

Monarchs and Parliaments in a Scottish Context: the Scottish Restoration Parliament and the Reassertion of the Royal Prerogative of Charles II as King of Scotland

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INTRODUCTION

This article examines the Restoration Settlement that was enacted in the Scottish Parliament of 1661-1663 and how the prerogative powers of the Scottish monarchy were reasserted in the aftermath of conquest by Oliver Cromwell and occupation of Scotland between 1651 and 1660. The longer-term perspective against which this monarchical reassertion was set was the experience of the Covenanting Parliaments of 1639-41. During this period, the Scottish Parliament had become more powerful at the expense of the monarchy. This had been legislated for in particular in the Scottish constitutional settlement of 1640-41. In essence, therefore, there were two important contexts in which Scottish parliamentary developments of 1661-63 should be viewed: foreign conquest and occupation and an earlier period of constitutional reform that had restricted the powers of the Scottish monarchy and increased those of the Scottish Parliament.

The comparative study of parliaments and representative assemblies has been at the heart of the activities and objectives of the International Commission for the History of Representative and Parliamentary Institutions (ICHRPI). The relationship between parliaments and monarchs is an important theme in the study of early modern European history. The work of H.G. Koenigsberger had an important impact on UK-based scholars, with his seminal article *Dominium Regale or Dominium Politicum et Regale: Monarchs and Parliaments in Early Modern Europe*. This was Professor Koenigsberger's inaugural lecture at King's College, University in London, in 1975, later published in 1986¹. An important general comparative work on European parliamentary history that was published in 1975 was *Parliaments and Estates in Europe to 1789*, by A.R. Myers, then Professor of Medieval History at the University of

¹ It is published in H.G. KOENIGSBERGER, *Politicians and Virtuosi. Essays in Early Modern History*, Hambledon, London 1986, pp. 1-25. Koenigsberger's extensive publications on parliamentary history include *Estates and Revolutions. Essays in Early Modern European History*, Cornell University Press, London 1971 and *Monarchies, States Generals and Parliaments: The Netherlands in the Fifteenth and Sixteenth Centuries*, Cambridge University Press, Cambridge 2001.

Liverpool². It was not until recently that a new general overview of early modern European parliamentary history appeared with the publication of *The Parliaments of Early Modern Europe* by the late Professor Michael Graves in 2001³. Yet, this comparative trend was predated by the work of Professor Antonio Marongiu, especially with his monograph *Medieval Parliaments. A Comparative Study*. It was first published in Italian in 1949, revised in 1962 and first published in English in the UK in 1968. His work in this book focused on the medieval period, although the chronological coverage does extend into the seventeenth and eighteenth centuries⁴. It is interesting to note that both Marongiu and Myers were medievalists and that Koenigsberger wrote about the Italian parliaments⁵.

With regard to Scotland, only one of the above authors (Graves in 2001) had much to say about the Scottish Parliament, but this is unsurprising given that the study of Scottish parliamentary history was largely stagnant from the 1920s until the later twentieth century⁶. Professor Marongiu's *Medieval Parliaments* therefore does not include anything on Scotland, but his thematic and intellectual approach can indeed be applied to the study of the Scottish Parliament. Part V of his book is relevant to such an approach, with the section on characteristics of parliamentary assemblies. Themes within this section that can be specifically applied to the Scottish Restoration Parliament of 1661-3 include representation, mandatory powers and the contractual nature

² A.R. MYERS, *Parliaments and Estates in Europe to 1789*, James and Hudson, London 1975.

³ M.A.R. GRAVES, *The Parliaments of Early Modern Europe*, Longman, New York 2001.

⁴ A. MARONGIU, *Medieval Parliaments. A Comparative Study*, Eyre & Spottiswoode, London 1968 translated edition – originally published as *Il Parlamento in Italia nel Medio evo e nell'età moderna* (1949), revised 1962.

⁵ H.G. KOENIGSBERGER, *The Italian Parliaments from their Origins to the End of the 18th Century*, in *Politicians and Virtuosi*, cit., pp. 27-61. The publications of Myers include *England in the late Middle Ages*, Penguin, Harmondsworth 1971, *English Historical Documents*, vol. 4, 1327-1485, London 1969 and *Crown, Household and Parliament in Fifteenth Century England*, Hambledon, London 1985. This was published posthumously and edited by C.H. Clough with an introduction by R.B. Dobson.

⁶ C.S. TERRY, *The Scottish Parliament: Its Constitution and Procedure, 1603-1707*, MacLehose, Glasgow 1905; R.S. RAIT, *The Parliaments of Scotland*, MacLehose, Jackson and Co., Glasgow 1924. For recent contributions in terms of books and monographs, see J.R. YOUNG, *The Scottish Parliament 1639-1661: A Political and Constitutional Analysis*, Donald, Edinburgh 1996; R.J. TANNER, *The Late Medieval Scottish Parliament: Politics and the Three Estates, 1424-1488*, Tuckwell, East Linton 2001; A.R. MACDONALD, *The Burghs and Parliament in Scotland, c.1550-1651*, Ashgate, Aldershot 2007; G.H. MACINTOSH, *The Scottish Parliament under Charles II*, Edinburgh University Press, Edinburgh 2007; K.M. BROWN, A.J. MANN, A.R. MACDONALD, R.J. TANNER (eds), *The History of the Scottish Parliament, 1235-1707*, 3 vols., Edinburgh University Press, Edinburgh 2004-2010. For the Records of the Scottish Parliament project, see <http://www.rps.ac.uk>. This is a fully searchable database containing the proceedings of the Scottish Parliament from the first surviving act of 1235 to the Union of 1707.

of parliamentary agreements⁷. It is the intention of this article to continue the trend of the comparative study of parliaments by taking these themes identified by Professor Marongiu and applying them to the Scottish Parliament and its relationship with the monarchy in the period 1661-3. This would be a fitting tribute to a scholar of Professor Marongiu's standing.

