenced by the Duke of Queensberry, he voted with the Court in 1700. He was later expelled from Parliament in 1702 for stating that the act establishing Presbyterian government contained certain things inconsistent with the essence of monarchy.

⁴¹ Burnet, *History of His Own Time*, II, p.309.

nobles who were determined not to lose their precedence.⁴² Along with the gathered estates in the chamber, a number of seats at the end of the row where the burghs sat were kept free for the Duchess of Albany, her daughter, and a number of their ladies-in-waiting. They sat only for this first day.⁴³ After the Duke of York's commission was read, the Marquis of Atholl, Lord Privy Seal, was appointed President of Parliament.⁴⁴ As had been predicted, Rothes' illness had been life threatening. He died of jaundice, the result of years of heavy drinking, at Holyrood a day before Parliament met.⁴⁵ Atholl took over the position of President, but there remained no Chancellor or Treasurer.

Next, the King's letter was read, which identified the succession of the throne and the peace of the church as matters that were to be legislated for in this session.⁴⁶ The Lords of the Articles were then elected by the procedure set out in the Act of 1663. The difference in membership of this key committee from previous sessions provided the greatest evidence of the change in Commissioner.⁴⁷ Hamilton, Perth, Dumfries and Queensberry were among the

⁴² Fountainhall, Historical Notices, I, p.302; Miscellany of the Maitland Club, III, Part I (Edinburgh, 1833), 'An Act by His Royall Highness His Majesties High Commissioner and Lords of the Privy Council, establishing the order of the Ryding etc. at the Opening of the Ensuing Parliament, 25 July 1681,' pp.119-127.

⁴³ NAS Supplementary Parliamentary Papers, PA 7/11/8, 'Minutes of Parliament, 28 July to 13 September 1681,' f.21; Fountainhall, Chronological Notes of Scottish Affairs, from 1680 'til 1701: being chiefly taken from the Diary of Lord Fountainhall (Edinburgh, 1822), p.19.

⁴⁴ Fountainhall records that "some expected a motion on the reading of the Duke of York's commission in the house, that it should have been objected against the Commissioner, that he was not so capable of so hy a dignity, not being a Protestant ... that he ought to swear the allegiance and supremacy which no Papist without a dispensation could weel doe." Fountainhall, Historical Observations, p.46. Burnet maintains that above 40 members of Parliament had promised to side with Hamilton if he would insist on the Commissioner taking the required oaths. When he refused, "many who were offended at it complained of D[uke of] H[amilton's] cowardice." Burnet, History of His Own Time, II, p.308.

⁴⁵ Burnet famously remarked that Rothes "delivered himself without either restraint or decency to all the pleasures of wine and women. He had but one maxim, to which he adhered firmly, that he was to do everything, and deny himself in nothing, that might maintain his greatness, or gratify his appetites." Burnet, History of His Own Time, I, p.187.

⁴⁶ NAS PA 2/31, ff.3-4.

⁴⁷ NAS Supplementary Parliamentary Papers, PA 7/11/7, 'A Note on the Journal of Parliament, 28 July 1681.'

noble members; Sir George Lockhart of Braidwood and Sir George Gordon of Haddo were among those for the shires.⁴⁸ Only Hamilton had been allowed on the Committee under Lauderdale, thus ensuring that the opposition party had little influence on the chief parliamentary committee. Although vastly outnumbered by crown supporters, the appointment of these Party members to the Articles was a significant step, signifying the end of their political isolation that had bred much of their discontent.

When Parliament met for a second day on 1 August, the 1662 Act for Ordering the House was revived. Lauderdale had informally enforced this in the Convention of Estates of 1678 to deal with the problem of the large numbers of interlopers who mingled with the elected members in the chamber. The act specifically ordained that only those who were officially members of Parliament could attend debates. Next, the draft of the King's letter was brought in to the chamber. Sir John Cochrane of Ochiltree, commissioner for Ayrshire, tabled a motion for the delay of the letter until all the controverted elections had been dealt with and the full membership was present.⁴⁹ This was not seconded, and so was refused. Sir John Cunningham of Lambrughton, the second commissioner for Ayrshire, was the first to raise the issue of religion. He argued that, considering the great significance of the King's request for legislation to protect the Protestant religion, there should be more time for members to fully consider the tenor of the Parliament's reply. The Duke of Hamilton, the Lord Advocate, Sir George Lockhart and Sir George Mackenzie

⁴⁸ NAS PA 2/31, f.4.

⁴⁹ Sir John Cochrane was the second son of the William Cochrane, first Earl of Dundonald. His strong covenanting views were well known: after accompanying Hamilton to London in 1679, he was present at the battle of Bothwell Brig. Implicated in the Rye House Plot in 1683, he fled to Holland, only to return at the time of Argyll's rebellion. *Scots Peerage*, III, p.346.

of Tarbat all insisted that there was nothing in the answer that would anticipate the Parliament's subsequent discussion.⁵⁰ The letter was put to the vote, and passed with only two negatives, that of Cunningham and William Anstruther of that Ilk, one of the commissioners for Fife.⁵¹

Hamilton and his allies, despite their earlier election to the Articles, were all absent from the Committee for Disputed Elections that had been selected on the first day of the session. This was now set up as a matter of course, to deal with the increasing problem of election petitions. Unlike the Articles, there was no election to choose the members: the Commissioner nominated 12 men, three from each estate, who were to debate and report on each individual case. At first, only a few cases were under discussion, but when the Committee sat on 29 July, it received further complaints concerning other suspect elections. The Lord Advocate, Sir George Mackenzie of Rosehaugh, objected in the Articles on 30 July to William Riddell, commissioner for Rutherglen, because he was an accessory to the rebellion at Bothwell Brig. Riddell was immediately seized, accused of treason and imprisoned, although he was soon set at liberty. He was, however, suspended from voting, and does not appear in the sederunt of Parliament.⁵²

On 5 August, the reports concerning the burghs of North Berwick and Selkirk, along with that of Peeblesshire was presented to the full Parliament. In the case of North Berwick, George Suittie's election was disallowed because it

⁵⁰ The actual rhetoric of the letter was very forceful. It thanked the King for the concern he had shown for the Protestant religion, and it promised to legislate "so as it may become a solid and pious support to your Royall family and Monarchy, and a sure fence in this disturbed and divyded Church against all usurpations and disorders of Popery and Phanaticisme." NAS PA 2/31, f.5.

⁵¹ NAS Supplementary Parliamentary Papers, PA 7/11/8, 'Minutes of Parliament, 28 July-13 September 1681,' f.23.

⁵² NAS Supplementary Parliamentary Papers, PA 7/11/96, 'Minutes of the Lords of the Articles, 28 July-16 September 1681,' f.303.

had been held with only 30 minutes notice at 6 o'clock in the morning, and he had been appointed as Commissioner to Parliament despite the fact he was neither a resident of the burgh nor a burgess. He had been only formally appointed a burgess some hours after the original election.⁵³ When these particulars were read out, a lengthy debate ensued in the Parliament about the restrictions on burgh commissioners. Lord Bargany questioned the Committee's decision: the situation was similar, he argued, to that of a nobleman created a noble during the course of Parliament; he may sit in Parliament notwithstanding he was not a nobleman before Parliament was proclaimed.⁵⁴ Others rejected the Committee's judgement, and vigorously defended Suittie's election, possibly because the other candidate for the seat was Charles Maitland, a relative of the Duke of Lauderdale and his brother, Hatton.

In light of the Committee's decision, Hamilton, seconded by George Lockhart, asked for a general review of the 1675 Act made in the Convention of Royal Burghs concerning burgh elections. Lockhart claimed that the act was too restrictive, and Sir John Cunningham, commissioner for Ayr, asserted that the ancient custom of burghs electing either one of their own or a suitably qualified 'country gentleman' had force of law by itself.⁵⁵ This angered the Lord Advocate, who loudly declared that "he saw seditious Bothwell Bridge faces sitting as members of Parliament." As would be expected, this caused much displeasure among the burghs. To quiet the resulting uproar, Mackenzie was

⁵³ See NAS Parliamentary Commissions, PA 7/25/85/6/1-1 'Papers Concerning Disputed Election in North Berwick,' especially PA 7/25/85/6/4, 'Protestation of Council against Suittie.'

⁵⁴ Bargany's future conduct is interesting. He was imprisoned on a charge of high treason in 1679 for plotting to assassinate the Duke of Lauderdale. He successfully secured royal favour, and was released in May 1680. The Duke of York took steps to prevent his case being heard before Parliament in 1681. *Scots Peerage*, II, pp.29-31.

⁵⁵ NAS Supplementary Parliamentary Papers, PA 7/11/8, 'Minutes of Parliament, 28 July-13 September 1681,' ff.24-5.

forced to revise his statement: what he had intended to say was that if the burghs had liberty to choose whom they pleased to represent them, "factious and disloyal persons might prevail to get themselves elected." As for those present he suspected of complicity in the Bothwell Brig rebellion, he hoped that because they had sworn the oath of allegiance and declaration of public trust, they would conduct themselves as such.⁵⁶

As in the Convention of Estates in 1678, discussion of the disputed elections had begun a lengthy debate as to the particular restrictions on voters and candidates. Sir John Bell, Provost of Glasgow, first moved for the Act of Convention of Burghs to be ratified. The Duke of Hamilton suggested a new vote: should non-residents of burghs be eligible for election to Parliament? The proposal was rejected by 52 votes. Next, the decision of the committee for North Berwick was put to the vote, and Charles Maitland was approved as commissioner by a majority of 14.⁵⁷ The election of Sir Patrick Murray of Pitdunnes was rejected in light of this decision, since he too was not a resident merchant in the burgh.

On 6 August, further election debates delayed proceedings. Following an allegation made against him by the Lord Advocate, William Anstruther, commissioner for Fife, brought in evidence showing that he was over 21 and therefore eligible for election. Sir John Cochrane, seconded by John Cunningham, next complained that the Provost of Edinburgh, Sir James Dick of Priestfield, was a collector of customs, and should therefore be refused his seat.

⁵⁶ Fountainhall, *Historical Notices*, I, p.310.

⁵⁷ NAS Supplementary Parliamentary Papers, PA 7/11/8, 'Minutes of Parliament, 28 July-13 September 1681,' f.26. The relatively small margin by which Maitland was approved perhaps indicated that there was a large section of the Parliament still hostile to Lauderdale and members of his family.

The Lord Advocate dismissed the suggestion. The elections of the burghs of Inverkeithing, Anstruther Easter, Ayr and were all quarrelled, but sustained.⁵⁸

Legal questions raised by a number of disputed shire elections necessitated a new statute modifying the existing franchise. All of the five shire election contests investigated by the Committee – Haddingtonshire, Berwickshire, Peeblesshire, Linlithgowshire and Stirlingshire – centred on the eligibility of voters. Recognising that the debates over controverted elections had led to a great delay in public business, the new act of 17 September set out clearly the qualification of voters.⁵⁹ Those who possessed 40 shillings land of old extent from the King retained their ancient right to vote, but the Act also extended the franchise to those freeholders who were “infest of property or in superiority and in possession of a 40 shilling land.”⁶⁰ Thus legally, even though the freeholder had alienated the land and therefore did not enjoy any profits or revenue from the land, provided he still retained the superiority, he was a tenant of the crown and eligible to vote in local elections. Since old extent had ceased to be a basis of taxation and would become increasingly redundant as a method of proving voter qualification, an alternative figure of £400 of valued rent (the annual value

⁵⁸ A row erupted between the Duke of Hamilton and the Earl of Queensberry concerning candidates in areas under their influence. First, Hamilton objected to the election of John Johnstone as commissioner for Lochmaben because he was not a resident. Queensberry immediately rose to his defence, claiming that as he was Provost of the burgh, the allegation was unfounded. Queensberry then objected to James Carruthers, commissioner for Annan. Hamilton answered that Carruthers was both a resident and a merchant within the burgh. Both complaints were remitted to the Committee. NAS Supplementary Parliamentary Papers, PA 7/11/8, ‘Minutes of Parliament, 28 July-13 September 1681,’ f.27. It was but one small example of the increasingly strained relationship between the once close allies. Hamilton seems to have taken Queensberry’s acceptance of a position on the Privy Council badly.

⁵⁹ To Parliament’s report on the matter can be found at NAS Supplementary Parliamentary Papers, PA 7/11/25, ‘Resolves of Parliament anent the Election of Commissioners for the Parliament, 1681.’

