The Conceptual Framework of Anglo-Scottish Union

Robertson, John
Univ. of Oxford. St. Hugh's College. UK-OX2 6LE Oxford
john.robertson@history.ox.ac.uk

1603 eta 1707 artean eskoziarrek Ingalaterrarekiko batasuna nola negoziatu zuten jasoko da kapitulu honetan. Eskoziarrek britainiar monarkian eduki nahi zuten lekua eta napoliarrek Espainiako monarkian zutena erkatuko dira. Napoliarrek independentzia gehiago nahi zuten, eskoziarrek, aldiz, batasun handiagoa. Eskoziarrek Ingalaterran "sartzea" adostu zuten, batasun "konfederala"ren ordez, baina bi kontzesio garrantzitsu lortu zituzten: Batasuna "itun" gisa jaso zen, eta herriak "erabiltzeko" sortu zen. Britainia Handiko Parlamentu berria subiranoa izango zen, baina eskoziarrentzat Batasuna baldintzapekoa zen.

Giltza-Hitzak: Eskozia. Espainiako monarkia. Napoliarrak. Andrew Fletcher. Konfederazioa. Inkorporazioa. Monarkia unibertsala. Feudalismoa.

Este capítulo explora los términos en los que los escoceses debatieron la unión con Inglaterra entre 1603 y 1707. Se compara el lugar que los escoceses consideraban ocupar en la monarquía británica con el de los napolitanos en la española. Mientras los napolitanos deseaban una mayor independencia, los escoceses apuntaban a una mayor unión. Los escoceses acordaron "incorporarse" a Inglaterra en lugar de optar por una unión "confederal", pero con dos logros importantes: la Unión se consideraba un "tratado" y su justificación era la "utilidad" del pueblo. El nuevo Parlamento de Gran Bretaña sería soberano, pero los escoceses continuaban viendo la Unión como condicionada.

Palabras Clave: Escocia. Monarquía española. Nápoles. Andrew Fletcher. Confederación. Incorporación. Monarquía universal. Feudalismo.

Ce chapitre explore les termes de l'union avec l'Angleterre négociée par les Écossais entre 1603 et 1707, en comparant la place que les Écossais prétendaient occuper dans la monarchie britannique avec celle des Napolitains dans la monarchie espagnole. Alors que les Napolitains prétendaient obtenir une plus grande indépendance, les Écossais visaient une plus grande union. Les Écossais ont ainsi choisi de s' « incorporer » à l'Angleterre au lieu d'opter pour une union « confédérale », mais avec deux concessions importantes : l'Union était considérée comme un « Traité » et elle se justifiait par son « utilité » pour le peuple. Le nouveau Parlement de Grande Bretagne serait souverain, mais les Écossais continueraient à voir l'Union comme conditionnelle.

Mots Clé : Écosse. Monarchie espagnole. Naples. Andrew Fletcher. Confédération. Incorporation. Monarchie universelle. Féodalisme.

From one end of the seventeenth century to the other, the Spanish Monarchy was a favoured reference point for those discussing the Anglo-Scottish union. In 1607, in an effort to explain the apparent reluctance of the Scots to enter a closer union with England, King James VI of Scotland and I of England told the English Parliament that the Scots feared to become 'a naked province, without law or liberty under this kingdom'. Accordingly, he continued, 'I hope you mean not that I should set garrisons over them, as the Spaniards do over Sicily and Naples, or govern them by commissioners, which are seldom found succeedingly all wise and honest men'[1]. In a much quoted passage, James added that it was quite unnecessary to govern Scotland in this manner, because

> This I must say for Scotland, and I may truly vaunt it; here I sit and govern it with my pen. I write and it is done, and by a clerk of the Council I govern Scotland now which others could not do by the sword[2].

It was a boast of which Philip II might have been proud. But James's point was that he could rule Scotland without the intermediaries, and the soldiers, which his Spanish counterpart required to keep Naples and Sicily in subjection.

Later in the same year James's words were echoed by the Scottish parliament, which assured him that

> We never meant thereby to except against any counfounding... of those two before separated kingdoms in one glorious monarchy and empire of the whole isle, but only that this your Majesty's ancient and native kingdom should not be so disordered and made confused by turning of it, in place of a true and friendly union, into a conquered and slavish province, to be governed by a Viceroy or Deputy, like such of the King of Spain's provinces as your Majesty in your Highness's speech made mention of[3].

James was to remain partial to the comparison with Naples. Almost ten years later, in 1616, he explained to Star Chamber why he would limit new building in the suburbs of London:

> It is the fashion of Italy, and especially of Naples, that all the gentry dwell in the principal towns, and so the whole country is empty: even so now in England, all the country is gotten into London; so as with time, England will be only London, and the whole country be left waste[4].