THE POLITICAL CONTEXT OF THE RESTORATION OF THE MONARCHY IN SCOTLAND

Recent decades in early modern British and Irish history have focused on the nature and interaction of the three kingdoms of Scotland, England and Ireland in a structural context following the 1603 Union of the Crowns whereby a single monarch ruled over three kingdoms. In 1603, the Scottish Royal Family – the Stuarts – succeeded to the English crown following the death of Elizabeth I. James VI of Scotland became James I of England. Following his death in 1625, he was succeeded by his son Charles I, but by the 1640s the kingdoms of England, Scotland and Ireland were engulfed by a series of civil wars that involved rebellion and warfare within the individual kingdoms as well as interaction between the three kingdoms. During the period 1639-51 Scotland was governed by the Covenanted Movement, a movement of opposition that took over the apparatus of state power in Scotland⁸. During these years, the Scottish Parliament met on a regular basis until the Cromwellian conquest of Scotland in 1651. There were three sessions in the Parliament of 1639-41 and two sessions of a Convention of Estates in 1643-44 (Conventions met for specific purposes and did not enjoy full parliamentary powers). The First Triennial Parliament of 1644-47 met over six sessions and The Second Triennial Parliament of 1648-51 met over eight sessions⁹. Scotland and Ireland were incorporated into the English Commonwealth and Protec-

⁷ A. MARONGIU, *Medieval Parliaments*, cit., pp. 223-250.

⁸ See, for example, D. STEVENSON, *The Scottish Revolution 1637-44*, Donald, Edinburgh 2003 edition; D. STEVENSON, *Revolution and Counter-Revolution in Scotland 1644-51*, Donald, Edinburgh 2003 edition; A.I. MACINNES, *Charles I and the Making of the Covenanted Movement 1625-1641*, Donald, Edinburgh 1991; A.I. MACINNES, *The British Revolution, 1629-1660*, Macmillan, Basingstoke 2005; A. WOOLRYCH, *Britain in Revolution 1625-1660*, Oxford University Press, Oxford 2002; B. BRADSHAW, J. MORRILL (eds), *The British Problem, c.1534-1707. State Formation in the Atlantic Archipelago*, Macmillan, Basingstoke 1996; A. GRANT, K.J. STRINGER (eds), *Uniting the Kingdom? The Making of British History*, Routledge, London 1995.

⁹ D. STEVENSON (ed.), *The Government of Scotland Under the Covenanters*, Scottish History Society, Edinburgh 1982, pp. 174-5. See J.R. YOUNG, *The Scottish Parliament*, cit.

torate in 1654 and a union of incorporation was in existence until 1660. The Restoration of the Stuart Monarchy of Charles II in 1660, in terms of the power relationships of the three kingdoms, was primarily an English event, with the key developments taking place in London. The Union of the Crowns was restored, however, and the union of incorporation was abandoned. The 1660 structural relationship of the three kingdoms resorted to the 1603 situation¹⁰.

In terms of the immediate government of Scotland in the aftermath of the Restoration, a decision was taken that Scotland was to be governed by a Committee of Estates. The Scottish Parliament, as a single chamber institution, consisted of different estates. In 1640 the Scottish Parliament created a Committee of Estates to govern the country after the end of the 1640 parliamentary session. Committees of Estates were appointed on a regular basis and they were technically parliamentary interval committees as they sat between parliamentary sessions or between different Parliaments. They consisted of a basic Edinburgh section and army section, with the Edinburgh section being the main form of government. The army section, as per the circumstances of 1640, was to accompany the Scottish Covenanting army in England. As events unfolded in the 1640s, further sections were created to accompany different Covenanting armies in Scotland, England and Ireland, as well as a diplomatic section in England¹¹. In 1660, the 1651 Committee of Estates appointed before the Cromwellian conquest was recalled to govern the country before a full parliament could meet. The 1660 Committee of Estates acted as a provisional government. The general political atmosphere in Scotland in 1660 was one of popular Royalism and it was clear that there was a strong desire among the ruling elites to restore the royal prerogative of the Stuart monarchy¹². The 1660 committee consisted of many new members compared to 1651, it was Royalist in its political outlook, and it played an important role in the election of shire and burgh members to the forthcoming parliament that duly met on 1 January 1661. The membership and mood of the new parliament was overwhelmingly, but not exclusively, Royalist¹³.

¹⁰ F.D. DOW, *Cromwellian Scotland, 1651-1660*, Donald, Edinburgh 1979; S.R. GARDNER (ed.), *Constitutional Documents of the Puritan Revolution, 1625-1660*, Oxford 1899, pp. 418-22; T. HARRIS, *Restoration. Charles II and His Kingdoms 1660-1685*, Allen Lane, London-New York 2005, pp. 43-135.