⁶⁰ NAS PA 2/31, f.16.

of land as determined by the assessment for public taxation) was deemed to be the new standard for eligibility.⁶¹

Although the total numbers of shire electorates are difficult to ascertain, the new statute must have greatly extended the shire franchise.⁶² Except for one act passed in the reign of George II, this piece of legislation determined the county franchise until 1832.⁶³ Certainly, by comparing the parliamentary commissions of a number of shires spread throughout the country, there are, in some cases, marked increases in the number of voters. In Aberdeenshire, 21 voters signed the 1681 parliamentary commission, and this had increased to 31 for the commission to the 1685 session of Parliament. There was a similar increase in Fife – from 35 in 1681 to 44 in 1685. The Test Act that was passed in this session of Parliament also provided further evidence of an increase in the shire electorate. All electors had to subscribe the Test, and this was usually done at the election of a commissioner to Parliament. These surviving proclamations provide a more accurate picture of the total amount of individuals eligible to vote in elections. In Aberdeenshire, 63 signed the Test on the same day that only 31 voted in the election that was held for their representative to the 1685 session. 74 signed the Test in Fife, yet only 44 signed the shire's 1685 commission to Parliament.⁶⁴

Paradoxically, the implementation of the Test Act had a detrimental effect on the electorate in other shires, especially in the radical south. In

⁶¹ See Rait, Parliaments of Scotland, pp.212-3 for further discussion of this Act and its implications for future voting contests.

⁶² Parliamentary commissions for the period are often fragmentary, and there are few shires for which there survives a complete record of commissions from parliament to parliament.

⁶³ Rait, Parliaments of Scotland, pp.213-4.

⁶⁴ Aberdeenshire – 1681 commission, NAS PA 7/25/2/9 and 1685 commission and Test Act, NAS PA 7/25/2/10/1 and 2. Fife – 1681 commission, NAS PA 7/25/14/10 and 1685 commission and Test Act, NAS PA 7/25/14/11/1 and 2.

Dumfriesshire, 22 individuals subscribed the commission for the shire's representative to the 1681 Parliament. For the session of 1685, this had fallen to 13. Only 11 subscribed the Test Act. It was a similar story in Lanarkshire. Those voting in elections fell from 23 in 1680 to eight in 1685. The Test was subscribed on the same day by only ten.⁶⁵

The importance of the act was not, however, immediately recognised. The Bishop of Edinburgh, commenting on the controverted election in Haddingtonshire, made the absurd assertion that the Committee for Disputed Elections might "verie lawfullie praefer one who was inferior in votes and they might pass over 4 or 5 votes, to hold out a Shaftsburie."⁶⁶ This obviously illegal method of excluding dissident individuals from Parliament would have been privately supported by many of the crown's officers in Parliament. Fountainhall records a further incident during this Parliament in which a shire elector who had voted against "the Duke and the Court faction in the election of the commissioners for Fife" was brought to prosecution on a spurious charge that he had been absent from the King's host at Bothwell Brig. In addition, Lieutenant-General Drummond, commissioner for Perthshire, was threatened with prosecution for claiming he had 40 shillings of land, when government investigations revealed this was doubtful (this again is a rather erroneous charge: Drummond had been the commissioner for Perthshire since 1669 and his eligibility had never been questioned previously).⁶⁷ When Drummond accused

⁶⁵ Dumfriesshire – 1681 commission, NAS PA 7/25/11/9 and 1685 commission and Test Act, NAS PA 7/25/11/10/1 and 2. Lanarkshire – 1681 commission, NAS PA 7/25/21/10 and 1685 commission and Test Act, NAS PA 7/25/21/11/1 and 2.

⁶⁶ Fountainhall, *Historical Notices*, I, pp.306-7

⁶⁷ Drummond remained the Commissioner for Perthshire until his death in 1688. The cause of his election dispute probably owed much to his previous dispute with the government. He had been imprisoned on Dumbarton Rock from 1674 to 1676 because of a quarrel with the Duke of Lauderdale. M. Young (ed.), *Burgh and Shires Commissioners*, I, p.203.

the Committee for Disputed Elections of "open injustice," a charge of defamation was added to the indictment. Drummond seems to have escaped prosecution, however.⁶⁸ Such continued governmental interference in local elections, combined with the subsequent passage of the Test Act, were obviously intended not to increase the electorate, but rather to place further restrictions on those eligible to elect and be elected.⁶⁹

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On 13 August the Act asserting the Right of Succession to the crown of Scotland was voted on. The Exclusion Bill passed by the English Commons had revealed how necessary it was for James to be certain of his position in Scotland. Thus, Parliament now declared any attempt to alter the lineal succession to the throne as an act of rebellion. Somewhat surprisingly, it passed unanimously without much discussion.⁷⁰ The Duke of York's presence as Commissioner no doubt intimidated those who would have voted against it. And there must have been some individuals within Parliament who would have chosen to reject it, since Monmouth had a large following in Scotland. Much more controversial was the draft of the Act for Securing the Protestant Religion, which was presented to the chamber on the same day. Sir John Cunningham immediately protested that the chamber was not full, and any discussion should

⁶⁸ Fountainhall, Historical Notices, I, p.301, 310, 311.

⁶⁹ Action was also taken against those who opposed the royal will. In the 1681 Parliament, the Provost of Ayr, William Cunningham of Brownhill had voted against the government on a number of occasions. Soon after Parliament had risen, he was prosecuted for assigning billets to a Covenanting force three years previously. Despite protesting that he did so to prevent the town being pillaged, he was not only imprisoned and fined by the Privy Council, but remitted to the Court of Justiciary on a criminal charge. RPCS, VII, p.256; Rait, Parliaments of Scotland, p.523; Fountainhall, Historical Notices, I, pp.336-8.

⁷⁰ NAS Supplementary Parliamentary Papers, PA 7/11/8, 'Minutes of Parliament, 28 July-13 September 1681,' ff.24-5; PA 7/11/86, 'Additional Minutes of Parliament, 28 July-17 September,' f.278; CSPD (1680-81), Newsletter to John Squire, 20 August 1680, pp.410-1.

be delayed until the majority of members were present. This was cast aside, and the draft was read. There were immediate complaints from Cunningham that the Act did not mention the existing legislation against papists, nor did it ordain the same to be put into execution. His suggestion that there should be a period of time laid aside to consider this act in reference to other acts securing religion was seconded by the Earl of Tweeddale, Sir John Cochrane and Sir Hugh Campbell of Cawdor, the commissioner for Nairnshire.⁷¹ The Lord Advocate argued for no delay, and the act was passed by a comfortable margin of 100.

On 15 August the Act of supply was presented to Parliament.⁷² The Convention of Estates in 1678 had agreed a supply of £150,000, which would have expired in 1683, but the Parliament extended the provisions of this act until 1688: five months' cess for five years, commencing Whitsunday 1683.⁷³ The Parliament reversed the decision of the Convention and re-imposed a poll tax for the relief of heritors.⁷⁴ The Duke of Hamilton urged the retention of annual rents to help pay for the subsidy and suggested that it may also be appropriate to place "reik-money" on every chimney. This would fall disproportionately on the burghs, however, and was rejected.⁷⁵ When the draft was read to the chamber, Sir John Cunningham and some other unidentified members moved for a delay

⁷¹ NAS Supplementary Parliamentary Papers, PA 7/11/8, 'Minutes of Parliament, 28 July-13 September 1681,' f.29. Campbell was a "firm Presbyterian and composed papers on religious subject," M. Young (ed.), Burgh and Shires Commissioners, I, p.94.

⁷² An additional financial measure was considered by Parliament. The excise act granted in the 1661 session of Parliament terminated on the King's death. On 13 September a new act was drafted which extended the excise for five years after this period to the King's successor. Andrew Fletcher of Saltoun, Adam Cockburn of Ormiston (both Haddingtonshire), Hugh Scott of Gala (Selkirkshire), Sir Hugh Campbell of Calder (Nairnshire) and Sir Patrick Houston of that Ilk (Dunbartonshire) all voted against this act, possibly as an implicit condemnation of the Duke of York's likely succession to the throne. NAS Supplementary Parliamentary Papers, PA7/11/8, 'Minutes of Parliament, 28 July-13 September 1681,' f.34.

⁷³ For the report of the Committee anent the Supply, see NAS Supplementary Parliamentary Papers, PA 7/11/13, f.66.

⁷⁴ Rait, Parliaments of Scotland, p.502.

⁷⁵ Fountainhall, Historical Notices, I, pp.322-3.

until the remaining elections were discussed and “religion farther secured.” They possibly feared that Parliament might be immediately adjourned when the subsidy was secure. A vote for the delay of the act was defeated by 59 votes, but its passage seems to have been postponed for other reasons. It was finally approved on 20 August.⁷⁶

Parliament met for a number of sessions prior to the passage of the most controversial acts. On 19 August, an early draft of the Act for Securing the Peace of the Country was laid open for consultation. The (ubiquitous) commissioner for Ayrshire, Sir John Cunningham asked that, seeing as it was a particular concern of the shires, arrangements might be made for the shire commissioners to study the draft in detail and to consult the earlier Act for securing the Protestant Religion. The Lord Advocate refused this, but assured Cunningham that further legislation was planned to secure religion, and that time would be given to consult this. Cunningham, now aware that the Articles were currently discussing such legislation, attempted to influence their discussions. On 22 August he handed in to the Lords of the Articles two ‘Overtures for Securing the Protestant Religion.’⁷⁷ The first suggested that the Oath of Coronation should be appended with a clause stating that the monarch would not consent to any alteration of the Protestant Religion, nor “tolerate priest, jesuits, nor trafficking papists to abide in this region or ... suffer any papist to be in any publick trust, power or office.” The second paper suggested that all those in positions of public trust should not only subscribe the oath of

⁷⁶ NAS Supplementary Parliamentary Papers, PA 7/11/8, ‘Minutes of Parliament, 28 July-13 September 1681,’ ff.29-30.

⁷⁷ NAS Supplementary Parliamentary Papers, PA 7/11/96, ‘Minutes of the Lords of the Articles, 28 July-16 September 1681,’ f.312.

allegiance, but also swear to adhere to the Confession of Faith.⁷⁸ Beyond the Articles acknowledging receipt of the proposals, Cunningham's suggestions were explicitly ignored.

On 27 August, the draft act anent Religion and the Test was brought into the chamber. Because of its importance, Cunningham, seconded by Sir Alexander Seton of Pitmedden, commissioner for Aberdeenshire, asked for the act to be laid open for consultation. This was refused. Hamilton asked for the act to be returned to the Articles, where it could be modified into two separate acts: one concerning Protestantism and one for papists. The Lord Advocate, who told Hamilton that the clergy had already given their approval to the act as it stood, also rejected this request. The second draft of the Act securing the Peace was next to be considered. Again, requests for a delay to allow for further consultation of the proposed legislation were disregarded. The Lord Advocate stated that the Act had been fully discussed at the previous session, had been laid open for a time, and should now be put to the vote. A motion for a delay was defeated by 37 votes.

It was not the end of the matter, however. Sir John Cunningham argued that there was no need for such an act because laws already existed against conventicles. In answer, the Lord Advocate declared that there was an absolute necessity for further legislation because all previous acts had had little effect. The debate then moved onto the complex relationship between this act and preceding legislation: the Act for Securing the Peace ratified the act of 1662 restoring Episcopal Government, which itself rescinded the act of 1592

⁷⁸ Both these overtures survive amongst the papers of the Lords of the Articles. See NAS Supplementary Parliamentary Papers, PA 7/11/92 and PA 7/11/93.

establishing Presbyterian government. However, it should be made explicit, argued George Dallas of St Martins, commissioner for Cromartyshire, that this only ended Presbyterian government of the church, and did not rescind the clause opposing Catholicism. Although the minutes of the Parliament record that the “act [was] amended in some particulars”, the final version was not altered in this way. Put to a final vote, the Act for Securing the Peace passed by 50 votes.⁷⁹ Fountainhall records, however, that Dallas’s motion for the revival of these clauses was “generally yielded to by the Parliament” and “all acts made against Popery were to stand in full force and effect.”⁸⁰ These particulars were to be included in the final version of the Test Act.

The discussions over the Act for Securing the Peace and the Test Act revealed an extensive level of government interference in the passage of legislation. It seems that there were increasing complaints from a number of the estates that acts were put to the vote far too quickly, so that many members had little time to consider them in detail. Limiting the period available for consultation - the period when acts were ‘laid upon the table’ - was an obvious ploy by the government to suppress any opposition and debate directed at the current legislation. The regular procedure of acts being laid on the table (possibly in the chamber where the Register and his clerks sat) was not common practice until the 1690s, although it seems likely that some mechanism for

⁷⁹ NAS Supplementary Parliamentary Papers, PA 7/11/8, ‘Minutes of Parliament, 28 July-13 September 1681,’ ff.31-2.