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1. 'A Speech to Both the Houses of Parliament, Delivered in the Great Chamber at White-Hall, the last day of March 1607', In: McILWAIN, C.H. (ed.), *The Political Works of James I*, Cambridge, Mass: Harvard University, 1918, repr. New York, 1965; pp. 300-301. Spelling in this and subsequent quotations has been modernised. James meant that it was very rare to find a succession of 'wise and honest' commissioners or viceroys.

2. Ibíd.; p. 301.

3. Letter from the Estates of the Scottish Parliament of 1607 to his Majesty, *Register of the Privy council of Scotland*, *Vol. VII 1604-1607*, Edinburgh: 1885; pp. 535-6.

4. 'A Speech in the Starre-Chamber, the xxth of June, 1616', in McILWAIN (ed.). *Political Works of James I*; p. 343.

The remark followed a wistful expression of regret that his earlier attempts to unite Scotland and England more closely had been misunderstood, suggesting that it may have been the memory of that proposal which brought the Neapolitan comparison to mind again.

Not all contributors to the Jacobean Union debate shared the king's view of the Spanish Monarchy as the anti-model for Anglo-Scottish Union. The great Scottish jurist, Sir Thomas Craig, believed that Spain had achieved her present position of greatness in Europe as a result of a succession of carefully constructed dynastic unions. By these means Spanish kings had fashioned an *imperium* which provided security for their subjects while awing their neighbours. The recent union of Scotland and England, he believed, had the power to make Britain as formidable as that *Hispanicum imperium*[5].

The Spanish Monarchy was once again a reference point for Scottish commentators at the end of the seventeenth century, when Andrew Fletcher published his *Discorso delle cose di Spagna; scritto nel mese di Luglio 1698*. Born in 1653, Fletcher had led a turbulent life as a political opponent of both Charles II and James II; for several years before 1688 he had been in exile in the Netherlands. Even after the Revolution and the accession of William and Mary he remained suspicious of royal ambition, and in 1697 he had published an eloquent historical critique of standing armies[6]. The *Discorso delle cose di Spagna* was apparently written by Fletcher in Italian (no English original exists), and was printed with 'Napoli' as its place of publication, even though it was almost certainly printed under Fletcher's direction in Edinburgh[7]. The tract began with an acute analysis of the causes of Spain's decline in the seventeenth century. This Fletcher attributed to the draining of its population as a result of religious intolerance and the insatiable demands of the Indies for manpower. But Spain still possessed the advantages of its situation: were population decline arrested, agriculture, industry and commerce might once again flourish. What the monarchy needed was a new prince –'un prencipe nuovo'– with a programme of reform to reconstitute –'riordinare'– its affairs and create good orders, 'buoni ordini'. The impending crisis of the Spanish Succession, Fletcher continued, should provide an ideal opportunity to find such a prince and restore the power of the Monarchy. Fletcher proceeded to review the various possible candidates for the succes-

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5. CRAIG, Sir Thomas. *De Unione Regnorum Britanniae Tractatus*, ed. C. Sanford Terry, Edinburgh: Scottish History Society, vol. LX, 1909; pp. 38-42, 258-62.

6. On Fletcher's life, ROBERTSON, John. 'Fletcher, Andrew', in *Oxford Dictionary of National Biography*, ed. H. C. G. Matthew and B.H. Harrison, Oxford: Oxford University Press, 2004. For his *A Discourse concerning Militias and Standing Armies*, London: 1697, 2nd ed. *A Discourse of Government with relation to Militias*, Edinburgh: 1698: *Andrew Fletcher: Political Works*, ed. John Robertson, Cambridge: Cambridge University Press, 1997; pp. 1-31.

7. The *Discorso* was first published as a separate pamphlet in 1698, and reprinted in *The Political Works of Andrew Fletcher, Esq.*, London, 1732. An English translation by John Robertson is included in his edition of *Andrew Fletcher: Political Works*; pp. 83-117. The best discussion of its bibliography is by SCOTT MACFIE, R. A. 'A bibliography of Andrew Fletcher of Saltoun', *Publications of the Edinburgh Bibliographical Society*, Vol. IV, 1901; pp. 117-18.

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sion, and the territorial exchanges required both to consolidate the monarchy and to win the acquiescence of other European rulers. Skilfully handled, such a combination of reform and exchange of territory would shortly enable the new ruler of Spain to aspire once again to 'universal monarchy', without the rest of Europe being aware of the danger.