¹¹ J.R. YOUNG, *The Scottish Parliament and the War for the Three Kingdoms, 1639-1651*, in 'Parliaments, Estates and Representation', n. 21 (2001), pp. 103-123; J.R. YOUNG, *The Scottish Parliament*, cit.

¹² D. STEVENSON (ed.), *The Government of Scotland under the Covenanters*, cit., pp. IX-X; C. JACKSON, *Restoration Scotland, 1660-1690. Royalist Politics, Religion and Ideas*, Boydell, Woodbridge-Rochester 2003, pp. 14-15.

¹³ J.R. YOUNG, *The Scottish Parliament*, cit., pp. 304-310; G.H. MACINTOSH, *The Scottish Parliament under Charles II*, cit., pp. 1-15.

What has become known as the «Restoration Parliament» met over three sessions between 1661 and 1663 (1 January-12 July 1661, 8 May-9 September 1662, and 18 June-9 October 1663). It represents a remarkable case study in the relationship between parliaments and monarchs in early modern Europe in how a parliament and ruling elite willingly surrendered constitutional gains from the 1640s to the monarchy. The Restoration Settlement in Scotland thereby represented a situation where the prerogative powers of the Stuart monarchy were restored, previous parliamentary constitutional gains were rescinded and the powers of the Scottish Parliament were reduced. In light of this, the Scottish Restoration must be viewed in the context of the development of «absolutism» in Europe. Furthermore, it could be argued that it should be specifically regarded in terms of a northern European perspective with the development of absolutism in Denmark-Norway and Sweden. In purely British terms, the Scottish Parliament surrendered more of its constitutional gains from the 1640s than its English counterpart. England was constitutionally returned to the eve of the Civil War and therefore reforming legislation of the early period of the English Long Parliament remained in place¹⁴.

REPRESENTATION

Following the 1603 Union of the Crowns, Scotland was governed under a system of absentee monarchy. James VI returned to Scotland only once after 1603, in 1617. Charles I visited Scotland in 1633 to be crowned as King of Scots, eight years after the death of his father. A parliament was also held in 1633 as part of the royal visit. The 1633 Parliament was subjected to intense Crown political management, a controversial legislative programme was enacted and legitimate constitutional dissent was stifled. This parliament had an important role in fostering a growing belief that the kingdom of Scotland was being reduced to provincial status. Charles I returned to Scotland eight years later in 1641, but under different circumstances. By 1641 the political tide had swung in favour of parliament, dominated by Covenanters, and Charles had to give royal sanction to a constitutional settlement that restricted his powers in Scotland and increased the powers of the Scottish Par-

¹⁴ J.R. YOUNG, *The Scottish Parliament*, cit., pp. 311-328; G.H. MACINTOSH, *The Scottish Parliament under Charles II*, cit., pp. 15-56; J.R. YOUNG, *The Scottish Parliament in the Seventeenth Century: European perspectives*, in A.I. MACINNES, T. RIIS, F.G. PEDERSEN (eds), *Ships, Guns and Bibles in the North Sea and Baltic States, c.1350-c.1700*, Tuckwell, East Linton 2000, pp. 139-172; T. HARRIS, *Restoration*, cit., p. 47; R. HUTTON, *Charles II*, Clarendon, Oxford 1989, pp. 166-7.

liament. In the aftermath of the execution of Charles I as King of England in 1649, the Covenanting regime in Scotland proclaimed the Prince of Wales as King of Great Britain, France and Ireland, albeit he was subject to terms and conditions that made him a Covenanted king of three Covenanted kingdoms. This was a critical factor for the Cromwellian invasion of Scotland in 1650. On 1 January 1651 Charles II was crowned King of Great Britain by a radical element of the Covenanting regime at Scone in Perthshire and this was to be the last coronation on Scottish soil. Charles II did not attend any of the parliamentary sessions of 1661-1663 nor any of the post-1663 Parliaments of Scotland before his death in 1685. Projecting the problem of absentee monarchy further into the later seventeenth and early eighteenth centuries, James, Duke of York, the heir to the throne represented his brother in the 1681 Parliament, but he did not attend the two sessions of the 1685-86 Parliament when he became King. With the «Glorious Revolution» in a Scottish context, William of Orange became King of Scotland in 1689, but he did not attend any of the ten sessions of the Parliament of 1689-1702. Queen Anne, as Queen of Scotland, did not attend any of the four sessions of the final Scottish Parliament of 1703-1707¹⁵.

In terms of parliamentary management, a Royal Commissioner (His Majesty's Commissioner or in the reign of Queen Anne Her Majesty's Commissioner) represented the crown when the monarch was not present. In 1639 the Commissioner was John Stewart, first Earl of Traquair, but on 2 June 1640 the Scottish Parliament convened in defiance of royal authority. Neither Charles I nor a Commissioner was present in the 1640 session and Parliament proceeded to elect a President in light of these circumstances¹⁶. Legislation concerning the election of the President was passed towards the end of the 1641 Parliament on 16 November (Parliament ended the following day on 17 November). It stated that in every parliament there should be a President chosen by the King or the Commissioner and the parliamentary estates. The legislation proceeded to state that in all succeeding parliaments the Chancellor was to be chosen as President or any other the King or his Commissioner

¹⁵ J.R. YOUNG, *The Scottish Parliament and the Monarchy in the Context of Absentee Monarchy and the Anglo-Scottish Dynastic Union, 1603-1707*, in «Czasopismo Prawno-Historyczne», LXI, Zeszyt 2, (2009), pp. 114-127.