⁸⁰ Fountainhall, *Historical Observations*, p.47; On 27 August, while discussing the Act for Securing the Peace, a motion was passed which agreed that there ought to be one separate act brought in against papists and popery. This was referred to the Articles, but was not acted on. It seems the request was granted purely to ensure the Act for Securing the Peace passed unchanged, and no specific act against Catholicism was intended. NAS Supplementary Parliamentary Papers, PA 7/11/9, ‘(Additional) Minutes of Parliament, 28 July-13 September 1681,’ f.49.

consultation was instituted at the Restoration.⁸¹ The Parliament of 1681 is the first session for which firm evidence exists that draft legislation was 'laid open' for a period of time to enable non-members of the Articles to study the particulars of the acts. The main acts that were advertised in this way were the Act for Securing the Peace, the Test Act, and the Act concerning the Election for Commissioners to the Shires.⁸² All involved a great deal of local implementation, and were perhaps opened up for consultation for the benefit of the shires and burghs in particular.

* * * *

On 29 August Sir John Cochrane gave in a paper against the Test, but this was refused because all supplications could be submitted only through the Articles.⁸³ However, Fountainhall recounts how in the same session Lord Bargany "presented a petition in *plain* Parliament (so that it is not absolutely necessar to goe first to the Articles)." Although Bargany's petition dealt with a private matter and, after having been read was then referred to the Articles, it challenged the generally accepted rule that nothing could be tabled in Parliament without first going through the Articles. As such, it was a significant precedent. Fountainhall declares that what had become the standard procedure was a "late novation, destructive of the liberty and power of the Parliament." This view was shared within the chamber itself. Sir George Lockhart in a speech declared that

⁸¹ I am indebted to Dr Alastair Mann for clarification on this matter.

⁸² The Act removing the summer session of the Court of Session was also laid open. NAS Supplementary Parliamentary Papers, PA 7/11/8, 'Minutes of Parliament, 28 July-13 September 1681,' f.31 and f.32; NAS Supplementary Parliamentary Papers, PA 7/11/9, '(Additional) Minutes of Parliament, 28 July-13 September 1681, f.58.

⁸³ NAS Supplementary Parliamentary Papers, PA 7/11/8, 'Minutes of Parliament, 28 July-13 September 1681,' f.33.

“the Articles rejecting a Bill ought not to have such a negative as to preclude the Parliament from calling for it, if they please, and considering it.” The resulting debate was, however, “stifled” because of “his Royall Hynesse shewing his dislike of it.”⁸⁴ Lockhart’s speech indicates that there was a debate ongoing about the level of consultation between committees and the full Parliament.

Following the refusal to accept Cochrane’s paper against the Test Act, several members (including two peers) made a request to enter in to the Articles, observe their discussions and peruse certain acts still in the planning stage.⁸⁵ Although this was not immediately refused – the Clerk Register agreed to study the previous acts and ascertain the former custom – a decision was continually delayed until Parliament was eventually adjourned.⁸⁶ The members who made the request were well within their rights, however. By reviving the 1662 Act for Ordering the House, the government had unwittingly renewed the clause that recognised the right of members to be present at meetings of the Articles in an observational role only.⁸⁷ Lauderdale had ended this practice in 1669 to thwart opposition against the union proposal with England, but it was never prohibited

⁸⁴ Fountainhall, *Historical Notices*, I, p.314.

⁸⁵ Fountainhall states that Charles Hamilton, fifth Earl of Haddington and Alexander Stewart, fourth Lord Blantyre were among those who made the request. *Historical Notices*, I, pp.414-5.

⁸⁶ *Ibid.*, pp.314-5.

⁸⁷ NAS PA 2/28, f.3 - “Nor any persons [shall be] suffered to stay at the Articles, save members of Parliament.” The Act was not an express invitation for members to attend the meetings of the Articles, but contemporaries obviously regarded the phrase “members of Parliament” in relation to the Lords of the Articles as open to various interpretations. In 1669 and 1681 there were clear indications that some considered the act as giving the whole chamber the right to attend. The intended meaning in 1662 was to allow access to the Committee only to members of Parliament who were *also* members of the Articles. In 1685 an additional clause was added to the Act clarifying the matter: “That by a posterior order of the House in the years 1668 and 1669 none is admitted to sit or be present with the Articles but the members of the Articles and Clerks.” *APS*, VIII, p.485.

in law.⁸⁸ Thus, since the request could not legally be refused, the government had no choice but to continually delay a decision on the matter.

The act restoring the Lord of the Articles in 1661 permitted any member of Parliament to submit a proposal that the committee had first ignored. However, when Sir John Cunningham submitted his two additions to the Act of Succession and the forthcoming Test Act, the Articles refused to consider the overtures.⁸⁹ Dexterous management of parliamentary time further frustrated attempts by members to introduce motions that had been rejected by the committee. As detailed previously, there were increasing complaints that draft acts were not available for adequate consultation. In addition to this, it had become apparent that the report of the Articles was, in some cases, being held back until the very last minute, or suddenly introduced without warning into the chamber. Thus, on some days when the Articles had met in the morning, the chamber was kept waiting until mid-afternoon to scrutinise their report. On the day the Test Act was passed, the report was not brought in until six o'clock. On other occasions, "by surprise, affairs and acts were brought in upon the Parliament, past in the Articles that morning, and very seldom delayed, but put to a vote that same dyet." Members had no "leisure to prepare themselves, for

⁸⁸ The Act for Ordering the House had been informally revived at the Convention of Estates in 1678 to deal with the large numbers of non-members in the chamber. The clause allowing entry to the Articles was, however, expressly disallowed. See Chapter Six, p.247.

⁸⁹ There were additional instances of parliamentary committees disregarding petitions given in by members. On 27 August, Sir Hugh Campbell of Calder complained that the Committee for Disputed Election had taken "no notice" of a list of questionable commissioners he had submitted. He demanded that they be discussed in full Parliament, but was refused. On 29 August, Campbell made the same request. The Lord Advocate declared that Campbell only intended to delay the passage of the Test Act, and again declined to consider Campbell's inquiry. NAS Supplementary Parliamentary Papers, PA 7/11/8, 'Minutes of Parliament, 28 July-13 September 1681,' ff.32-3.

arguing, nor to deliberate, combine or take joynt measures.”⁹⁰ Burnet noted that:

there was not much time given to consider things; for the Duke [of York], finding that he was master of a clear majority, drove on everything fast, and put bills on a very short debate to the vote, which went always as he had a mind to it.⁹¹

There is little doubt that both the restrictions on acts laid open for examination and the timing of the Articles’ report were aimed at frustrating opponents of the government’s measures. Legislation was hurriedly rushed through, as Burnet notes, with the consent of the majority of the chamber. Nevertheless, there was a widespread feeling that Parliament’s right of consultation was being disregarded, and discontented voices were beginning to make themselves heard. As his predecessor had done before him, by taking the complicity of the gathered estates for granted, the Duke of York as Commissioner was treading dangerous ground.

Since this session of Parliament had first begun, few members had courage enough to speak against the Duke of York’s religion. Opposition finally surfaced, however, at the debates surrounding the passage of the Test Act on 29 August. Subscription of this and the act of Succession, both implying that the Catholic Duke of York would succeed to the throne, was to be made a pre-requisite for the exercising of public office. Subscribers were to be under no obligation from previous covenants to endeavour to change the government in Church or State.⁹² When the draft was brought in, John Hamilton, second Lord Belhaven described it as a “very good act for securing our religion from one

⁹⁰ Fountainhall, *Historical Notices*, I, p.313-4.

⁹¹ Burnet, *History of His Own Time*, II, p.310.

⁹² NAS PA 2/31. ff.9-10.

another” but he did not see an act “brought in to secure our Protestant religion against a Popish or phantical successor to the Crown.” James Ogilvy, second Earl of Airlie and some other immediately “cryed treason” and moved that Lord Belhaven be committed to prison. Given leave to explain his statement (considering he was “but a young man”), Belhaven unconvincingly attempted to retract his remark; he was not referring to the present situation, but at what might take place 100 years henceforth. Belhaven’s argument was not accepted; indeed, some of the “Court party” thought that his second answer was worse than the former. After a vote supported by a large majority, Belhaven was committed prisoner in Edinburgh Castle.⁹³ The Lord Advocate declared there was ground for an accusation of treason against him.⁹⁴

The final draft of the Test Act was read to Parliament on 31 August. The fate of Belhaven may have silenced some members, but others continued to voice their discontent with the act. Ludovic Grant of Freuchie, commissioner for Elgin and Forresshire, voted against a clause in the act and, as such, incurred the wrath of the Commissioner.⁹⁵ Robert Gordon of Gordonstoun, commissioner for the shire of Sutherland, vehemently opposed the act on the grounds that “conscience cannot be forced, and that those severe sanctions and penalties operated nothing, save to render men hypocrites,” probably a view that was paradoxically shared by the Catholic Duke of York.⁹⁶ The Earl of Argyll was among those who spoke against the Test, and had attempted in the Articles

⁹³ Fountainhall records that the Bishops voted to imprison Bellhaven, despite complaints from lawyers that they should not be involved in criminal cases. *Historical Notices*, I, p.308.

⁹⁴ Fountainhall, *Historical Notices*, I, pp.307-8; NAS Supplementary Parliamentary Papers, PA 7/11/8, ‘Minutes of Parliament, 28 July-13 September 1681,’ f.33; NAS PA 2/31, f.8.

⁹⁵ NAS Supplementary Parliamentary Papers, PA 7/11/8, ‘Minutes of Parliament, 28 July-13 September 1681,’ f.33; M. Young (ed.), *Burgh and Shires Commissioners*, I, p.297.

⁹⁶ Fountainhall, *Historical Notices*, I, p.316.

to add a clause sanctioning "all acts against Popery." In the chamber, Argyll argued that the provision excepting the royal family from the Test should be withdrawn, for there should be "no gap left open for the Royal family to differ in religion."⁹⁷ Sir Alexander Seton of Pitmedden, commissioner for Aberdeenshire, asked for clarification that the Test did not sanction unalterable episcopal government, contradicting the 1567 Confession of Faith that had been tacked on at the end of the act.

The Test, similar to the Declaration of Public Trust and Oath of Allegiance, was to be a mandatory requirement for the exercise of public office. Fountainhall records that one of the main designs of the Act was "to get elections of commissioners in shires and burrows so packed, as none should vote but those who took this Test."⁹⁸ When the session was adjourned, he wrote that it would be easier to call a new Parliament, "seeing the two praelimitations they have by this Parliament put upon all elections"⁹⁹ ... will have that influence in all subsequent Parliaments, they will get elected whomsoever the Court pleases to recommend in most Shires and Burrows."¹⁰⁰ Indeed, the Test had widespread repercussions in the localities. The most significant opposition arose after Parliament had risen when attempts were made to implement the oath. Large numbers of public officials throughout Scotland refused to subscribe the Test Act; Ayr was left with no council because all the current members declined to take the oath.¹⁰¹ The most serious difficulties were found in cases of magistrates

⁹⁷ Cited from an unidentified source in Andrew Lang, *Sir George Mackenzie*, p.220.

⁹⁸ Fountainhall, *Historical Notices*, I, p.309.

⁹⁹ The two limitations Fountainhall speaks of were "the one in Burrows only to choose inhabitants, the other in shires and Burrows that the electors must first take the Test." *Historical Notices*, I, p.327.

¹⁰⁰ *Ibid.*, p.327.

¹⁰¹ *CSPD (1680-81)*, Newsletter to Roger Gartsell, October 15 1681, p.517.

of burghs. In almost every burgh, there were a number who refused the Test and resigned their offices. The result was a general dislocation of municipal business that constantly called for the intervention of the Privy Council.¹⁰²

A more significant casualty was the President of the Court of Session, Sir James Dalrymple of Stair. Deprived of his judgeship in 1681 on his refusal to take the Test, he was subsequently forced into exile in Holland. The Duke of Hamilton was among five noblemen who refused to subscribe the Test because of misgivings over the wording of the oath. The Duke of Monmouth also ignored Council requests to sign the Test, arguing that although he was a Privy Councillor, he was not resident in Scotland. The Council passed an act depriving him of all his offices, but the King refused to implement it.¹⁰³ Hamilton eventually conceded in July 1682 when he was on the brink of losing his offices.

The Earl of Argyll was the most famous dissenter against the Test and the sentence of treason and forfeiture laid against him for his refusal is perhaps one of the better known events of the Restoration. On 3 November 1681 he took the Test in front of the Privy Council, but he spoke in so low a tone, it was difficult for Council officials to ascertain if he had actually sworn the Oath in its entirety. The following day when asked to explain himself, Argyll produced and read a paper which stated that the Test was self-contradictory and that he took it so far as it was consistent with itself and the Protestant religion. Four days later he was imprisoned in Edinburgh Castle and a process of treason was raised against

¹⁰² *RPCS*, VIII, Introduction, p.viii.

¹⁰³ *Ibid.*, p.219; p.233; pp.294-5.

him. A sentence of death was pronounced on him, but Argyll escaped from the Castle in December and went into hiding in London.