The *Discorso* was a curious work, heavily ironic in intent, yet rich in allusion. It belongs with the growing body of late seventeenth-century commentary on the decline of Spain. But what makes it stand out are two barely concealed references. One is to the work of Machiavelli, the greatest single inspiration of Fletcher's political thinking. The language of the 'prencipe nuovo', of 'riordinare' and of 'buoni ordini' was classically Machiavellian. The other is to Tommaso Campanella, the great Neapolitan rebel and theorist of Spanish universal monarchy, whose *De Monarchia Hispanica* (1640) was in Fletcher's library. Here the allusion lies in the pretended place of publication, 'Napoli', coupled with the argument on behalf of a Spanish universal monarchy. Moreover, although the British kingdoms were beyond the scope of the *Discorso*, it seems clear that Fletcher's irony was indirectly aimed at their situation; once more we may see a Scot taking Naples as a vantage-point for a comparison between the Spanish and British monarchies. Fletcher published the work just as Scottish ships set sail for Darien, on the Isthmus of Panama, where the Scots hoped to plant a colony on Spanish territory. In this setting, the *Discorso* might well be read as suggesting that smaller, dependent kingdoms, such as those of Naples or Scotland, should themselves take advantage of the Spanish Succession crisis to avoid once again being swallowed up by the great monarchies of Europe[8].

The use of Naples as a comparative vantage-point from which to view the position of Scotland can be taken still further, if we look at look at the broader pattern and language of debate in the two kingdoms in the years around 1700, the years of the Spanish Succession crisis. For it was not only the Neapolitans whose future was threatened by dynastic failure. In Britain too it was becoming clear that the ruling queen, Queen Anne, was unlikely to have surviving heirs (in her case because all her many children died young). In that case the British kingdoms were faced, either with a return of the exiled, proscribed Stuarts, in the person of James III, or with finding themselves a new ruling dynasty. For the majority of the Protestant ruling class, in Scotland no less than England, the latter was the only feasible option. Though there was a sizeable minority of Jacobites in Scotland, the Protestant nobility and lesser landowners, backed by townsmen, lawyers and the clergy of the Church of Scotland, were determined not to throw away the gains of the Revolution of 1688-89[9]. But this did not mean that the Scots would

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8. ARMITAGE, David, 'The Scottish vision of empire: intellectual origins of the Darien venture', in ROBERTSON, John, (ed.), *A Union for Empire. Political thought and the Union of 1707*, Cambridge: Cambridge University Press, 1995; pp. 107-9.

9. The strength of this sentiment is the dominant theme of the new study by WHATLEY, Christopher A., with PATRICK, Derek J., *The Scots and the Union*, Edinburgh: Edinburgh University Press, 2006.

automatically do England's bidding in the matter of a successor dynasty. Anticipating Anne's predicament, the English Parliament voted the Act of Settlement (1701), which bestowed the succession on Sophia of Hanover and her heirs, by right of their descent from a daughter of James I. The Act covered the succession to the Irish as well as the English throne; though it could say nothing about Scotland, it strongly implied that the Scots should follow suit. The Scots, however, saw an opportunity to extract terms for their acceptance of the Hanoverian succession.

The need to do so was reinforced by the coincidence of an economic crisis. Between 1695 and 1698 there had been a succession of harvest failures, followed in 1700 by the definitive collapse of the Darien venture, despite the dispatch of a second expedition to the colony in 1699. The impact of these was all the more adverse because the Scottish ruling elite had previously devoted both political and financial capital to the cause of national economic development, establishing a committee of the Privy Council specifically for trade, and investing heavily not only in the Darien venture, but in the Newmills cloth manufactory and the Bank of Scotland. The merchant elites in the towns had likewise shown willing to invest, in a vain attempt to offset the increasing pressure on their historic trade with France, the Netherlands, and the Baltic. The English could hardly be blamed for all of these failures, but the absence of naval protection for Scottish shipping, and the hostility of English merchants and government ministers to the Darien venture were obvious sources of grievance[10].

The opportunity to voice these grievances came with the calling of a new Scottish parliament in May 1703, following the accession of Anne as Queen in 1702. For the Queen's ministers, the priority was to secure Scottish assent to the Hanoverian succession. They were made to wait. In a series of carefully-crafted speeches, supplemented by further pamphlets, Andrew Fletcher diagnosed the full extent of the crisis, and set out the terms on which the Scots should agree to a new union of the crowns with England. The existing Union of the Crowns, he argued, had reduced Scotland, in the eyes of the rest of the world, to a condition 'more like a conquered province, than a free independent people'[11]. His diagnosis of Scotland's condition as a 'province' carried a clear implication of dependence –but he did not simply blame this on England and the English. Rather, he argued, Scotland's present dependence had two underlying causes. The first was the power which the great feudal nobility exercised over their inferiors in rural Scotland, and the resulting poverty of Scottish agriculture, which in turn left the nobility dependent on financial hand-outs from the crown's ministers in England.

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10. SMOUT, T.C. *Scottish Trade on the Eve of the Union*, Edinburgh and London: 1963; WHATLEY, Christopher A. 'Taking stock: Scotland at the end of the Seventeenth Century', in SMOUT, T.C. (ed.). *Anglo-Scottish Relations from 1603 to 1900*, Oxford: Oxford University Press for the British Academy, 2005; pp. 103-25.

11. FLETCHER, Andrew. *Speeches by a Member of the Parliament which began at Edinburgh the 6th of May, 1703*, Edinburgh: 1703, in *Andrew Fletcher: Political Works*, ed. Robertson; p. 133.