¹⁶ *The Records of the Parliaments of Scotland to 1707* [hereafter RPS], K.M. BROWN et al (eds), (St Andrews 2007-2011), 1640/6/4; J.R. YOUNG, *The Scottish Parliament*, cit., pp. 1-20; A.R. MACDONALD, *Chancellors, Presidents and Speakers: Presiding Officers in the Scottish Parliament before the Restoration*, in P. SEAWARD (ed.), *Speakers and the Speakership – Presiding Officers and the Management of Business from the Middle Ages of the 21st Century*, Wiley-Blackwell, Oxford and Chichester 2010, pp. 55-56.

should choose. The Chancellor was a senior Officer of State and the highest judicial officer in the kingdom. The legislation of 16 November further stated that the President was to be chosen after the taking of the parliamentary oath by all parliamentary members. This relates to the parliamentary oath of 2 June 1640, whereby the members acknowledged their right to convene and conduct parliamentary business¹⁷. When the first session of the First Triennial Parliament met on 4 June 1644, the legislation of 16 November 1641 was pragmatically implemented and adhered to. The President of the last parliamentary session of 1641, John Elphinstone, second Lord Balmerino, administered the parliamentary oath and another President was chosen to replace him. According to the terms of the 1641 act, the estates proceeded to unanimously elect John Maitland, first Earl of Lauderdale. The principle of election by estates triumphed over the royal appointment of the Chancellor. No Commissioner was present in the 1644 session anyway and the Chancellor, John Campbell, first Earl of Loudoun, was a Covenanter. Presidents of the Scottish Parliament were elected between 1644 and 1651¹⁸.

John, first Earl of Middleton was appointed as Royal Commissioner by Charles II before the convening of parliament on 1 January 1661, but when parliament met, its first act was to pass legislation constituting the Chancellor to be President of Parliament in all time coming. Therefore the right and independence of the estates to elect their own President was abandoned and this was sanctioned by the estates. Previous legislation of June 1640 and November 1644 concerning the election of the President of Parliament was rescinded. The Chancellor was appointed by the Crown and the Chancellor would automatically become President. The Chancellor as President would preside in all parliamentary meetings in all time coming. Clear demarcation is therefore evident between the offices of Chancellor and Royal Commissioner, with the former presiding and the latter representing the crown. In addition, the Chancellor, as President, would be responsible for administering the Oath of Allegiance to all parliamentary members. The Oath of Allegiance is discussed below, but it demanded unfettered personal allegiance to the monarch in order to hold public office. The Chancellor and President in 1661 was William Cunningham, eighth Earl of Glencairn. In the context of the legislation of the 1640s concerning the President, it can be argued that the legislation of 1 Jan-

¹⁷ RPS, 1640/6/6; 1641/8/215; A.R. MACDONALD, *Chancellors, Presidents and Speakers*, cit., pp. 52-53.

¹⁸ RPS, 1644/6/3; 1644/6/5. Loudoun was President in the first six sessions of the Second Triennial Parliament of 1648-51, but this was via election as President and not *ex officio* because he was Chancellor. See D. STEVENSON (ed.), *Government Under the Covenanters*, cit., p. 175.

uary 1661, emphasising the Chancellor's right to preside, represented a return to an earlier position. The fact that the Chancellor in 1661 and whoever held that office thereafter would be required to administer the Oath of Allegiance to parliamentary members acknowledging royal authority may also be interpreted as a pragmatic adoption of the role of the President under the Covenanters in administering the 1640 parliamentary oath¹⁹. From a different perspective, recent research has indicated that the Covenanted innovations relating to the office of President were indeed maintained after the Restoration. Under the Covenanters every parliamentary decision was signed off by the President in the format I.P.D.P. (*in praesentia dominorum parliamenti*). This applied to a whole range of decisions and procedures relating to acts, warrants, adjournments, summons, committee referrals, commissions, instructions, military instructions etc. Therefore, in the context of post-Restoration developments, «the presidential subscription of papers in the name of the estates» was maintained and Parliament «communicated directly» with the King through the Chancellor, who was also President. Accordingly, it has recently been argued that this represented a «significant shift» in parliament's constitutional position «as an organ of government in its own right»²⁰.

The Scottish Parliament, as a single chamber institution, consisted of different estates. These estates were redefined as part of the Restoration Settlement. The clerical estate (bishops and archbishops) had been abolished by the Covenanters as part of the constitutional settlement of 1640-41. From 1640-51 the estates consisted of the nobility, barons or shire commissioners and burgesses. This was part of an ideological alignment with Scottish Presbyterianism whereby the «church» and the «state» were deemed to be separate spheres of influence. The clerical estate was reintroduced at the Restoration, albeit not immediately. Religion would prove to be a highly contentious issue during the Restoration period, but for the Crown there was to be an alignment with royal authority²¹. On 28 March 1661 an act was passed concerning religion and church government. With regard to the government of the church, the act stated that the King would «make it his care to settle and secure the same in such a frame as shall be most agreeable to the word of God, most suitable to monarchical government and most complying with the public peace

¹⁹ RPS, 1661/1/5; 1661/1/6; 1661/1/7; G.H. MACINTOSH, *The Scottish Parliament Under Charles II*, cit., pp. 9, 18-19; A.J. MANN, *House Rules: Parliamentary Procedure*, in K.M. BROWN, A.R. MACDONALD (eds) *The History of The Scottish Parliament. Volume 3. Parliament and Context, 1235-1707*, cit., p. 139.