Neither the King nor the Duke of York sought the Earl's life, so a pardon was prepared. It was never used however, because Argyll fled across to Holland. James was furious, and wanted Argyll's estates confiscated. However, many at Court believed that the Scots had massively over-reacted against an otherwise loyal servant of the crown, singled out merely because he had benefited under Lauderdale's favour. As a result, Charles compromised. He let the Campbell estates pass to Argyll's son, but also shared out Argyll's jurisdictions amongst the other Highland chiefs.¹⁰⁴

Many conformist ministers refused to accept the Test because of theological objections against the attached Confession of Faith. In November 1681, the Council was forced to issue an explanatory act declaring that the Test was only meant to imply adhesion to the Protestant religion as opposed to popery and fanaticism.¹⁰⁵ The self-contradictory nature of the act was, however, apparent for all to see. The act was obviously not an anti-popery measure, since the Catholic Duke of York and the rest of the royal family were exempt. In addition, the Confession of Faith stated that God was the only head of the Church, something that had since been altered by a number of Supremacy Acts. The Privy Council's only response was to declare that the Confession of Faith, despite its symbolic status, was but an imperfect act, passed in the infancy of the Reformation. It was not enough to convince around fifty clergymen, primarily in Lothian, who resigned their offices rather than take the Test.¹⁰⁶

¹⁰⁴ Hutton, *Charles II*, pp.412-3; *RPCS*, VII, p.238; pp.242-3

¹⁰⁵ *RPCS*, VII, 3 November 1681, p.239.

¹⁰⁶ K.M. Brown, *Kingdom or Province? Scotland and the Regal Union, 1603-1715*, (London, 1992), p.162..

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In Parliament on 6 September, Belhaven was given leave to apologise to the chamber, and on his knees at the bar, he sought pardon for “the rash and unadvised expressions uttered by him.”¹⁰⁷ Suitably chastised, he was readmitted to his place. Cromwell Lockhart of Lee, commissioner for Lanarkshire, was another member who very nearly joined Belhaven as a prisoner in Edinburgh Castle. During the debates over the Test Act, Lee attempted either to leave or enter the chamber, and was prevented from doing so by the macer. After a heated exchange, the two men came to blows, drawing the attention of the Commissioner. Striking an officer in the house while the King or Commissioner was present was strictly prohibited by an act of 1593, and Lee, who, according to Fountainhall had already ‘offended’ the Duke of York by his voting, only escaped punishment by paying compensation to John Shaw, the injured party.¹⁰⁸

Tempers were obviously running high inside the chamber. Opposition was not only directed at the Test Act, but at a number of more minor matters. An Act for Discharging the Summer Session of the Court of Session (a similar idea to restrict the sessions of Parliament had been mooted in 1672 but rejected)¹⁰⁹ attracted criticism because the Lord Advocate planned to include a clause for the King to bring the session back if he pleased. There were objections that some may attempt to bribe or offer money, for example, to a courtier to prevail with the King to renew the session. Moreover, Parliament had always undertaken

¹⁰⁷ NAS PA 2/31, f.11.

¹⁰⁸ There are two different accounts of this incident: Fountainhall in *Historical Notices*, I, p.314, and *CSPD* (1680-1), Newsletter to John Squier, September 6 1681. The newsletter states that Lee was obliged to pay the exorbitant sum of £1,000 sterling to the macer in compensation.

¹⁰⁹ For more on this, see Chapter Five, pp.180-1.

responsibility for such matters, and there were fears that this was a design to subtly extend the royal prerogative.¹¹⁰ Disquiet was voiced over the Act asserting the Royal Prerogative in Point of Jurisdictions, in which the King was granted the right to nominate a crown-appointed lieutenant to observe magistrates at work. It was looked upon by the lawyers of the house as “a mighty extension and stretch towards arbitrary government.”¹¹¹ The Act for encouraging Trade and Manufactories which traditionally invited tradesmen from other countries to come and set up in business, pointedly omitted the words ‘Protestant’ strangers, an obvious sign, wrote Fountainhall, of the “present government under a Popish commissioner.”¹¹²

A number of government proposals were rejected by Parliament, however. An act altering the regulations for selling grain, a usury clause allowing merchants to borrow or lend money at 1% per month, and a change in the law relating to the legal process in cases of inhibition were all “rejected by plurality of voices of the Parliament.” The crown gave up on attempts to make the Court of Justiciary alone competent to deal with the four pleas of the crown (murder, rape, robbery and arson) because it was regarded as an attack on hereditary jurisdictions. A grant of half a month’s cess in favour of the University of St

¹¹⁰ Fountainhall, *Historical Notices*, I, p.316; NAS Supplementary Parliamentary Papers, PA 7/11/8, ‘Minutes of Parliament, 28 July-13 September 1681,’ f.33. The fear of bribery being used to secure the revival of the summer session was based on past experience. The town of Edinburgh in 1672 prevailed with the Duchess of Lauderdale to ensure that the act changing the parliamentary session did not pass (it was commonly supposed that money changed hands) - See Chapter Five, p.181. In this instance, the Provost of Edinburgh’s petition to the Articles against the taking away of the summer session was rejected. See NAS Supplementary Parliamentary Papers, PA 7/11/96, ‘Minutes of the Lords of the Articles, 28 July-16 September 1681,’ f.316. The loss to the town of Edinburgh was estimated at £10,000 sterling annually. The council blamed the Lord Provost for the act, because he did not acquaint the council what was happening in Parliament until it was too late. Presumably, bribes would have been offered once more. *CSPD* (1680-1), Newsletter to Roger Gartsell, 13 September 1681, p.447.

¹¹¹ Fountainhall, *Historical Notices*, I, pp.320-1.

¹¹² NAS PA2/31, ff.12-13; *Historical Notices*, I, pp.318-9.

Andrews was carried in the negative, but through false marking of votes, was given royal assent.¹¹³ A number of complaints given in by members were, however, also refused. Thus, an indictment handed in by 12 citizens of Edinburgh against the former Provost, James Rothead, for “lease making of them to the King” was rejected. A motion by the Duke of Hamilton against the town of Edinburgh’s imposition of two pence on a pint of ale, an illegal taxation, Hamilton argued, was also declined. Due to the interference of Hatton, a proposed Act limiting the Provost of Edinburgh to a term of two years maximum was also turned down. Sir Andrew Ramsay, Provost of the town for 12 continuous years at the behest of Lauderdale, had shown how useful it was to have control of the leading vote in Parliament; allowing more freedom in elections in Edinburgh was therefore not in the interest of the crown.¹¹⁴

An interesting act limiting the expense and size of gatherings at marriages, baptisms and burials was passed on 13 September. To curb the ‘exorbitant ... [and] superfluous expense’ of these occasions, a number of restrictions were to be enforced. At marriages, excepting the close family, only eight friends were permitted to attend. At baptisms, just four witnesses were authorised to attend the service with the family. Burials were also subject to constraints. A maximum of 100 were permitted to attend the funeral of a nobleman or bishop; 60 for a baron of ‘quality’; 30 for other landed gentlemen. The number of official mourners was also restricted: 30 for noblemen and bishops, 24 for barons, Privy Councillors, Provost of Burghs and Lords of Session; 12 for other landed gentlemen and citizens of burghs.¹¹⁵ There were immediate complaints

¹¹³ *Ibid.*, pp.321-2; Rait, *Parliaments of Scotland*, p.85.

¹¹⁴ Fountainhall, *Historical Notices*, I, pp.311-2; p.324; British Library Lauderdale Papers, Ms 23248, ? to Earl of Moray, n.d, f.18.

¹¹⁵ NAS PA 2/31, ff.13-14.

from the barons, piqued that the burghs were “equalised with them in the number of mourners.” Others had more significant concerns. It was suspected that the act had a political motive, to avoid large numbers of people gathering in multitude. During the Interregnum, Oliver Cromwell, fearful of rebellion, had passed a statute outlawing horseracing on similar grounds. Fountainhall surmised that it was passed in reaction to the funeral of the Chancellor, Rothes, who had been buried at night on 23 August in St Giles Cathedral with great splendour. It was “boasted that the Duke of Modena had not such an internment,” something the Duke of York was understood to have taken exception to.¹¹⁶ It is also recorded that the draft act passed in Parliament contained a clause discharging any feasts at burials, except bread and drink, and this was excluded from the printed act (it is absent also from the manuscript copy in the official records). As Rait has recognised, royal assent in Parliament only approved the substance of legislation; the precise text of an act could be reconsidered at a later date.¹¹⁷

The private ratifications were the last items to be considered before Parliament was adjourned. However, the King’s Advocate threatened to refuse all of them because he had no specific instructions from the King to pass any of them. The Earl of Argyll complained that such a protest would render all ratifications useless. The design, argues Fountainhall, was that individuals would be forced to consult Mackenzie for approval individually, a privilege for which they would have to pay handsomely.

¹¹⁶ Fountainhall, *Historical Notices*, I, pp.317-8.

¹¹⁷ *Ibid.*, p.318; Rait, *Parliaments of Scotland*, p.438.

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The Lord Advocate, Sir George Mackenzie of Rosehaugh was certainly one of the most prominent figures in this Parliament. He, along with his cousin, Sir George Mackenzie of Tarbat, Charles Maitland of Hatton, and Sir George Gordon of Haddo, were the key figures who managed the debates in Parliament, and ensured that the crown's legislative programme was kept on track. It was a considerable transformation from the "factious young man" whose earlier criticisms of the government had prompted Lauderdale to seek his removal from Parliament in 1669.¹¹⁸ Unlike his predecessor, the current Commissioner, James, Duke of York, had a minimal input, and this did not escape criticism. "Some wise men observed," wrote Fountainhall, "that the Duke of York might have honestie, justice, and courage enough, and his Father's peremptoriness, but that he had naiter great conduct, nor a deep reach in affairs, but was a silly man."¹¹⁹ As he had done in the Privy Council in 1680/81, James was quite content to glorify in his titular role, but less enthusiastic to take part in actual leadership. His greatest asset was his position as heir to the throne.

Despite opposition to a number of measures from a vocal minority, this was the most compliant meeting of the estates since the first Restoration Parliament. Those who were prepared to vote against the crown's proposals undoubtedly suffered from a lack of leadership, as the Duke of Hamilton astutely decided against another period of exile in the political wilderness. Many of the nobility (Hamilton included) no doubt had ambitions of succeeding to the offices that had been held by Rothes. Indeed, as Burnet recounts, there were "many

¹¹⁸ See Chapter Four, pp.148-9.

¹¹⁹ Fountainhall, *Historical Notices*, I, p.327.

pretenders” who competed for the position “by the most compliant submission and the most active zeal.”¹²⁰

The royal burghs compliance had been assured with a guarantee given before Parliament, that if they voted loyally with the crown, their trading privileges (removed in 1672) would be fully restored. The issue was given some consideration, first in the Articles on 3 August. On 4 August, the Convention of Royal Burghs granted full power to those members who sat in the Articles to seek an act rectifying their present situation.¹²¹ A series of draft acts rescinding the controversial act of 1672 were drafted in response to a petition given in by the Royal Burghs, but were never presented to the full Parliament.¹²² The draft acts that the Royal burghs hoped would restore their ancient privileges instead placed further limitations on their trading freedoms: this was the “reward the Burrowes got for their cheap service to the Court.”¹²³

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The 1681 session of Parliament was adjourned on 17 September, with a new session appointed to convene on 1 March 1682. The Commissioner’s first session of Parliament had granted all that had been demanded – the lineal succession of the throne was assured; an additional grant of taxation had been

¹²⁰ Burnet, History of His Own Time, II, p.310.

¹²¹ Records of the Convention of Royal Burghs, 1677-1711, IV, (Edinburgh, 1880), p.26.

¹²² NAS Supplementary Parliamentary Papers, PA 7/11/96, ‘Minutes of the Lords of the Articles, 28 July-16 September 1681,’ f.304; NAS Supplementary Parliamentary Papers, PA 7/11/88-91, ‘Draft Acts in Favour of the Royal Burghs’; NAS Supplementary Parliamentary Papers, PA 7/11/87, ‘Petition of the Royal Burghs.’

¹²³ Fountainhall, Historical Notices, I, p.pp.323-4. On 13 September, the Provost of Edinburgh reported to the Convention of Burghs that the Articles had debated the issue of trading privileges for a considerable time. All the concessions offered, however, were “but a further strengthening of the said act 1672, and further restricting of the burrows, and putting them altogether out of hopes to recover their ancient privileges which they had before the act 1672.” The privileges of the Royal Burghs were not restored until 1690. Records of the Convention of Royal Burghs, 1677-1711, IV, p.27.

approved, enabling more troops to be raised to deal with the ever-present problem of conventicles; and additional restrictions were to be placed on all public officials by the new Test Act. As an added bonus, all these measures had been passed with relatively little opposition from the gathered estates.