In other words, the Scottish nobility was politically dependent on England because of the backwardness of Scottish agriculture, which in turn was due to the oppressive manner in which the nobility treated the common people[12]. The second fundamental cause of Scottish dependence was the omnivorous economic appetite of London, which Fletcher believed was draining all the outlying kingdoms of the monarchy, and even the rest of England, of their wealth and population. The immediate source of this analysis was the work of the Anglo-Irish economic writer, Sir William Petty, but the essential critique was that voiced by King James in 1616, when he denounced the fatal attraction which a great capital city exercised over the provinces. (Fletcher even followed James in saying one thing, and doing another: like the king, he much preferred staying in London to living in his own country)[13].

Fletcher's remedies for the dependent, 'provincial' condition of Scotland were a combination of agrarian reform, commercial development (he himself was a Darien investor), and a re-ordering of the existing Union of the Crowns by placing strict 'Limitations' on the power of Anne's successors. Individually, none of his proposals attracted sufficient support to be carried. His specific suggestions that land be redistributed to smaller proprietors who would cultivate it directly, while the poor were subjected to a form of bonded labour (which he made the mistake of likening to ancient slavery), were regarded as both draconian and impractical. As we shall see, his proposed 'Limitations' tapped into a longer tradition of Scottish thinking about union, and therefore had more appeal, even if by 1705 ministers had succeeded in securing their rejection. Fletcher's real achievement, however, was to have set the terms for the debate which occurred in Scotland after 1698, and was at its most intense between 1703 and 1707, when a new Union was finally agreed. There was widespread agreement with his diagnosis of both the social and the political predicament of Scotland, and a shared conviction that renegotiation of the terms of the existing union with England was essential.

If we now turn back to Fletcher's comparative vantage-point, the kingdom and city of Naples, we can see that a strikingly similar debate took place there over the same period, between c. 1697 and 1710. The protagonists were of course different: in 1700 Philip Bourbon, grandson of Louis XIV, succeeded to the thrones of the Spanish Monarchy, including that of Naples, as Philip V. He was almost immediately greeted by a conspiracy, the *Congiura di Macchia*, in favour of the Austrian candidate to the Spanish thrones; and although that was put down, Austrian forces under Archduke Charles successfully annexed the kingdom for the Habsburgs in 1707, ending over two hun-

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12. FLETCHER, *Speeches*, in *Political Works*; pp. 133-4; and his earlier pamphlet on the economic and social condition of Scotland, *Two Discourses concerning the Affairs of Scotland, written in 1698*, Edinburgh: 1698, in *Political Works*; pp. 33-81.

13. For the analysis of the attractive power of London: FLETCHER, Andrew. *An Account of a Conversation Concerning a Right Regulation of Governments for the common Good of Mankind*, Edinburgh, 1704, in *Political Works*; pp. 175-215, esp. 177-81, 198-215; comment on Petty; p. 199, n. 26. On Fletcher's taste for London, and other great capitals, see my 'Introduction', *Political Works*; pp. xii-xv, xxvii-xxviii.

dred years of Spanish rule. Not only the protagonists, but the geographical and economic circumstances, institutions, and constitutional language of the Mediterranean kingdom were all very different from those of Scotland. Even allowing for these differences, however, the terms of the debate in Naples bear comparison with those found in Scotland[14].

There too the threat of 'universal monarchy' and reduction to the status of a 'province' provided the framework in which the prospects of the kingdom were discussed. Canvassing the alternative Bourbon and Habsburg claims to the throne in a manuscript tract of 1697, the jurist Francesco D'Andrea cautiously suggested that an Austrian succession would create a monarchy less dangerously ambitious than one linked to the France of Louis XIV[15]. Those who acted on this suggestion, the Macchia conspirators, in turn justified their actions with the claim that their objective was 'di liberare il Regno dalla non meno ignominiosa, che miserabil condizione di Provincia'[16]. Defenders of the Bourbon monarchy countered that the accusation of universal monarchy levelled at Louis XIV was a specious pretext, and that French support offered the best prospect of defending Neapolitan commerce from subordination to Dutch and English interests[17].

Not surprisingly, it was the former analysis which prevailed after the Austrian capture of the kingdom in 1707. In 1709 a leading official of the new regime, Gennaro D'Andrea, commissioned a lengthy 'Relazione dello stato politico, economico e civile del Regno di Napoli nel tempo ch'è stato governato da i Spagnuoli', more simply known as the 'Massime del governo spagnolo a Napoli'. The author of the work was Paolo Mattia Doria, a Genoese man of letters who had settled in Naples in the 1690s. In his intelligence as well as the debt he too owed to Machiavelli, Doria bears striking resemblance to Andrew Fletcher. Adding a new term to the Machiavellian lexicon, Doria characterised Naples as 'un regno governato in provincia'. The concept described the technique of ruling an acquired kingdom by the methods of divide and rule. Doria argued that the Spanish had used two policies in particular to rule Naples as a 'province'. They had made constant concessions to the feudal nobility, granting them powers of jurisdiction which

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14. For an extended comparison, ROBERTSON, John. *The Case for the Enlightenment. Scotland and Naples 1680-1760*, Cambridge: Cambridge University Press, 2005; pp. 147-200: Ch. 4 The predicament of 'kingdoms governed as provinces'.