²⁰ A.R. MACDONALD, *Chancellors, Presidents and Speakers*, cit., pp. 57-58.

²¹ J.R. YOUNG, *The Scottish Parliament in the Seventeenth Century: European Perspectives*, cit., pp. 139-146.

and quiet of the kingdom»²². The clerical estate was constitutionally readmitted to parliament on 8 May 1662, the opening day of the 1662 parliamentary session. The Act for Calling in the Bishops to the Parliament stated that «considering that the clergy did always, in the right constitution of parliaments, represent the first state, and that now archbishops and bishops being restored, it is fit the parliament is returned to its ancient constitution, and that the clergy have their place and vote in parliament as formerly»²³. In terms of the government of the Church of Scotland, an Episcopal structure of archbishops and bishops was sanctioned by the Act for the Restitution of the Ancient Government of the Church by Archbishops and Bishops of 27 May 1662. According to the act, Episcopal government of this nature was deemed to be «the church government most agreeable to the word of God, most convenient and effectual for the preservation of truth, order and unity, and most suitable to monarchy and the peace and quiet of the state»²⁴. The wider political circumstances behind the restoration of Episcopacy were murky and controversial, however, and there had been an expectation that a Presbyterian Church of Scotland would be maintained. Large parts of the country, especially in the west and the south-west were Presbyterian, and attempts to enforce the religious policies of the Restoration settlement would cause significant problems for Charles II's administration of Scotland, resulting in widespread religious dissent and armed rebellions in 1666 and 1679 respectively. In terms of the rank and file ministry, by 1663 around 270 ministers, constituting c. 25-30% of the total ministry, had been deprived of their livings. The majority of these were in the west and south-west of the country²⁵.

Further legislation passed in the 1662 session provided for the removal from public office of opponents to the Crown's religious policies. On 24 June 1662 an act for the preservation of His Majesty's person, authority and government was passed. It condemned the National Covenant of 1638 and the Solemn League and Covenant of 1643, the key ideological documents of the Covenanters, and the King's subjects were under no obligation to uphold the Covenants or the actions of the 1638 General Assembly that had been held in Glasgow and abolished Episcopacy. The activities of the Covenanters, including printing and preaching, were deemed to be seditious and treasonable. It

²² RPS, 1661/1/159.

²³ RPS, 1662/5/4.

²⁴ RPS, 1662/5/9.

²⁵ T. HARRIS, *Restoration*, cit., pp. 114-132, 329-376; G.H. MACINTOSH, *The Scottish Parliament under Charles II*, cit., p. 39; K.F. MCALLISTER, R.F. TANNER, *The First Estate: Parliament and the Church*, in K.M. BROWN, A.R. MACDONALD (eds), *The History of The Scottish Parliament*. Vol. 3, *Parliament in Context, 1235-1707*, cit., pp. 52-3, 57-8.

was deemed to be high treason to write, print, pray, preach, publish, and declare any words or sentences to stir up the people against the royal prerogative and supremacy in ecclesiastical causes or government of the church by bishops and archbishops²⁶. This tone was continued in a later act of 5 September 1662 requiring a declaration to be signed by all persons in public trust, including those who already held public office, condemning the Covenants. Individual acknowledgement was required that the Covenants «were and are unlawful oaths, and were taken by and imposed upon the subjects of this kingdom, against the fundamental laws and liberties of the same, and that there lies no obligation upon me or any of the subjects from the said oaths, or either of them, to endeavour any change or alteration of the government either in church or state as it is now established»²⁷.

The reintroduction of the clerical estate also had an impact on the process of parliamentary business. The Lords of the Articles or Committee of Articles had been unpopular and controversial in the Parliaments of 1621 and 1633 where they had been perceived as driving through the crown's legislative programme. The Articles traditionally consisted of eight clerics, eight nobles, eight barons or shire commissioners, eight burgesses and eight officers of state, giving a total membership of 40. The eight clerics elected eight nobles, who in turn elected the eight clerics. The combined group of 16 nobles and clerics then elected the eight barons or shire commissioners and the eight barons. The King or in his absence the Royal Commissioner, then nominated the eight Officers of State (whose numbers had been restricted to eight in 1617). The abolition of the Lords of the Articles was one of the leading constitutional demands of the Covenanting Movement²⁸. Legislation passed in the 1640 parliamentary session effectively declared the committee to be redundant. The Act anent the Choosing of Committees out of every Estate of 6 June 1640 stated that each estate was to elect its own representatives to committees. The use of the Lords of the Articles was deemed to be optional and not mandatory and if employed, such a committee was to be of a preparatory nature only. During the 1640s, however, an elaborate system of parliamentary session and

²⁶ RPS, 1662/5/20.

²⁷ RPS, 1662/5/70.

²⁸ J.R. YOUNG, *The Scottish Parliament in the Seventeenth Century: European Perspectives*, cit., pp. 143-44; R.S. RAIT, *The Parliaments of Scotland*, cit., pp. 367-371, 374, 380, 386; TERRY, *The Scottish Parliament*, cit., pp. 103-120; J. GOODARE, *The Scottish Parliament of 1621*, in «The Historical Journal», n. 38 (1995), pp. 29-51; J.R. YOUNG, *Charles I and the 1633 Parliament*, in K.M. BROWN, A.J. MANN (eds), *The History of the Scottish Parliament. Volume 2. Parliament and Politics in Scotland, 1567-1707*, Edinburgh University Press, Edinburgh 2005, pp. 101-137.

interval committees developed. Session committees sat during parliamentary sessions and interval committees sat between parliamentary sessions or between Parliaments. Committees were appointed for a range of functions. Committees for Bills and Overtures, for example, were used for the process of internal parliamentary business²⁹.