James, Duke of York largely embraced a nominal role as Commissioner, since he took little active part in any of the debates. And although the Duke of Lauderdale, the dominant master of Parliament for over a decade, was absent, there were plenty of like-minded individuals who filled his place. The vocal minority who dared to voice opposition in the presence of the heir to the throne instead faced the wrath of Sir George Mackenzie of Rosehaugh, the King's Advocate, who assumed the role of guardian of crown interest. The parliamentary opposition undoubtedly suffered from a lack of effective leadership, provided in previous sessions by the Duke of Hamilton and other members of the nobility. However, this coalition temporarily fell apart by the time the 1681 session convened, split by bitter recriminations between those who had accepted the spoils of office under the Duke of York and those who had continued to spurn those attempts at reconciliation. For the crown, Rothes' death prior to the meeting of Parliament provided a welcome and unexpected opportunity to secure the support of those who had expressed initial doubts over the ministry of the Catholic Duke of York. The key offices left vacant by the Chancellor's death proved to be an excellent way of securing the support of ambitious members of the nobility.

Careful manipulation of parliamentary procedure and time also aided the success of the crown legislative programme. Lauderdale's personal involvement in the staffing of key committees had always been well known and

conspicuous, but in 1681, more subtle measures were used to influence and restrict debate. Discussion within the full chamber was kept to a minimum since acts were often only abruptly advertised before being voted on in full. Opponents were further discouraged by the imprisonment of those who had initially dared to question specifics of the legislation brought into the chamber.

Within Parliament itself, there was minimal resistance to the various acts sought by the crown. When these came to be implemented, however, there was little such concurrence. The controversial Test Act had been drawn in such a manner as to exclude all crown opponents from sitting in future Parliaments. Its effect, however, was only to create a broader dissident opposition, united in defence of Protestantism against a Catholic monarch. This combined with the extensive religious persecution of the early to mid-1680s, the infamous 'Killing Times' in which summary executions were inflicted on all those who refused to recognise the royal supremacy, alienated even the most conforming of subjects. By the time Parliament met once more in 1685, there was a groundswell of opposition against the Catholic Duke of York and his policies of toleration. Parliament once more became an arena in which to express this discontent.

Epilogue

The 1681 session of Parliament was the last to meet in the reign of Charles II. Yet while a study of Parliament in the reign of James VII is beyond the scope of this thesis, it is useful to add some further information regarding the events in Scotland up until the accession of James VII in 1685.

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The Duke of Lauderdale's health declined rapidly after he had stepped down from office in 1680. After suffering a series of strokes, he passed his final years in search of relief at various spas in Bath and Tunbridge Wells, ever hopeful of a return to office when his health recovered.¹ This was not to be, however, and Lauderdale died at Tunbridge Wells on 20 August 1682. His funeral in Haddington, some eight months after his death, was every bit the spectacle of power that he himself would have delighted in. After a sermon by the Bishop of Edinburgh at Inveresk Kirk (who ascribed any errors he committed in life to his brother and his wife), a procession of twenty-five coaches, at least two thousand horse, and hundreds more on foot, "filling the highway for full four miles in length," proceeded to Haddington church. There, Lauderdale was interred in a magnificent tomb, next to members of his family, but raised higher on a stone plinth. All this was a flagrant breach of the 1681 Act regulating the expense and numbers in attendance at burials, but "so wele was he beloved ... [by] the whole cuntrie," as Charles Maitland informed

¹ O. Airy, "Lauderdale, 1670-82," in *English Historical Review*, I (1886), pp.68-9.

Lauderdale's widow, it was entirely at their request.²

With Lauderdale's passing ended a form of government that had dominated Scotland since the Restoration. No individual was ever to match his twenty-year supremacy over the Scottish administration, nor was any other Scot able to succeed to his position as the King's closest advisor. Moderates and radicals alike on both sides of the border may have hated Lauderdale precisely for these reasons, but his legacy for succeeding Commissioners of Parliament was to reveal the true potential of the office. James, Duke of York, for one, understood that Lauderdale's longevity as Secretary and Commissioner lay in his control of the flow of information to the monarch. Thus, he followed his predecessor's example, and set up a secret council staffed by seven leading councillors. This process continued when he was created King; vital decision-making was carried out at court, and power was concentrated in the hands of a few key individuals. For those few who benefited from such methods, the rewards were immense. Ultimately, however, such a method of government was detrimental to the freedoms and ancient privileges of the Scottish Parliament.

The various offices that were still held by the Duke were shared out among a number of individuals as part of an attempt to reconcile the Scottish leadership after the divisions provoked by Lauderdale's rule. His place as Knight of the Garter was given to his greatest rival, the Duke of Hamilton. It was exactly the sort of position he had sought for a number of years, and his satisfaction with court patronage alleviated the potential political threat he may have represented.

² Fountainhall, Chronological Notes, p.267; LP, III, pp.230-1. The Earl of Tweeddale and his son (also Lauderdale's son-in-law), Lord Yester were conspicuously absent from the funeral, p.229. As had been expected, Yester and his wife were overlooked in Lauderdale's will, and the family estate of Lethington passed to a son of the Duchess. Lang, Sir George Mackenzie, p.233.

Others from the parliamentary opposition were also compensated. Queensberry was elevated to the rank of marquis and made Lord Treasurer; James Drummond, fourth earl of Perth succeeded to the post of Justice-General; both Tweeddale and Hamilton were restored to the Privy Council. Charles Middleton, Earl of Middleton, the son of Lauderdale's infamous opponent of the early 1660s, was added to the membership. Sir George Gordon of Haddo was promoted to the office of Chancellor. Although Haddo was a distinguished lawyer, he was but a mere gentleman, and Atholl, once favourite for the position did little to hide his disgust. Haddo was granted the title of Earl of Aberdeen after a few months, yet it was apparent that James had appointed a man totally dependent on himself.³

The demise of Lauderdale effectively brought to an end the career of his brother, Charles Maitland of Hatton, now third Earl of Lauderdale. A process against Hatton had been instituted previous to the Duke's death, and when he was appointed Treasurer, Queensberry set up an investigation into Hatton's long suspect management of the Mint.⁴ As expected, irregularities were found, and a letter was extracted from the King in August 1682 depriving him of his places and his right to the ducal title. Subsequently, a case was brought against him in the Court of Session, which developed into a long and complicated lawsuit. Eventually, the judges found Hatton liable for £72,000 that was owed to the Crown.⁵ Financially ruined and politically isolated, Hatton's position of

³ Hutton, *Charles II*, p.413; Fountainhall, *Historical Observations*, p.87.

⁴ The membership announced for the Commission did not bode well for Lauderdale's brother. Hatton's enemies, Hamilton, Perth and Haddo were among those appointed to the Commission for examining into the affairs of the Mint.

⁵ Lang, *Sir George Mackenzie*, pp.233-4. The King reduced the sum repayable to the crown to £20,000, part of which was made redeemable by the surrender of the lands of Dundee and Dudhope to James Graham of Claverhouse, later Viscount Dundee.

Treasurer-Depute was given to John Drummond of Lundin, brother of the Earl of Perth.

The Earl of Argyll, arraigned for treason in 1681 for his refusal to subscribe the Test, had carried the crown before the Duke of York at the riding of Parliament held in the same year. This sudden reversal of fortune was an irony not lost on contemporaries, many of who were delighted that the Campbells, who had benefited so much under the auspices of Lauderdale, were finally getting their comeuppance. In exile in Holland, Argyll was first connected with the Rye-House plotters in a conspiracy to seize or slay the King and the Duke of York in 1683, and in the summer of 1685 staged an abortive rising in alliance with Monmouth against the Duke of York. Captured after some initial skirmishes, Argyll was executed on his previous charge of treason.

After Argyll's death, James grew more confident, pursuing further measures for religious toleration and actively promoting Catholics in public office. The Scottish Parliament, meeting in April 1685, was dissolved in August 1686 after its members refused crown demands to relax the civil disabilities on Scottish Catholics. Rioting in Edinburgh soon followed. It was an inauspicious beginning to the new King's reign, arousing tensions that ultimately resulted in the rejection of James VII as monarch in favour of the Protestant William of Orange. Under the new government, the Duke of Hamilton and many of his previous allies re-emerged as self-appointed leaders of the revolutionary cause.

Conclusion

The Scottish Parliament in the Restoration era conforms in many respects to other European constitutional assemblies of the seventeenth-century. Each assembly had developed differently to meet the particular needs of its system of government; yet, it has been argued that the majority of European representative legislatures between 1600 to 1700 lost significant power to the monarchy. Many of what had been important assemblies in countries such as Spain and France had either disappeared by the end of the century, or had been transformed into passive and obedient tools of the monarchy. Koenigsberger has argued that at some time from 1500 to 1700, the majority of European Parliaments were engaged in struggles for ultimate political power with their representative monarchies. The eventual political victory of the crown left Parliament intact as an institution, but, to a greater or lesser extent, without effective power.¹

This state of affairs was by no means a foregone conclusion when Charles II was restored to the throne in 1660 after twenty years of constitutional upheaval. Even the most optimistic royalist would never have predicted that in little over a year, the crown would have achieved such a complete recovery of its powers. Nor could it have been anticipated that a chamber staffed by significant numbers of individuals who had previously sided with the Covenanters would so readily agree to the revival of the prerogative powers necessary to keep Parliament in check. The right of the King to choose his own ministers, officers of state and

¹ H.G. Koenigsberger, Estates and Revolutions: Essays in Early Modern European History, (Ithaca, 1971) p.13.

privy councillors, to make war and peace, to summon sessions of Parliament, and the return of the Lords of the Articles was granted with little more than a murmur of complaint. The most controversial measure of the session was the Act Recissory, which in effect turned back the clock to 1633 by abolishing all covenanting innovations and the more controversial reforms of Charles I. Yet even the group who voted against its passage, about 40 in number, caused little disturbance. Those who left the chamber rather than subscribe an oath of loyalty to the crown did not attempt to disrupt the rest of the proceedings or raise disorders in the localities. Instead, the majority slipped into political obscurity for the rest of the reign. Only the small group of radical ministers made much fuss about the subsequent restoration of episcopacy. Blamed for the mistakes of 1649-51 that had led to subjugation at the hands of Cromwell, they had been increasingly sidelined since the revived Committee of Estates took action against their rival meetings. Presbyterianism had become associated with rebellion, and later disorders did little to dispel such suspicions.

For the Scottish nobility, an alliance with the crown was the best way of recovering their power, wealth and privileges lost to the Covenanters, and latterly, Cromwell. The nobles dominated negotiations with General Monck, and successfully ensured that their chosen method of interim government, the Committee of Estates from 1651, was re-instated. The key posts in the new administration went to individuals who had remained loyal to the crown throughout the last decade, even though almost all had been active in the covenanting regime at some point in their political career.

In the shires and burghs, many of those who had been ousted from their positions after the failure of the Engagement were re-instated. There is evidence

of managed elections for the first session of the restored Parliament, but it is true also that there was a genuine royalist reaction in Scotland, following on from the Engagement of 1648-9. Accepting Charles II as monarch meant, in the short-term at least, an end to the quartering of English soldiers, to the levy of cess, and to the general disorder of the last decade in particular. Scotland had played an subordinate role in the Republican regime, and the prospect of advancement in a new administration was not just tempting for ambitious members of the nobility. Positions in councils across the land were up for grabs, and the best way of securing such offices was to demonstrate loyalty to the crown. In Parliament, the delayed implementation of an Indemnity act helped to obtain the support of those who feared retribution for past behaviour. One covenanting innovation survived - the system of oaths to demonstrate loyalty. Those who refused to subscribe both the oath and declaration of public trust were not just ousted from Parliament, but from all positions of public authority.

The biggest threat to Parliament in its first few years was factional divisions. The Covenanting background of a number of high profile statesmen came back to haunt them when Middleton, the King's Commissioner, became increasingly obsessed with ensuring that it was he alone that dominated Scottish affairs. The ease by which Middleton persuaded the gathered estates to enact the audacious 'Billeting' plot to oust his main rival, the Secretary of State, the Earl of Lauderdale, was ample evidence of the submissiveness of Parliament. However, Middleton made a disastrous miscalculation, and he paid with his job. Parliament was quick to change its allegiances. At the command of Lauderdale, they renounced their former actions in order to preserve royal favour. It seems that whatever the King's Commissioner asked, the estates were quick to grant.

Widespread in Europe was the belief that parliamentary approval ought to be obtained for important legislation, and rulers generally accepted that no tax could be imposed without the consent of Parliament. Two Conventions of Estates were summoned in the mid-1660s, despite crown claims that the more than generous yearly annuity of £40,000 granted to the King in 1661 would mean an end to such future grants of taxation. As in England, the crown overestimated its finances. Corrupt courtiers took a large slice of the grant voted in 1661, and the resulting shortage was compounded by the downturn in trade. Although the Conventions were assembled to provide a supply for English military action against the Dutch, it was the perpetual problem of religious dissent that necessitated first a standing army, then a large militia to ensure order in the localities. The government had few problems securing generous fiscal grants from the two Conventions, who were once more eager to express their loyalty to the crown. But the imposition of successive taxes to pay for the expansion in manpower (and the use of troops to collect these funds) made the royalist administration more unpopular in certain localities than ever. Rebellion broke out in 1666 because the government had underestimated the strength of feeling against such quartering of troops, and especially the submissiveness of those ministers who had been forcibly removed from their parishes by the legislation of 1663. As the administration was to learn from bitter experience, repressive religious policies only bred discontent.