15. D'ANDREA, Francesco. 'Discorso politico intorno alla future successione della monarchia di Spagna' (1697-98), in MASTELLONE, Salvo. *Francesco D'Andrea politico e giurista 1648-1698. L'acesa del ceto civile*, Florence: Olschki, 1969; pp. 183-99.

16. 'Copia di lettera scritta da D. Bartolomeo Ceva Grimaldi Duca di telese ad un suo amico a Napoli, Vienna, 1701', Società Napoletana di Storia Patria, Ms XXVII.c.10 ff. 121-131, quotation at ff. 124r-v. See also 'Discorso interno alla successione della Monarchia di Spagna dopo la morte de Carlo II, del Consiglier Conte Saverio Pansuti', Biblioteca Nazionale di Napoli, Ms. X.F.72 ff. 1-44.

17. 'Riflessioni sopra li differenti interessi che la maggior parte delle potenze di Europa hanno nel presente stato della monarchia di Spagna', Società Napoletana di Storia Patria, Ms. XXVI. D.10 ff. 728-55.

only made them more independent of the crown. At the same time, they had allowed the city of Naples to grow at the expense of the rest of the kingdom, by concentrating in it the magistracies, courts and institutions of education, and with them most of the kingdom's industry and commerce[18]. Here too, in other words, the fundamental causes of provincial dependence were an over-mighty feudal nobility and an over-blown, outsize capital city. Doria's remedies were correspondingly similar to Fletcher's. As in Scotland, agrarian reform, commercial development and a new political framework were needed to assure the flourishing of the kingdom of Naples.

At this point, however, a clear divergence between the cases of Scotland and Naples opens up. Whatever the similarities between the social and economic diagnoses offered by Fletcher and Doria, their constitutional and political expectations were markedly different. What the Neapolitans sought from the Spanish Succession crisis was greater autonomy, if not actual independence. Francesco D'Andrea's doubts about a Bourbon succession had reflected a fear that the advent of a Spanish monarchy closely allied to France would reduce the autonomy which the Neapolitan noble and civilian elites had enjoyed since the failure of the Masaniello revolt of 1647-48. More positively, both the 'Austracistas' of the Macchia Conspiracy and Doria clearly expected the Austrian Habsburgs to offer more autonomy than their Spanish predecessors. By this they had in mind two things in particular. First, the governing and magisterial offices of the kingdom should be reserved for 'regnicoli', Neapolitans, and particularly for the class of 'togati', the jurists or men of the robe, who had grown accustomed to ruling through their membership of the Viceregal councils and the main tribunals of the city. Second, the Austrian Viceroys were expected to stand up to Rome, and to defend the autonomy of the kingdom from the Papacy, preventing the latter from renewing its historic claims to feudal suzerainty, and from interfering in every aspect of ecclesiastical and even civil affairs[19]. The jurists' campaign to stiffen the kingdom's defences against Rome culminated in the publication, in 1723, of Pietro Giannone's great *Storia civile del Regno di Napoli*, which discredited the Papal claim to feudal overlordship, and documented the repeated encroachments of the church on the civil power. But the fate of the work marked the limits of Neapolitan autonomy under the Austrians; the Viceroy was unable to prevent its condemnation or to save Giannone from being driven into exile. In the event, of course, the Neapolitans were liberated from Austrian rule even more suddenly and unexpectedly than they had been subjected to it. In 1734 the kingdom was conquered anew by Carlo Borbone, son of Philip V by his second wife, Elizabetta Farnese, and thus restored to independence. Having told themselves that independence was the key to prosperity and reform, the Neapolitans now had to live with the burden of that expectation for well over a hundred years.

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18. DORIA, Paolo Mattia. *Massime del governo spagnolo a Napoli*, eds. Giuseppe Galasso and Vittorio Conti, Naples: Guida, 1973.

19. RICUPERATI, Giuseppe. 'Alessandro Riccardi e le richieste del "ceto civile" all'Austria nel 1707', *Rivista Storica Italiana*, 81, 1969; pp. 745-77.