The Covenanters' committee system was overturned at the Restoration, however, and the Lords of the Articles returned as a central feature for Parliament's activities. The Articles were reintroduced on 8 January 1661, but in a different format from the traditional model. They consisted of twelve members per estate (nobles, barons/shire commissioners, and burgesses), plus the Officers of State. Apart from the Officers of State, they were elected by each of their estates meeting separately and then approved by Commissioner Middleton. Technically, the committee was a Lords of Articles *and* Processes. In the context of 1661, the remit of legal processes was added to the traditional function of the committee. The Royalist ideology behind the reintroduction of the Articles was apparent in the language of the commission. The commission stated that the King, «considering how necessary it is for his own honour, for the public good of his subjects and the more orderly and speedy dispatch of business in this parliament that their proceedings and manner thereof be as conforming as conveniently may be to the ancient customs and forms before these troubles». Specific Covenanting legislation was also rescinded and annulled within the commission. This included the act anent the choosing of committees out of every estate of June 1640, whereby each estate elected its own representatives to committees³⁰. An element of sophistication can be detected here. The 1661 Articles were elected by the Covenanters' procedure, although they were approved by the Commissioner in 1661, yet the commission that formally established the Articles proceeded to abolish the legislation that had provided for election by each estate. The commission also dealt with the issue of twelve members per estate in the context of 1661. This was due to the «multiplicity of affairs and processes» and it was to be without prejudice to any course the King, with the advice of the estates, might take to the future number or manner of election³¹. When the 1662 session opened on 8 May, the 1661 Articles continued in existence. Following the readmission of the clerical estate, the nine clerics (two archbishops and seven bishops) were added to the Articles. There was also one replacement member for the barons/shire

²⁹ J.R. YOUNG, *The Scottish Parliament*, cit., D. STEVENSON (ed.), *Government of Scotland under the Covenanters*, cit.

³⁰ . RPS, 1661/1/13.

³¹ *Ibidem*.

commissioners. Sir John Urquhart of Cromarty, one of the commissioners for the shire of Inverness, replaced Sir Alexander Gibson of Durie, one of the shire commissioners for Fife in the 1661 session. On 8 May 1662 it was also stated that the nomination and constitution of the Articles was to be without prejudice to whatever course the King may take in the future concerning the constitution of the Articles³².

The 1663 parliamentary session proved to be a defining moment for the Lords of the Articles and a return to a traditional format. On 18 June 1663 an act was passed concerning the constitution and election of the Lords of the Articles. John Leslie, seventh Earl of Rothes, the new Royal Commissioner, informed the estates of the King's wishes that «in the constitution of parliaments and choosing of lords of articles at this session and in all time coming, the same form and order should be kept which had been used before these late troubles, especially in the parliament held in the year 1633»³³. The manner of election used in the 1633 Parliament was seen and considered by the estates and the estates agreed to the king's wishes. Therefore the 1663 parliamentary session agreed that the election of the Lords of the Articles in 1663 should return to the procedure used in 1633. The clergy therefore withdrew to the Exchequer Chamber and the nobility withdrew to the Inner House of the Court of Session. The barons and the burgesses remained in the Parliament House. Thereafter the clergy elected eight noblemen to be on the Articles and the nobility elected eight clerics. The clergy and the nobility then met together in the Inner Exchequer House where they showed their respective elections to each other. Those who were elected remained together in that room and the clergy and nobles who had been elected to the Articles then jointly elected the eight barons and eight burgesses to be on the Articles. The clergy and nobles who had been elected to the Articles then presented all the elections (including those for the barons and burgesses) to Commissioner Rothes, «who being satisfied thereof», then returned to the Parliament House with the clergy and nobility where he read out the list of names of eight clerics, eight nobles, eight barons and eight burgesses. The Officers of State were added to the Articles and the Chancellor was to be President in the meetings of the Articles³⁴. The

³² RPS, 1662/5/3; 1662/5/4; 1662/5/5.

³³ RPS, 1663/6/4; 1663/6/5.

³⁴ RPS, 1663/6/5. A.J. MANN, *House Rules: Parliamentary Procedure*, cit., p. 138, states that the «1612 method of selection» of the Articles was «affirmed» in 1663. The 1663 act for the Articles has 1633 as the model and precedent. A new Parliament House was constructed in the 1630s, after Charles I had ordered the construction of a Parliament House in 1632. It was first used for the 1639 Parliament. Hence the Parliament House in 1663 was different from 1633, when the estates met in the New Tolbooth (J.R. YOUNG, *Charles I and the 1633 Parliament*,

Lords of the Articles remained in existence as a feature of the Scottish Parliament until the Revolution settlement of 1689-90, when they were permanently abolished in 1690³⁵.