Despite contemporary claims, the Pentland rising was never a serious threat to the stability of the royalist administration. Its main consequence was that it exposed the limits of the regime's authority in the localities. Lauderdale's commanding position at court depended on the illusion that all was well north of

the border, and such a high profile demonstration of the ineptitude of some of his deputies in Scotland provided the excuse for their removal. The bishops, headed by Archbishop Sharp, were forced into accepting the royal supremacy in church matters and a new policy of toleration. The Earl of Rothes was demoted to the post of Chancellor, and the power-base of his support, the army, was disbanded. A standing army, something no other monarch had possessed, had been appointed as a means of crushing any opposition to the restitution of royal power, to prevent any popular uprising such as that of the Covenanters. Yet, providing for permanent troops was something for which the Scottish economy was never designed. The army proved to be a massive drain on resources, and, with a downturn in trade caused by war and continuing disagreements with England over commercial tariffs, the Scottish economy languished in the doldrums. This was largely the case throughout the reign of Charles II.

Lauderdale, finally unencumbered by any rivals, was appointed Commissioner to Parliament in 1669. The deputies he appointed to oversee business in Scotland after Rothes' fall, the Earl of Tweeddale and Sir Robert Moray, had few ambitions to succeed to Lauderdale's position. Indeed, Moray could only be persuaded to stay a year before he returned to his scientific studies in London. Tweeddale had initial success, especially in curbing some of the corruption that had flourished under Rothes, and he spearheaded a number of new initiatives, the most significant of which was the idea of political union with England.

Some form of union had initially been suggested as a means of bringing both countries to a closer trade agreement. Negotiations for political union began largely as a result of the failure of these talks. There were benefits for

everyone, except, crucially, the English. The King believed he could make use of Scottish votes in a British Parliament, and the leading Scottish politicians were assured of promotion, as well as an end to the trading restrictions enshrined in the Navigation Act. Yet, when Parliament met to approve the proposals, it became clear that there was no broad support for such an initiative; Lauderdale recognised as much when he refused to allow the chamber to vote on the membership of a commission to treat with English representatives. A number of vocal opponents constantly challenged the government's plans, and, after consultation with key members of the Articles, even Lauderdale was forced to admit to the King that such a measure could not be pushed through an unwilling chamber. Despite the recent erosion of parliamentary powers (and the submissiveness of previous sessions to crown demands), there existed a widely held belief that Parliament had a right to be consulted, especially on a proposal that would have resulted in a reduction in its powers, or ultimately, its demise.

It was not an auspicious start to Lauderdale's new position, and although the subsequent failure of the union proposal initially quietened opposition in the chamber, when Parliament reconvened, there were soon a number of other problems. A measure removing the monopoly of trading rights from royal burghs was perceived as an attack on their ancient privileges. In addition, the advocates, many of whom represented burghs in Parliament, were enraged by the advancement of a number of uneducated men to their ranks. Regardless of the government's true intentions, both these initiatives were regarded as ill-disguised attempt at subjugation. Lauderdale's personal behaviour in Parliament was also significant. His paranoia that any opposing view was a threat to his own standing and that of the crown roused further discontent among the estates.

The success of many European Parliaments depended on the co-operation between the gathered estates. In France the continued conflict between the members of the Estates-General resulted in a limited number of meetings during the seventeenth-century. As a result, the Estates-General lost the initiative for power to the smaller provincial Parlements, altogether a less intractable body.² In contrast, it was the combined power of the nobility with the lesser estates in the Scottish Parliament in the mid-seventeenth-century, which allowed the institution to expand its powers at the expense of an absolutist monarchy. As was the case in Scotland and England, the weakness of monarchy, combined with the co-operation between parliamentary estates, enabled British assemblies, at some points during the seventeenth-century, to effectively rule without the authorisation of the monarch. Yet after the Restoration, the crown recouped and increased all the power it had lost. In Parliament, the crown faced problems only when opposition became widespread over all three estates.

The growing discontent of the burghs, and to a lesser extent, the shires, found leadership in the guise of the Duke of Hamilton. Consistently overlooked for government position, Hamilton seems to have been motivated mainly by his exclusion from favour. He found sympathy with the Earl of Tweeddale, who had been cast aside by Lauderdale on little more than a whim. In 1673, genuine discontent over monopolies provided the excuse for making a broader attack on Lauderdale's ministry. This was unexpected, for Lauderdale believed that the restrictions of the Restoration settlement prevented such opposition from being elected. Crucially, there was no such restriction on members of the nobility,

² A.R. Myers, *Parliament and Estates in Europe to 1789*, (London, 1975), pp.29-30, 70; R. Bonney, *The European Dynastic States, 1494-1660* (Oxford, 1991), pp.322-3.

who exploited existing discontent amongst the other estates, against the monopolies in particular. The lesser estates paid severely for their involvement. To purge those implicated in the attack on Lauderdale, restrictions on burgh elections were rigorously enforced, and attempts to regulate advocates led to a long and bitter dispute. Cases of controverted elections, a rare occurrence at the beginning of the reign, multiplied, evidence of increasing discontent in the localities.

The relationship between monarchy and Parliament was the key ingredient in determining how successful a representative assembly could perform in seventeenth-century Europe. It remained true throughout the century that all Parliaments were called at the behest of the monarch. Consequently the monarch could dissolve, prorogue or even abandon consultation with representative assemblies. This was increasingly the case in France and Spain where the monarchy devised alternative arrangements for the granting of taxation. In these countries, provincial or regional assemblies began to assume many of the functions of national assemblies, the advantage for the crown being that these local assemblies were easier to direct and control. In Sweden, the Riksdag could assume a commanding role in government only with the Crown's authorisation. As was seen when Karl XI ascended the throne, an absolutist monarch could, by refusing to summon the estates, eliminate their participation in government.³

Charles II never went to such extremes in Scotland, but after the events of 1673, there was a reduction in the role of the estates. Lauderdale became

³ M.F. Metcalf (ed.), The Riksdag: A History of the Swedish Parliament, (New York, 1987), pp.103-4.

increasingly tired with Parliament because it was too difficult to control, and too dangerous, especially when he was facing similar hostility from the House of Commons. Requests for a new meeting were consistently ignored until the financial situation necessitated a grant of taxation. A Convention of Estates was called because it was limited only to discussions on tax. Yet, Hamilton and his Party of followers, benefiting from increased organisation, managed to turn the issue of controverted elections into another attack on the Commissioner. Although the opposition did not disrupt the passage of the supply, it once more successfully discredited Lauderdale. This, coupled with military debacle of the Highland Host, combined to make Lauderdale's position increasingly untenable.

The meeting of the Convention was Lauderdale's last as Commissioner. Although his influence had been reduced somewhat due to ill health, in 1680 the English Parliament achieved what their Scottish counterparts could not – securing his retirement from politics. English opposition to the continuance of Lauderdale's rule was crucial. It is unlikely that Charles would have removed his chief Scottish minister on the demands of the Scottish Parliament alone. Indeed, Hamilton had been seeking as much for a decade without result. It was only when opposition both north and south of the border was in likelihood of uniting did the King act. It was Charles II's fear of English, not Scottish, disaffection that led him to seek conciliatory policies

James, Duke of York's succession to the post of Commissioner was initially welcomed, but it soon became clear that he was in Scotland only to escape the unfolding Exclusion Crisis in England. In complete contrast to his predecessor, he played a minimal role in Parliament. This did not mean, however, that there was no need to control the chamber. The Duke of York's presence effectively

prevented open displays of opposition, especially criticism regarding his Catholic faith, but there were familiar attempts to stifle debate. The controversial Test Act was designed to exclude all crown opponents from sitting in future Parliaments. Its effect, however, was only to create a broader dissident opposition, united in defence of Protestantism against a Catholic monarch. The repressive religious policies pursued in the infamous 'Killing Times' alienated even the most conforming of subjects.

* * * *

The crucial question is what did the parliamentary opposition that emerged during the Restoration represent? For one, it felt no affinity with the Presbyterian dissenters that were involved in armed rebellion against the crown. Indeed the Duke of Hamilton had often advocated more repressive measures against non-conformity, hoping to benefit financially from the involvement of his troops. The opposition remained consistently loyal to the crown, even initially to the Catholic James VII, and it was inconceivable that those involved would go to the lengths of an armed struggle. It was hostility to the long tenure of the Duke of Lauderdale, and exclusion from political office that galvanised noble involvement, but it is clear that not all of those involved by 1678 could have hoped to benefit from the removal of Lauderdale.

As was evident in the union debates of 1669, there existed a widely held belief that Parliament had a significant role to play in the ruling of the country, even if the crown was often reluctant to acknowledge it. Yet this was in conflict with the system of government revived by the Restoration settlement. The Crown regained the right to summon, prorogue and dissolve sessions of

Parliament, to name all personnel, and to exercise complete control over debate by the restitution of the Lords of the Articles. The estates had little input into the drafting of legislation, and, under Lauderdale in particular, any suggested alterations to the pre-planned legislative programme were positively discouraged.

Yet, at almost every meeting of the estates, there was resistance to this tenet. Few remnants of the Covenanting era survived the Restoration, but it is clear that some of the ideology behind the constitutional revolution of the 1640s endured. The escalating problem of religious non-conformity, leading eventually to armed rebellion, was ample demonstration of the continuation of covenanting beliefs. Amongst sections of the political elites some aspects of covenanting ideology survived, albeit in a watered down form. For, even after the unprecedented reassertion of royal power in 1661, there still existed a belief that Parliament had a role in limiting unrestrained royal authority. This was especially true towards the end of the reign of Charles II, when discontent towards the increasingly arbitrary rule of Lauderdale reached its peak. The publication of Sir James Dalrymple of Stair's Institutes of the Law of Scotland in 1681, with its emphasis on the divine basis of law and its superiority over the royal prerogative, articulated such ideas.⁴ It became the basis for a new political agenda that can be followed through to the 1689 revolution and beyond. When James VII was deposed, the Scottish crown was offered conditionally to William and Mary. Subsequently, throughout the 1690s, the country party, led

⁴ Stair's views were still in the minority. With James, Duke of York's presence in Scotland from 1679-82, there was a new flourishing of royalism, best seen in Sir George Mackenzie of Rosehaugh's treatise on absolute monarchy, Jus Regium (1684). See the introductory remarks to C. Jackson, "The Paradoxical Virtue of the Historical Romance: Sir George Mackenzie's *Aretina* and the Civil Wars" in John Young (ed.), Celtic Dimensions of the British Civil Wars (Edinburgh, 1997) for this work's place in Mackenzie's literary output.

by Andrew Fletcher of Saltoun, sought to reduce crown powers. As detailed in his famous policy of limitations, Fletcher's concept of a constitutional monarchy subject to an annual Parliament that had powers to appoint committees and officers of state was the complete antithesis of what Lauderdale believed Parliament's role to be.

Hamilton and his supporters made their protests known in Parliament because it was believed that this was the arena in which grievances could be redressed. It is clear that the royalist administration did not share this view. When the opposition's attempts failed, they were forced to journey to Court to represent their complaints direct to the King. This too had little success. Lauderdale, from the beginning of the Restoration, had realised that real influence depended on having the King's ear. Even when he was absent from London, he had a channel of communication open that the opposition could not hope to rival. It was he and often he alone who kept Charles informed of events in Scotland. That the King rarely sought alternative sources of information from Scotland gives some indication of the significance he placed on events in his northern kingdom. As long as there was no danger of insurgency in Scotland, Charles was content to delegate responsibility for Scottish government to his chief minister. Opposition to Lauderdale was only successful when the English Parliament joined in the attack, an altogether more dangerous prospect for the King. When this occurred, Lauderdale was at once as disposable as both Middleton and Rothes had been.

James, Duke of York's promotion to the post of Commissioner was at first successful, partly because few dared to voice discontent about the heir to the throne, and because many of the noble leaders of the opposition were initially

satisfied with court patronage. Yet many of the old tensions remained. James too was reluctant to let Parliament operate as freely as some wished, and he preferred to concentrate command in the hands of a few favoured individuals. The growth in discontent after the Parliament of 1685 was dissolved demonstrated that the opposition that had first appeared in the reign of Charles II was not centred against one particularly dominant individual, such as Lauderdale, but rather against a belief that Parliament was a subservient body, with a minimal role to play in policy.