While the Neapolitans sought greater autonomy –and eventually gained independence– as a kingdom, the Scots, in contrast, were seeking no more than a better form of union with their more powerful neighbour kingdom, England. No one in Scotland in the 1700s was seriously seeking independence; even Jacobite supporters of the Old Pretender, James III, knew that he would seek restoration to all three of his kingdoms, and thus a renewal of the Union of the Crowns. The historic integrity and independence of the Scottish crown had indeed to be defended against the mischievous claims of English antiquarians that medieval Scottish kings had done homage to their English counterparts; historians who refuted the English antiquarians were duly rewarded by the Scottish parliament[20]. But no attempt was made to predicate Scotland's future on a recovery of its independence. Instead between 1703 and 1707 the Scots resumed and brought to a conclusion the debate over the best form of union on which they had been engaged ever since it had been initiated by James VI and I. The debate had by no means been continuous, occurring in fits and starts as necessity required or opportunity arose. But after 1603 the Scots did think, as the Neapolitans would rather not, in terms of forms of union.

At first there had been general agreement that this should come by making the Union of the Crowns more equal, by protecting Scotland in particular from abuse of power by the court and the king's ministers in London. If even James VI had occasionally shown signs of arbitrariness at the Scots' expense, his son Charles I gave much stronger cause for concern, most dangerously in his support for Anglican forms of worship and ecclesiastical authority in the 1630s. When the opportunity arose in 1641 therefore, the Scots had taken it: seizing on Charles's difficulties with the parliament of England, the Scottish parliament passed a series of acts limiting the king's powers within the kingdom. Two years later, Charles' worsening position in both England and Ireland gave the Scots a further opportunity, this time to secure the limitations on royal power through a new form of union with England. Under the Solemn League and Covenant (1643), the two parliaments agreed to adopt the Presbyterian form of church government in both kingdoms, as a guarantee of their political equality and co-operation. Framed as a new covenant with God himself, this union acquired a status in Scots' eyes out of all proportion to its acceptability in England. When in 1649 the English parliament and army repudiated the covenant, executed the king, and abolished the monarchy in England and Ireland, the Scots refused the independence which the English republicans were happy –indeed keen– for them to resume, and went back to war with England, in the cause of Anglo-Scottish union. They proclaimed Charles II king of England and Ireland as well as Scotland, and set out to restore the Union of the Crowns along with the Solemn League and Covenant[21].

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20. FERGUSON, William. 'Imperial crowns: a neglected facet of the background to the Treaty of Union', *Scottish Historical Review*, 53, (1974); pp. 22-44; KIDD, Colin, *Subverting Scotland's Past. Scottish Whig historians and the Creation of an Anglo-British Identity*, Cambridge: Cambridge University Press, 1993; pp. 42-50.

21. MORRILL, John. 'The English, the Scots, and the dilemmas of union', in SMOUT, ed., *Anglo-Scottish Relations from 1603 to 1900*; pp. 57-74.

It took two brutal shocks to disabuse the Scottish nobility of their error. The first was English military conquest by Cromwell's army, a process complete by 1651. The second was the experience of life in Scotland during the three years 1649-51, when the Presbyterian clergy were sufficiently confident of their power to subject even the nobility to their discipline, threatening the social hierarchy. It required the humiliation of Cromwell's conquest to bring this –arguably even greater– humiliation to an end. A year later the English parliament offered to 'negotiate' a different form of union with the Scots, based on a union of parliaments. It was an offer the Scots could hardly refuse –and which therefore only a few would openly embrace during the life of the republic. But the accompanying offer of free trade, along with measures by the Cromwellian regime in Scotland to check the power of the clergy, gave this model of union distinct retrospective attractions. When union was again mooted, in 1670, and the two Privy Councils began short-lived negotiations, the assumed starting-point was parliamentary union in return for free trade. Despite the return of excluded or exiled Presbyterian clergy in 1687-88, the same was true for those who canvassed closer union after the Revolution; even Andrew Fletcher, it seems, momentarily thought in terms of a union of parliaments[22].

By the time the union debate of 1703-1707 got under way, therefore, there were two models of Anglo-Scottish union with seventeenth-century antecedents. One was derived from the Limitations and the ideal of an equal union of crowns championed by the Covenanters in the 1640s. Fletcher's proposed Limitations were clearly modelled on those which had been imposed on Charles I in 1641, though he distanced himself as far as he could from the 'peevish, imprudent, and detestable conduct' of the Presbyterians who had supported them. Within and beyond parliament Fletcher presented the Limitations as part of a wider programme of political and constitutional (as well as economic and social) reform, designed to re-order the Scottish political community, and reconstitute the existing union on a confederal basis[23]. This model of confederal or 'federal' union (the terms were used interchangeably) was further elaborated by the London-Scot James Hodges, in a series of pamphlets devoted to *The Rights and Interests of the Two British Monarchies…with a special respect to an United or Separate State* (1703, with a further instalment in 1706). Hodges made repeated efforts to define more exactly what a confederal union would involve, drawing on the example of the existing Dutch and Swiss confederations. Perhaps tellingly, however, he never published the promised pamphlet setting out a detailed proposal for a federal union of Scotland and England[24].

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22. WHATLEY. *The Scots and the Union*; pp. 90-92; ROBERTSON, 'Fletcher, Andrew', *ODNB*.