MANDATORY POWERS AND THE CONTRACTUAL NATURE OF PARLIAMENTARY AGREEMENTS

The parliamentary sessions of 1661-63 increased the mandatory powers of the Scottish monarchy. Whereas the constitutional settlement of 1640-41 represented a contractual parliamentary agreement that made parliament more powerful, the settlement of 1661-63 overturned that agreement and restored the royal prerogative. Contractually, power was willingly transferred, albeit with some minority resistance, from the estates back to the monarchy. The bulk of legislation relating to this took place in the 1661 session, especially in the first three months (January to March 1661). General and specific legislation was enacted to restore the royal prerogative and repeal legislation from the Covenanted Parliaments³⁶.

On 28 March the estates rescinded and annulled the «pretended parliaments» in the years 1640, 1641, 1644, 1645, 1646 and 1648 (this is often referred to as the Recissory Act). All acts and deeds passed and done in them were declared to be null and void³⁷. Therefore, the majority of parliaments and sessions under the Covenanters were repealed in a single piece of legislation. The date of the passing of this act is important, as by this point in the parliamentary session specific contentious issues had already been dealt with. The Crown's rights of executive and judicial appointments had also been sanctioned by this date. On 11 January legislation was passed which sanctioned the right of the Crown to appoint Officers of State, Privy Councillors and Lords of Session³⁸. On the same date an act was passed acknowledging the royal pre-

cit., pp. 102-103). See A.R. MACDONALD, *The Burghs and Parliament in Scotland, c. 1550-1651*, Ashgate, Aldershot 2007, pp. 144-156.

³⁵ RPS, 1690/4/22.

³⁶ J.R. YOUNG, *The Scottish Parliament*, pp. 310-320; A.I. MACINTOSH, *The Scottish Parliament under Charles II*, cit., pp. 1-35.

³⁷ RPS, 1661/1/158; C. JACKSON, *Restoration Scotland*, cit., pp. 77-78, 107-108; G.H. MACINTOSH, *The Scottish Parliament under Charles II*, cit., pp. 23-25; R.S. RAIT, *The Parliaments of Scotland*, cit., pp. 315-318. The passage of this act was not without controversy as the 1641 Parliament had been legally summoned and Charles I had personally attended the session between August and November 1641. The 1650 and 1651 parliamentary sessions were dealt with in the legislation of 9 February approving the Engagement and annulling the 1649 Parliament.

³⁸ RPS, 1661/1/16.

rogative in the making of laws. The king was given sole right for the calling and dissolving of parliaments and conventions of estates. It was stated that no parliament could be legally convened without the King's special warrant and presence of the King himself or his Commissioner. Any legislation passed in a parliament that had not been convened in this way would not be binding on the people. This act can be interpreted as a reaction against the June 1640 parliamentary session that met in defiance of royal authority and the Triennial Act of 6 June 1640 that stated that parliaments were to meet every three years³⁹. In legislation of 16 January, the royal prerogative was also sanctioned for the making of leagues and conventions. This was aimed at illegal assemblies and convocations and the taking of bonds⁴⁰.

The 1643 Convention of Estates was specifically dealt with in an act of 22 January. It was deemed to be a «pretended meeting» that met without royal authority. The 1643 Convention and all its acts and proceedings were annulled, as was parliamentary legislation from 1644 which had approved and ratified the Convention's proceedings⁴¹. This is important as the Convention, along with representatives from the English Parliament and the Church of Scotland, was the body that negotiated the 1643 Solemn League and Covenant and the Treaty of Military Assistance that brought the Covenanters into the English Civil War on the side of the English Parliament. The 1643 Solemn League and Covenant sought to create a British confessional confederation and a Covenanted king of three Covenanted kingdoms. It was dealt with in another specific piece of legislation on 22 January where any obligations for renewing and swearing of the Solemn League and Covenant were discharged⁴².

Specific legislation was passed on 9 February dealing with the 1648 Engagement and the 1649 Parliament. The 1648 Engagement was approved and the 1649 Parliament was annulled in a single piece of legislation⁴³. Hence these two important issues were not dealt with in separate acts, indicating that they were actually linked. The 1648 Engagement was an abortive Royalist military invasion of England in the summer of 1648 to fight for Charles I. Fur-

³⁹ RPS, 1661/1/17.

⁴⁰ RPS, 1661/1/23.

⁴¹ RPS, 1661/1/36.

⁴² A.I. MACINNES, *The British Revolution*, cit., pp. 148-151.

⁴³ RPS, 1661/1/67. The act made an exception for «all such acts as were passed in meetings of parliament or committee of estates» that had been authorised in the King's presence. This applied to the meetings of the Committee of Estates and parliamentary sessions where Charles II had been present. This did not extend, however, to any acts passed that were «inconsistent with this present act». See R.S. RAIT, *The Parliaments of Scotland*, cit., p. 317.

thermore, the 1648 Engagement rejected the concept of a British confessional confederation in favour of a union of incorporation instead⁴⁴. The Engagement had been approved by the 1648 Scottish Parliament, albeit there was a small radical opposition. In the aftermath of the defeat of the Engagement, a radical regime came into power in September 1648 in the Committee of Estates. Participation in the radical regime was sanctioned by the Church of Scotland. Only the godly could sit in Parliament and Engagers were banned. The radical regime was also anti-aristocratic in outlook and as such it was targeted at the Restoration⁴⁵. It is therefore clear that legislation had been passed targeting specific issues, before the passing of the general rescissory legislation of 28 March.