It is clear that the growth of opposition to crown powers in the Restoration is crucial to an understanding of later events, especially those surrounding the Revolution of 1688-89. Although almost all institutional changes introduced by the Covenanters were abolished at the return of Charles II, their ideology survived, most noticeably in the religious dissent that plagued both Charles II's and James VII's reigns. It is unlikely that Hamilton and his followers thought they had much in common with their parliamentary colleagues of the 1640s but they too demonstrated a line of thinking that had its basis in covenanting times. Many of the opposition Party were motivated by their exclusion from political office, but there was a constitutional basis to their actions. Greater parliamentary involvement in the drafting of legislation was a fairly consistent demand, and there was a shared belief that Parliament was a significant body, not simply a rubber stamp for pre-prepared legislation.

A new degree of parliamentary freedom was only achieved with the deposition of the Stewart monarchy. The Revolution saw the abolition of the Lords of the Articles, the removal of the bishops, reducing the crown vote, and the royal prerogative superseded by the rule of law. The Scottish Parliament

witnessed a new constitutional settlement - one that was radically different from that enacted at Charles II's restoration in 1660.

Appendix I

Membership of the Committee of Estates, 1660

Nobility Attendance at Committee of Estates,
August-December 1660

Name	Commission For 1651	Attendance		%
		23 August-13 October (31 diets in total)	9 October-8 December (19 diets in total)	
Earl of Wigton	✓	23	11	68
Earl of Glencairn, Lord Chancellor	✓	31	0	62
Earl of Dumfries	✕	24	3	54
Earl of Rothes, President	✓	12	14	52
Earl of Tullibardine	✓	21	5	52
Lord Cardross	✓	23	0	46
Lord Bellhaven	✓	16	5	42
Lord Burghlie	✕	17	4	42
Earl of Home	✓	13	6	38
Earl of Loudon	✓	0	18	36
Earl of Linlithgow	✓	5	11	32
Earl of Galloway	✓	15	0	30
Earl of Buchan	✓	14	0	28
Earl of Callander	✓	13	0	26
Earl of Cassillis	✓	0	12	24
Earl of Haddington	✓	12	0	24
Earl Marischal	✓	6	5	22
Earl of Seaforth	✕	6	4	20
Lord Fraser	✓	5	2	14
Earl of Eglington	✓	7	0	14
Lord Cochrane	✓	1	5	12
Earl of Dalhousie	✓	6	0	12
Earl of Morton	✕	0	5	10
Earl of Errol	✓	0	5	10
Earl of Wemyss	✓	5	0	10
Earl of Roxburgh	✓	0	4	8
Lord Duffus	✓	3	0	6
Lord Halkertoun	✕	0	3	6
Duke of Hamilton	✓	0	2	4
Earl of Murray	✕	0	2	4

**Shire Attendance at the Committee of Estates,
August-December 1660**

Name	Previous Shire	Commission for 1651	Attendance		%
			23 August-13 October (31 diets in total)	9 October-8 December (19 diets in total)	
Sir James Fouils of Colinton	Edinburgh	✓	25	17	84
James Murray of Skirling	Peebles	✓	25	17	84
Sir Archibald Stirling of Carden	Stirling	✓	26	12	76
Robert Keith of Hepburn	Haddington	✓	17	15	64
John Murray of Touchdam and Polmais	Stirling	✗	19	13	64
Sir James Livingston of Kilsyth	----	✗	19	12	62
Sir Thomas Hamilton of Preston	----	✓	12	16	56
Sir John Fletcher, King's Advocate	----	✗	7	18	50
Thomas Kerr of Cavers	Roxburgh	✓	18	7	50
Robert Nairn of Strathurd	----	✓	22	3	50
William Elliot of Stobs	Roxburgh	✓	16	11	48
Thomas Drummond of Riccarton	----	✓	14	10	48
Sir George Mackenzie of Tarbat	----	✗	7	16	46
Sir Walter Scot of Whitslade	Selkirk	✓	13	10	46
John Udny of that Ilk	Aberdeen	✓	15	6	42

**Shire Attendance at the Committee of Estates,
August-December 1660**

Name	Previous Shire	Commission for 1651	Attendance		%
			23 August-13 October (31 diets in total)	9 October-8 December (19 diets in total)	
Sir James Mercer of Aldie	----	x	16	5	42
Sir Robert Innes of that Ilk, younger	Elgin	✓	20	0	40
George Hay of Naughton	Fife	✓	16	3	38
Sir Archibald Stewart of Blackhall	----	✓	15	3	36
Sir Gilbert Ramsay of Balmain	Kincardine	x	5	12	34
Sir James Arnot of Fernie	----	x	13	3	32
Sir Alexander Gibson of Durie	----	✓	3	11	28
Alexander Home of Prendergest	Berwick	x	10	4	28
Sir John Wauchope of Niddrie-Marischal	Edinburgh	✓	0	11	22
William Murray of Hermiston	----	x	6	5	22
William Kerr of Newtoun	----	x	5	5	20
Robert Ferguson of Craigarroch	Dumfries	✓	5	5	20
Sir George Kinnaid of Rossie	----	x	2	6	16
Sir Archibald Primrose	----	x	6	2	16
Sir James Lockhart of Lee	Lanark	✓	0	7	14
William Douglas of Kelhead	----	x	4	3	14

**Shire Attendance at the Committee of Estates,
August-December 1660**

Name	Previous Shire	Commission for 1651	Attendance		%
			23 August-13 October (31 diets in total)	9 October- 8 December (19 diets in total)	
Sir John Colquhoun of Luss	Dumbarton	✓	0	4	8
William Scott of Ardross	Fife	✓	0	4	8
Sir James McGill of Cranstoun-Riddell	Edinburgh	✓	2	2	8
Sir John Wemyss of Bogie	Fife	✓	0	2	4
Sir James Ogilvie of Newgrange	---	✓	2	0	4
Robert Grierson of Lag elder	Dumfries	✓	2	0	4
Laird of Haltoun	---	x	2	0	4

**Burgh Attendance at the Committee of Estates,
August-December 1660**

Name	Previous Burgh	Commission for 1651	Attendance		%
			23 August-13 October (31 diets in total)	9 October-8 December (19 diets in total)	
John Milne	Edinburgh	✓	25	14	78
Sir Robert Murray	----	✗	22	15	74
David Wilkie	Edinburgh	✓	18	16	68
William Cunningham	----	✗	24	8	64
Hew Hamilton	Edinburgh	✓	18	13	62
George Garden	Burntisland	✓	20	11	62
Sir Robert Farquhar	Aberdeen	✓	27	3	60
David Spence	Rutherglen	✓	22	6	56
John Burnside	----	✓	13	14	54
Duncan Nairn	Sirling	✓	17	10	54
Sir Andrew Ramsay	----	✗	18	9	54
John Scot ¹	Edinburgh	✗	20	7	54
Archibald Sydsert	Edinburgh	✓	12	14	52
Andrew Glen	Linthgow	✓	16	9	50

¹ Replaced his father, William Scot, who had an original commission.

**Burgh Attendance at the Committee of Estates,
August-December 1660**

Name	Previous Burgh	Commission for 1651	Attendance		%
			23 August-13 October (31 diets in total)	9 October- 8 December (19 diets in total)	
Alexander Cunningham	Crail	✓	20	4	48
Robert White	Kirkcaldy	✓	15	8	46
John Bell	----	✗	18	4	44
David Simpson	Dysart	✓	12	8	40
John Rutherford	Jedburgh	✓	15	5	40
William Seton	----	✗	11	8	38
John Jossie	----	✗	11	8	38
John Paterson	----	✗	11	7	36
Andrew Grant	Perth	✓	15	3	36
James Pedie	Montrose	✓	9	8	34
Sir Alexander Wedderburn	Dundee	✓	7	8	30
John Forbes	Inverness	✓	14	1	30
Sir John Smyth	Edinburgh	✓	0	14	28
Sir William Thomson	----	✓	0	10	20

**Burgh Attendance at the Committee of Estates,
August-December 1660**

Name	Previous Burgh	Commission for 1651	Attendance		%
			23 August-13 October (31 diets in total)	9 October- 8 December (19 diets in total)	
Alexander Bower	Dundee	✓	5	5	20
John Lindsay	Anstruther Easter	✓	0	5	10
Hew Kennedy	Ayr	✓	0	4	8
Colin Campbell ²	Glasgow	✓	0	3	6
Robert Arnot	Perth	✓	0	3	6
John Auchterlony	Arbroath	✓	0	2	4
Robert Campbell	----	x	2	0	4

² Replaced his father, also Colin Campbell, who had an original commission.

Appendix II
Membership of Lords of the Articles
1661-63 and other posts held

LORD OF THE ARTICLES	COMMITTEE OF ESTATE MEMBER	PRIVY COUNCILLOR
Duke of Hamilton	✓	✓
Marquis of Montrose	x	✓
Earl of Erroll	✓	✓
Earl Marischal	✓	✓
Earl of Mar	x	✓
Earl of Rothes	✓	✓
Earl of Atholl	x	✓
Earl of Home	✓	✓
Earl of Haddington	✓	✓
Earl of Dumfries	✓	✓
Earl of Callander	✓	✓
Earl of Annandale and Hartfell	x	✓
Sir John Gilmour (Edinburgh)	x	✓
Sir Peter Wedderburn (Haddington)	x	✓
Sir Thomas Hamilton of Preston (Haddington)	✓	x
Sir James Lockhart of Lee (Lanark)	✓	✓
John Murray of Polmaise (Stirling)	✓	x
Sir Archibald Stirling of Carden (Linlithgow)	✓	x
Sir Alexander Gibson of Durie (Fife)	✓	✓
Sir George McKenzie of Tarbat (Rosshire)	✓	✓
Sir James Foulis of Colinton (Edinburgh)	✓	x
Mungo Murray of Garth (Perth)	x	x
William Scott of Ardross (Fife)	✓	✓
Sir Gilbert Ramsay of Balmain (Kincardine)	✓	x
Sir Robert Murray (Edinburgh)	✓	✓
John Paterson (Perth)	✓	x
Alexander Wedderburn (Dundee)	✓	x
William Gray (Aberdeen)	x	x
Duncan Nairn (Stirling)	✓	x
Andrew Glen (Linlithgow)	✓	x
John Bell (Glasgow)	✓	x
William Cunningham (Ayr)	✓	x
William Seaton (Haddington)	✓	x
John Irving (Dumfries)	x	x
John Auchterlony (Arbroath)	✓	x
Hew Sinclair (Annan)	x	x

Appendix III

Draft Pamphlets and policy papers Held by the Duke of Hamilton¹

1. "Address to the King giving a Representation of the State and Interest of Scotland and listing the chief causes of Complaint" (c.1673/4), by Sir George Mackenzie of Rosehaugh (?). **NAS GD 406/2/640/5**
2. "A Representation of the State and Interest of Scotland, listing the Chief Causes of Complaint" (c.1673/4), by Sir George Mackenzie, his Majesty's Advocate.
NAS GD 406/2/635/16
3. "The Causes and the Remedy of the Grievances in Scotland" (c.1674/5), by the Viscount Tarbat.
NAS GD 406/2/B635/3
4. "The History of Holyrood House – a Pasquil on Duke Lauderdale" (1675), author unidentified.
NAS GD 406/2/B635/1
5. "Defences for the Duke of Lauderdale against the Commons address" (1675), author unidentified.
NAS GD 406/2/635/4
6. "The Present State of Affairs in Scotland, upon the Adjournment of the Parliament;" "Ane Short Accompt of the Affairs of Scotland" (another copy in GD 406/2/640/4); "A Representation of the Present Affairs of Scotland;" "A Short Representation of the affairs of Scotland;" Untitled (c.1674), all by Sir George Mackenzie of Rosehaugh.²
NAS GD 406/2/635/6 (i/ii/iii/iv/v)
7. "A Representation of the State of Affairs in Scotland, drawn by Sir George Mackenzie, his Majesties Advocate" (c.1673/4).
NAS GD 406/2/635/16 (another copy in **NAS GD 406/2/635/13**)
8. Printed copy of "Some Further Matter of fact relating to the Administration of affairs in Scotland under the Duke of Lauderdale, Humbly offered to his Majesty's consideration" (1679?)
NAS GD 406/2/635/15
9. "What may be Redressed by the King without a Parliament" (1674/5?), author unidentified.
NAS GD 406/2/635/17

¹ All are unpublished unless otherwise stated.

² Many of the statements made in these papers will be found (in many cases word for word) in the published pamphlet "An Account of Scotland's Grievances by Reason of the Duke of Lauderdale's Ministry" (c.1674), attributed to Sir James Stewart of Goodtrees.

Appendix IV

This satirical poem sums up perfectly the relationship between Lauderdale and Hamilton. Probably written soon after the events of the 1673 session of Parliament, it gives valuable insight into what contemporaries made of the often-personal battle between the two Dukes. The characterisation of the parliamentary opposition as drunkards is probably more explicitly aimed at Rothes, yet Hamilton too is criticised for claiming to be “Scotland’s great physician.” Lauderdale does not escape lightly, however. He is criticised for his treatment of Tweeddale and for his arbitrary imprisonment of Lieutenant General Drummond. Yet the writer clearly understands the means by which Lauderdale survives all attempts to remove him from power – the continued favour he is shown by “his Master,” the King.