23. FERGUSON, William. *Scotland's Relations with England: a Survey to 1707*, Edinburgh: Edinburgh University Press, 1977; p. 209; FLETCHER. 'Speeches', in *Political Works*; p. 135, with the Limitations on pp. 137-40; and see ROBERTSON, John. 'Andrew Fletcher's vision of union', in MASON, Roger A. (ed.). *Scotland and England 1286-1815*, Edinburgh: John Donald, 1987; pp. 203-25.

24. HODGES, James. *The Rights and Interests of the Two British Monarchies, Inquir'd into, and Clear'd; with a special respect to an United or Separate State. Treatise I*, London, 1703, *Treatise III*, London 1706; see ROBERTSON, John. 'An elusive sovereignty. The course of the Union debate in Scotland 1698-1707', in ROBERTSON (ed.). *A Union for Empire*; pp. 206-7, 213-17.

The other available model was that of an incorporating union of the crowns and parliaments of the two kingdoms. This would 'incorporate' Scotland and England as one body politic, consisting of one crown and one parliament, which would together make law for the subjects who inhabited their territories, and these subjects would be free to trade without restriction among themselves. The language of 'incorporation' had been of the utmost importance to James VI and I, who had a horror of being thought the head of a divided and monstrous body, or the polygamous husband of two wives[25]. But by 1707 the content of the term had been much more precisely defined than it was at the start of the Union of the Crowns. It now specifically included a union of parliaments, while excluding the different systems of private law in the two kingdoms, as well as their different forms of church government. It was of course this model of union which triumphed in 1707, for increasingly obvious political reasons[26].

It is not the political obviousness of the outcome of the negotiations in 1707 which I would emphasise, however, so much as the rigidity of the choice which the Scots found themselves facing. In part, I have suggested, this was of their own making, the choice deriving from the two models of union elaborated in the seventeenth century, and forged during the years of Scottish Presbyterian aggression in the 1640s, followed by military defeat at the hands of Cromwell in the 1650s. But the rigidity of the choice facing the Scots was also a reflection of a wider inflexibility in European thinking about forms of union. On the one hand was an idea of confederal union as a union of equal, individually sovereign states. This idea was embodied in the United Provinces –or 'States', as they were known– of the Netherlands, and was conceptualised by the jurists, notably Samuel Pufendorf and Ulrich Huber, under the rubric 'systems of states'. Such a 'system', the jurists insisted, was viable if the parties to the league or union (*foedus*) each possessed sovereignty, and were thus equally independent, for dependency was the mark of a 'province'[27]. It was thus very difficult to conceive of a union in which there were inequalities of power, or layers of authority. Europe might offer a particularly impressive example of such an unequal, layered union, in the form of the Holy Roman Empire, which had been given a new lease of life by the Treaty of Westphalia in 1648. But the jurists could make no sense of even the reconstituted Empire as a union. If Pufendorf later regretted his likening of its constitution to a 'monster', the Empire remained an anomaly, under-

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25. 'A Speech on the xix day of March 1603/4', McILWAIN. *Political Works of James I*; p. 272.

26. On the incorporating unionist case, ROBERTSON. 'An elusive sovereignty'; pp. 220-22; the most up-to-date account of the passing of the Union is WHATLEY. *The Scots and the Union*, chs 5-9.

27. PUFENDORF, Samuel. *De Jure Naturae et Gentium* (1672), transl. as *Of the Law of Nature and Nations*, London, 1703, Bk. VII, Ch. V, Sect. 16-21; see ROBERTSON, John. 'Empire and union: two concepts of the early modern European political order', and MOORE, James; SILVERTHORNE, Michael. 'Protestant theologies, limited sovereignties: natural law and conditions of union in the German Empire, the Netherlands and Great Britain', both in ROBERTSON (ed.). *A Union for Empire*; pp. 26-9, 171-97.

standable only in terms of its own system of Public Law, or *Reichsrecht*[28]. It would be almost another 140 years before two unusually imaginative political theorists, Alexander Hamilton and James Madison, dared to draw a distinction between 'confederal' and 'federal' unions, and broke free of the rigid model of confederation with which those Scots opposed to an incorporating union of parliaments were obliged to work[29].

For its part, the model of incorporating union which triumphed in 1707 was also open to the charge of inflexibility. There was more than a trace of Hobbes' Leviathan to the outcome envisaged by the incorporating unionists. In the first place, incorporation meant that there would be a single, sovereign crown-in-parliament with an absolute power to make public law; if in future its will was defied, and the Scots sought to secede from the Union, there was little doubt that the new state would seek to re-impose its authority by conquest, after the example of Cromwell in 1651. Moreover the incorporating unionists were confident that both the old Scottish parliament and the new incorporated British parliament were 'representative' in the Hobbesian sense; that is, full sovereign power lay in parliament as a representative body. The exercise of parliamentary authority in no wise depended on reference back to the 'freeholders', still less to the people in general[30].