The royal prerogative in military and foreign policy affairs was recognised in legislation of 16 January 1661. The sole power of raising and disbanding arms, the maintenance of all strengths, forts and garrisons, the making of war and peace or treaties and leagues with foreign princes or estates were deemed to lie with the Crown. It was declared high treason for subjects to rise and continue in arms or to be involved in the above issues⁴⁶. This was a reaction against the Covenanters' activities post-1637 in raising armies in Scotland and parliament's involvement in British and European diplomacy, such as the Solemn League and Covenant. Personal loyalty to the King was demanded in legislation of 27 February in the form of the Oath of Allegiance. The act of 27 February was entitled the Act for taking the Oath of Allegiance and asserting the royal prerogative. It demanded personal loyalty to the crown and subscription of it was required for the holding of public office. The act noted that «all the troubles and miseries that have overspread this kingdom, and almost destroyed all religious and civil, all public and private interests these twenty years bygone and upwards, have arisen and sprung from these invasions that have been made upon, and contempts done to the royal authority and prerogative of the crown» and that the King «conceives himself obliged, both for his own royal interest and for the public interest and peace of his people, to be careful to prevent the like in future». The Oath of Allegiance was contained within the act and subscribers were required to personally acknowledge that the king was the only supreme governor of the kingdom of Scotland over all persons

⁴⁴ A.I. MACINNES, *The Scottish Moment, 1638-45*, in J. ADAMSON (ed.), *The English Civil War*, Macmillan, Basingstoke 2009, p. 152.

⁴⁵ J.R. YOUNG, *The Covenanters and the Scottish Parliament, 1639-51: The Rule of the Godly and the Second Scottish Reformation*, in E. BORAN, C. GRIBBEN (eds), *Enforcing Reformation in Ireland and Scotland, 1550-1700*, Ashgate, Aldershot 2006, pp. 131-158.

⁴⁶ RPS, 1661/1/24.

and in all causes. Acknowledgment was also required that no foreign prince, power, state or person civil or ecclesiastic had jurisdiction, power or superiority over the kingdom. Accordingly, subscribers were personally required to utterly renounce and forsake all foreign power, jurisdictions and authorities. They were required to use their utmost power to defend, assist and maintain the King's jurisdiction against all persons and they were to be answerable to God in taking the oath⁴⁷. Acknowledgement of the royal prerogative was also contained within the act of 27 February. This encompassed issues that had been dealt with in earlier legislation of the session and discussed above pertaining to the royal prerogative (the sole right of executive and judicial appointments, the convening of parliaments and conventions, the making of war and peace etc). Therefore, the act of 27 February demanded personal loyalty to the Crown and personal acknowledgement of the royal prerogative in terms of how that prerogative had been defined in legislation passed in the session prior to 27 February⁴⁸. The declaration of 5 September 1662, discussed above, also incorporated some of these issues in addition to renouncing the Covenants. Thus, all persons in public trust were required to acknowledge the illegality of entering into leagues and covenants, taking up arms against the King or those commissioned by him, as well as the illegality of gatherings and convocations that had been used at the beginning and carrying on of the late troubles. Compulsory subscription of oaths and obligations had been used by the Covenanters to demand loyalty to their cause and regime. Such a model would now be adopted by the crown to demand loyalty to the monarchy, royal authority and Episcopal government of the Church of Scotland⁴⁹.

The mood of loyalty to King Charles II was reflected in the financial settlement that was offered by the estates. According to legislation of 22 March 1661, the king was offered £40,000 sterling (£480,000 Scots) per annum for the rest of his life. The legislation stated that the estates prayed that the king's lifetime «may be long and prosperous, that this kingdom may have further occasion to let the world know they do, above all things, hate the very thoughts of disloyalty, and that no people under heaven can express more duty and obedience to the authority and commands of their sovereign than they are and will be ready to do»⁵⁰. The manner and process for raising these funds, mainly through the collection of excise duties, were laid out in a later act of 29 March⁵¹. The theme of

⁴⁷ RPS, 1661/1/88.

⁴⁸ RPS, 1661/1/88.

⁴⁹ RPS, 1662/5/70; G.H. MACINTOSH, *The Scottish Parliament under Charles II*, cit., pp. 39-40.

⁵⁰ RPS, 1661/1/144.

loyalty to the monarchy was further reflected in legislation of 13 May for a solemn thanksgiving for Charles II's restitution to the royal government. The date of 29 May, Charles II's birthday and the date of his restitution to royal government in 1660, in all time coming would be set apart as a holy day⁵².

CONCLUSION

The Scottish parliamentary sessions of 1661-63 marked a significant achievement for the Scottish monarchy of Charles II in the restoration of the royal prerogative. There was a strong realignment between the elites and the Crown after years of warfare and conquest. As stated at the outset of this article, the Scottish Parliament of 1661-63 should be viewed within a wider European context in the relationship between monarchs and estates and also the nature of developing absolutism. In a British perspective, it is also important to note that in England there was a constitutional return to 1641 in terms of the English Restoration Settlement and the English Parliament retained constitutional gains⁵³. In Scotland, however, the legislation of the Restoration Parliament returned Scotland to 1633 and the constitutional gains of the 1640s were repealed. It is therefore hoped that this article makes a comparative contribution from a Scottish perspective to Professor Marongiu's themes of representation, mandatory powers and the contractual nature of parliamentary agreements, first articulated sixty two years ago in 1949.

⁵¹ *RPS*, 1661/1/160.

⁵² *RPS*, 1661/1/255.

⁵³ T. HARRIS, *Restoration*, cit., pp. 134-135.