‘A Dialogue Betwixt Hamiltoune and Lauderdaleill’¹

LAUDERDAILL

Are you the man that darr withstand
 My pleasur, with a pettie band
 Off tiplers, that surround you?
 I’ll let yow know,
 That with one blow
 I’m able to confound you.

HAMILTOUNE

Your blust’ring cannot doe us wrong
 Should you wear out your bussleing tongue,
 So pray proceid no furdur;
 But lett’s express

10

¹ Printed in David Laing (ed.), *Various Pieces of Scottish Fugitive Poetry of the Seventeenth Century*, 2nd Series (Edinburgh, 1853), author unknown.

The Practices
By which we cheat each other.

LAUDERDAILL
Sometymes I catch a simple Lord,
Who for small help he can afford,
‘Mongst loyall men’s inrolled;
I’le swear a King’s
A sacred thing,
And should not be controlled.

HAMILTOUNE
I know a trick a good as that,
When I a Lord mynd to intrape, 20
The best way to secure him,
And make him myne,
Is to resigne,
Ane Old Love to assure him.

LAUDERDAILL
I have ane airt which never faills.
My Master’s Letter still prevails,
Who does extreamlie trust me;
It’s by that hap
I keep my cap
For as ill as ye wish me.² 30

HAMILTOUNE
I have a troupe of femaill sex
That can your faction’s currage vex,
Without a sword or corslett;
Though I’m a Duke,
They will on look,
Catch me er’ I’m a wared.

LAUDERDAILL
My Dutches can ane armie bring
Off those she favour’d in her spring,
For she was still in action;³
And though she’s old, 40
Her blood’s not cold,
Shall yet increase our factione.

HAMILTOUNE
Your Grace’s marrow, boull and sake,

² The King’s continued favour and the powers he gave to his Commissioner was the key to Lauderdale’s success and longevity in office.

³ An allusion to the Countess of Dysart’s alleged ‘intrigues’ with Cromwell, the purpose of which was to secure a guarantee that Lauderdale would only be imprisoned, not executed.

Your conter pease, at least a peck,
 Serves all for our derisione;
 When we paroll,
 And drink a scoll,
 To Lauderdaill's confusione.

LAUDERDAILL

Your scrybleing gown-men I despyse,
 Though you their nonsense highlie pryze, 50
 Set up in rithme and order;
 Your Jurnay horne
 Gett only scorne,
 For blowing from the Border.⁴

HAMILTOUNE

Yet our's must be the juster side,
 Which now by mind is tried,
 Since I'm turned politician;
 I was ane ass,
 Though now I pass,
 For Scotland's great physician. 60

LAUDERDAILL

Your Grace is yet so great a sott,
 You only act what others plott
 At Maistertoune's round table,⁵
 And claret blowes
 Up Roth's nose,
 And makes his judgement stable.

HAMILTOUNE

Ryde fair, my Lord, for yow may chance
 To make ane voyage unto France,
 As old Hyde did before yow;
 Wer you once o're 70
 We'l fear no more,
 His Majestie 'l restore you.

LAUDERDAILL

My Lord, I'le follow you advyse,
 But I advertice once, twice, thrice,
 A herald comes to sound you;
 Dumbartoun can
 Keep any man,

⁴ The reference to "scrybleing gown-men" – most probably the advocates – suggests the date at which the poem was written. It was almost certainly while the advocates' dispute was ongoing, and the reference to Hamilton's journey home suggests that it may have been written either in or soon after early 1674 when members of the opposition were returning from their unsuccessful journey to Court.

⁵ The public house where Middleton's allies devised the Billeting plot in 1662.

Ask Drummond, he will tell you.⁶

HAMILTOUNE

Your threat'nings does us little ill,
 You frighten more than you do kill; 80
 For Tweddale you did fear him,
 And make him run,
 In heast to shun
 A danger was not near him.

LAUDERDAILL

A vengeance sure must you attend,
 Whilst you have Tweddale for your friend,
 Accursed since his creatione;
 He did embrace
 The usurper's race,
 And a Stewart's extirpatione. 90

HAMILTOUNE

It never can belong to you
 To upbraid a man with what you doe,
 By calling him a traitor;
 The King of France
 Payes the expence
 Of cheats, you act by natur.

LAUDERDAILL

Oblig'd by France, I feare not you
 Nor all that Faction's spight can doe;
 Bais slutt, a pox upon her!
 Stormes I'le endure, 100
 My port's secure,
 By the French Maid of Honour.

HAMILTOUNE

For of the friends you cannot thrive,
 Take head, I pray, of seventie-fyve.
 Though you had cair to hide it;
 Our Parliament
 The strock had sent
 Had you but dar'd to byde it.

⁶ A reference to the imprisonment of Lieutenant General William Drummond of Cromlix who was deprived of his command and imprisoned in Dumbarton Castle in 1674 owing to a quarrel with Lauderdale. He was released in 1676. M. Young, (ed.) The Parliaments of Scotland: Burgh and Shire Commissioners, I, p.203.

LAUDERDAILL

No matter, since my stratagem
 Did make you ane after game, 110
 For all your great abruptnes;
 I countermyne
 All your designe
 Your stormie Voyage can witnes.⁷

HAMILTOUNE

Her war alyk with you, for that
 Will make your Grace's heart to clap,
 For fear wee had attempted
 To cutt your thrott,
 Which is a plott
 You have not yet prevented. 120

LAUDERDAILL

Your wild ambition's understood,
 Though you pretend your Countrie's good,
 As did your predicesor;
 Whose head did pay,⁸
 As yours yet may,
 The crymes of ane Oppressor.

HAMILTOUNE

Well, faith, I'm almost out of hope,
 You have so oft deserv'd a rope,
 And yet escap'd without it;
 But your arrears 130
 Of sixtie years,
 You'll pay, you need not doubt it.

⁷ Another possible indication of the date of the poem – after Hamilton's audience with the King in December 1673.

⁸ A reference to the Marquis of Argyll, executed in 1661.

Appendix V

Among the Shaftesbury papers in the Public Record Office is a list of names (drawn up by an anonymous writer) of those suitable for taking office in Scotland once Lauderdale and his associates have been removed from power. As would be predicted, many can be identified as previous supporters of the Duke of Hamilton's opposition in Parliament, although the anonymous writer obviously does not place Hamilton or his closest allies as amongst the best candidates for office (see, for example, his description of Tweeddale and Queensberry). Interestingly, the writer picks out for special mention those who have continually refused to subscribe the Declaration of Public Trust, suggesting that there was a significant body of opposition that operated outside the public arenas.

'Instruments for the Worke'¹

Of lawyers, with us called advocates, these are the chief as in order,

- 1 Mr Walter Pringle; a good countryman; to church indifferent; a freind to England; scruples not the declaration.
- 2 Mr James Daes; a good countryman; to church indifferent; a freind to England; takes not the declaration.
- 3 Mr David Hume; as the 2d.
- 4 Sr Geo Lockhart; as the 1st.
- 5 Sr John Cunningham as the 1st.
- 6 James Stuart; as the 2d but I know not how affected to England. Sr John Harper as the 1st but presbyterian, changeable of late. If these wer to be considered qua lawyers, they would be otherwise ranked.

Note. The Erle of Crawford is our present Chancellares brother in Law, I wish he had his office; the Erle of Hadington is the Chancellares son in law. The

¹ From PRO, Shaftesbury Papers, vi b, 428, printed by J.R.Jones as 'The Scottish Constitutional Opposition in 1679' *SHR*, xxxvii, (1958).

Lord Cochrane is the E of Dundonald's son.

I mention the Peers by themselves, and each in such order as my opinion prefers them for publicke spirits and well affected to government, and I thinke I erre not.

- 1 The Erle of Craufors and Lindsay a good countreyman, Presbiterian, great freind to England, never tooke the declaration nor will.
- 2 Erle of Lowdon as the other in all mentioned.
- 3 The Lord Cardross as the first but once tooke the declaration and will not againe.
- 4 Lord Melvill as the first.
- 5 Erle of Forfar, as the first.
- 6 Erle of Tarras, as the first.
- 7 Lord Carmichale, as the first.
- 8 D of Hamilton, a good countreyman, indifferent anent church government, not much concerned in England, takes the declaration.
- 9 E of Finlaterre as the third, but not much concerned in England.
- 10 E of Cassils a good countreyman, presbiterian, freind to England, has taken the declaration and I suppose will againe.
- 11 E of Callander as the third, but not concerned in England, and I knowe not if he wil still declarre.
- 12 Viscount Kenmore as the third but inconcerned as to England.
- 13 L Strathnaver as the first.
- 14 Vt Arbuthnot as the 12th.
- 15 E of Perth a good countreyman highly Episcopal, freind of England, takes the declaration.
- 16 E of Hadington as the 10th much at D Hamilton's Disposall.
- 17 E of Lothian as the Eight.
- 18 Ld Cochrane as the 8t likewise.
- 19 E of Southesk as the 8t.
- 20 E of Dumfreese as the 15th.
- 21 E of Tweedale as the 8t selfish and plyant.
- 22 E of Queensberry as the 21st.
- 23 Ms of Atholl as the 15th.
- 24 E of Kincarden as the 8t.
- 25 L Yester as the 8t at Tweedale's dispose.
- 26 E Rosebrugh young, I cannot say what, at Tweedale's dispose too.
- 27 L Torfichane as the 10th but inconcerned as to England.
- 28 L Blantyre as the 27th.
- 29 L Bargony as the 27th.
- 30 L Jedburgh as the 15th but inconcerned as to England.
- 31 L Ruthven as the 1st; young and I know not how affected to England.

As for the Marq of Montrose I can say nothing of common knowledge and I doubt the information I have; you will not I thinke have mention of other peers then these as recommended to publicke trust or office; els the mentioner will erre.

The best men of our present Bishopes are

Dr Young late of Edinburgh now B of [Ross]²

Dr Ramsay B of Dumblane.

Wee have many good gentlemen I shall name only a few I looke on fittest beyond doubt to choose of and of whom you are likliest to hear; preferable by my opinion according to their order in this List.

- 1 Sr James Dundass of Armiston, a good countreyman; presbiterian; a great freind to England; never took our declaration nor will.
- 2 Sr Robert Montgomery of Skelmorley; just such another.
- 3 Patrick Craufurd alias Lindsey of Kilburney as the 1st.
- 4 Sr William Carre of Greenhead; as the 1st; once tooke the declaration, will not now.
- 5 Sr Patrick Houston of Houston; a good countreyman; presbiterian a freind to England; takes declarat.
- 6 Sr William Scot of Harden senior; as the first.
- 7 John Rutherford of Edgarston; as the 4th.
- 8 Sr Hugh Cambel of Cesnock; as the 1st; concerned as to Engl.
- 9 John Maxwel of Pollock as the 1st.
- 10 James Hay of Parke as the 1st.
- 11 Robert Bailye of Jerveswood as the 1st.
- 12 Cromwel Lockhart of Lee; a good countreyman esteemd but I know him not well.
- 13 John Hope of Hopton as 1st.
- 14 Leutenant general Drumond as the 5th but concerned of England.
- 15 Sr Charles Halket of Pitferrane a good countreyman; to church government indifferent; frend to England; takes the declaration.
- 16 Andrew Fletcher of Salton; as 15th.
- 17 Adam Cockburne of Ormiston; as 15th.
- 18 Sr David Carnagy of Pittarro; as 15th.
- 19 John Napeir of Kilmahow; as 4t.
- 20 Sr John Shaw of Greenock; as 4t.
- 21 Lewes Craige of Ricarton; as 4t.
- 22 Sr Patrick Murray; a good countreyman; Episcopall; unconcerned of England; takes the declaration; at Tweedale's dispose.
- 23 Sr William Bruce of Balcasky as the 22d; at the Chancellares disposall.
- 24 Sr Alexander Bruce of Broomhall as the 22d; at Kincarden's dispose.
- 25 Sr Alexander Primrose of Carrington; as the 15th but unconcerned of Engl; not steedfast of late.
- 26 Sr Peter Wadderburne of Gosford as the 25th in omnibus.
- 27 Sr John Lockhart of Castlehill, as the 15th.
- 28 Sr John Cochrane of Ochiltree, as the 15th.
- 29 Sr Archibald Murray of Blackbarerry as the 22d, at Tweedale's dispose.

² This omission from the manuscript provides the date at which this list was written. Young was appointed Bishop of Ross in January 1679. J.R.Jones, 'The Scottish Constitutional Opposition in 1679', p.40.

30 Alexander Monro of Bearcraft as the 15th; disposed by Sr Alexander Primrose his patron and Kinsman.

These I assure you to be such as I truste and I think you will not heare of other but truly wee have many good men of gentry.

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