Critics of incorporating union did their best to exploit these implications, just as its advocates seized on the weaknesses of the confederal alternative. The ensuing pamphlet debate was not only of intellectual interest; it mattered politically, not least since 'public opinion' played a greater role in the political process than the ruling elite may have anticipated[31]. Of the two sides, however, the incorporating unionists were better at defusing the objections to their model of union. They did so in two ways.

One was to emphasise that before it became embodied in Acts of the Scottish and English parliaments, the Union had been negotiated as a 'treaty' between the two kingdoms. If any 'fundamentals' of the Union were broken, the treaty, as a form of contract, might be regarded as void. This conception of the Union as a treaty was most enthusiastically advanced by the English pamphleteer Daniel Defoe, who was paid by the Crown to go up to Scotland

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28. [PUFENDORF, Samuel], alias Severinus da Monzambano. *De Statu Imperii Germanici* (1667), transl. as *The Present State of Germany*, London, 1696; pp. 152-4. See SCHRÖDER, Peter. 'The constitution of the Holy Roman Empire after 1648: Samuel Pufendorf's assessment in his *Monzambano*', In: *Historical Journal*, 42, 1999; pp. 961-83.

29. HAMILTON, Alexander; MADISON, James; JAY, John. *The Federalist or, the New Constitution* (1787-88), ed. Max Beloff, Oxford: Basil Blackwell, 1948.

30. On the Hobbesian character of incorporating union: ROBERTSON, John. 'The idea of sovereignty and the Act of Union', in DICKINSON, H. T.; LYNCH, M. (eds.). *The Challenge to Westminster. Sovereignty, Devolution and Independence*, East Linton: John Tuckwell, 2000; pp. 32-41.

31. BOWIE, Karin. *Scottish Public Opinion and the Anglo-Scottish Union 1699-1707*, Woodbridge: Boydell and Brewer for the Royal Historical Society, 2007, opens up a new, hitherto neglected dimension of the Union debate.

to argue the Unionist case. The argument was intended above all to reassure those who feared that the hard-won independence of the Scottish Kirk might still be compromised by the strength of the Anglican interest in the united British parliament[32]. That its proponents offered no mechanism by which a breach of the treaty of Union might be tested –there was no thought of creating a Public Law of Union after the example of Imperial *Reichsrecht*– did not undermine the effectiveness of the suggestion: the idea that the Union was a 'treaty' deflected attention away from the absolutist implications of the incorporating unionists' doctrine of sovereignty.

Equally persuasive was the incorporating unionists' insistence that sovereignty itself was of purely formal significance; what mattered was the 'utility' which would result from the Union. A single, common parliament of Great Britain would not only be able to secure free trade for Scottish merchants throughout the territories under its jurisdiction, including its colonies overseas. It would also check the exercise of noble power, not least by attracting the greatest nobles to London, leaving Scotland itself to be governed by its lairds, or lesser nobility, and their relations in the legal profession. Moreover if the nobility's surviving legal privileges, such as their retention of 'heritable jurisdictions', were found to be contrary to 'the evident utility of the subjects', they might be abolished, notwithstanding the general intention to preserve Scots Private law[33]. Finally, incorporating union would guarantee the legal establishment of not one but two Protestant Churches, the Anglican and the Presbyterian, on the basis of civil rather than divine right. To a laity still smarting from its treatment at the hands of the clergy during the Civil Wars, and reminded of their abiding capacity for intolerance as recently as 1696-7, by a spate of witchcraft persecutions of as well as by the summary trial and execution of the young 'atheist', Thomas Aikenhead, the prospect of an Erastian ecclesiastical settlement may have been the most attractive of all the Union's 'utilities'.

The 'success' of the case for incorporating union may be measured not only in the outcome of the debate between 1703 and 1707, an outcome to which there were many other, more political contributions. It may also be reflected in the Union's longevity. A Union founded on the assumption that it was (once) a 'treaty', and therefore cannot be altered in its most fundamental articles without dissolving it, and which has always emphasised that its value lies in the benefits it brings to both the Scots and the English, may expect to last only so long as it continues to satisfy these expectations. That it has now lasted for three hundred years suggests that the terms in which it was presented, and the 'utilities' which were claimed for it, were not ill-chosen.

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32. DEFOE, Daniel. *An Essay at Removing National Prejudices Against a Union with England, Part III*, [Edinburgh], 1706; see ROBERTSON. 'An elusive sovereignty'; pp. 223-4.

33. 'Treaty of Union', Article XVIII, in PRYDE, Gordon S. *The Treaty of Union of Scotland and England* 1707, Edinburgh and London: Nelson, 1950; p. 95. On the significance of the issue of heritable jurisdics, and their eventual abolition in 1747, see KIDD, Colin. 'Eighteenth-century Scotland and the three unions', in SMOUT (ed.). *Anglo-Scottish Relations from 1603 to 1900*; pp. 171-87.