

James VI and I and rule over two kingdoms: an English view*

Conrad Russell

King's College London

Abstract

This article compares English and Scottish responses to the union of the crowns in 1603 following the accession of James VI and I. It examines the reluctance of the English to rethink their ideas on sovereignty, and the problems inherent in an 'imperfect union'.

When King James VI of Scotland inherited the throne of England in March 1603, it meant profound institutional and political changes in the distribution of power in Scotland. Yet paradoxically, because of Scottish views on the nature of power and of the state, it meant a comparatively small intellectual adjustment of those views. By contrast, in England, the accession of a Scottish king made little difference to the course of English political life, but it offered a far-reaching challenge to English views about the nature of sovereignty and of the state. Seen from south of the border, the troubles caused by the union were those resulting from the failure of the English to rethink their ideas on sovereignty. This failure prevented them from thinking constructively about the new relationship into which they had entered through the union of the crowns. Indeed, it often prevented them from admitting that they had entered into any relationship at all.

In the terminology of the day, the union of the crowns in 1603 was an 'imperfect union', between two sovereign states under a common authority. The terminology was used in contrast to a 'perfect union', which blended two states together into a single state. During 1604, in a long series of tracts, Englishmen examined other examples of these two types of union. They found that perfect unions, like that of England and Wales, tended to result from conquest. Imperfect unions, on the other hand, tended to be also impermanent unions. Like the union of Kalmar and the union of Spain and the Netherlands, they tended to break up. Of the imperfect unions discussed during 1604, only four still exist: the

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unions of Aragon and Castile, of the Swiss Cantons, of England and Scotland, and of Britain and Northern Ireland.¹

In an imperfect union, each state kept its existing institutions. Each kingdom continued to have its own privy council, its own parliament, its own laws and its own Church. It was therefore possible in theory for the relations between England and Scotland to be governed by the maxim that ‘two groups who do not meet cannot fight’. This was always the preferred approach to union of most of the English political classes. As the larger and the richer kingdom, England had the king’s residence, interrupted only by one visit to Scotland in 1617. Proposals for the king to visit Scotland, like the repeated attempts to persuade Charles V to find time for a coronation in Valencia, were always treated as proposals for irresponsible absence from duty. The English had no objection if James was king of Scots in his spare time, but the task was not to be allowed to distract him from the serious business of governing England.

This Anglocentric attitude rested on England’s superior size. In terms of population, it may have been something like five times the size of Scotland. Perhaps even more interesting to a king was the fact that it had a far more developed central state than Scotland. The disparity in revenues was even greater than in population, and the revenues of the king of England may have been over twenty times those of the king of Scots.² The king of Scots, in terms of income, was on about the same level as the richest English earls. To a king with James VI and I’s addiction to spending, this was one of England’s most powerful attractions. Moreover, England had by far the more central geographical position in terms of European politics. For most of James’s reign, the cockpit of potential conflict in Europe was in the golden triangle area bounded by Brussels, Amsterdam and Cologne. Before the crisis in Bohemia began in 1618, the likeliest cause of war during the reign was the disputed succession in Cleves and Jülich. Even in the three years after the beginning of the Bohemian crisis in 1618, probably the key question was whether it would lead to the end of the Twelve Years’ Truce between Spain and the Dutch when it was due for renewal in 1621. For these issues, London was a far more central vantage point than Edinburgh. When we add in a preference for living in what was once described as the ‘sun-side’ of the king’s dominions,³ this London base was to be expected. Even the Scots appear to have taken it for granted.

¹ B. Galloway and B. Levack, *Tracts on the Jacobean Union* (Scottish Historical Soc., Edinburgh, 1985), *passim*; C. Russell, ‘Composite monarchies in early modern Europe’, in *Uniting the Kingdom? The Making of British History*, ed. A. Grant and K. J. Stringer (1995), p. 135.

² David Stevenson estimates the Scottish ordinary revenues in 1625 at £16,500 sterling (D. Stevenson, *The Scottish Revolution, 1637–44* (Newton Abbot, 1973), p. 41). This figure would need correcting if we were to assume any under-valuation of the Scottish pound in sterling terms. By any calculation, this figure is far below the English receipts, which were calculated in Sept. 1607 at £324,075 (Public Record Office, SP 14/28/60). All these figures are, as modern ministers put it, ‘illustrative’.

³ P.R.O., SP 14/7/40.

In the sphere of foreign affairs James was fortunate that his union was subjected to fewer strains than might have been expected. England and Scotland had behind them centuries of mutual hostility, and James succeeded at precisely the moment when people were becoming weary of this hostility, and were ready to say 'never again'. This was one of the strongest points made by English friends of the union: 'heretofore the ports of either nation have been so many gates for the invasion of the other'. Anyone dealing with Anglo-Scottish relations was well aware that England was not an island. The hope that the union represented the end of wars between the kingdoms therefore represented a hope of a great increase in national security.⁴

At the same time, and partly because of the strength resulting from union, James was the first English king for a very long time to have a substantial reign free from any major foreign war. This relieved the union of some of the biggest strains to which unions could be subject. Unions always suffered from wars which were perceived as more in the interest of one partner than of another. Even if there was no dispute about the principle of the war, a union was always likely to experience disagreement about the division of the costs of war, as was to happen to England and Scotland in the reign of William III. The brief period of war at the beginning of the reign of Charles I showed that the Anglo-Scottish union was as vulnerable to these strains as any other. The fact that these strains were absent through the reign of James was a major source of strength.

The peace also cramped the activities of any foreign powers which might consider trying to break the union. The power most obviously tempted to do this was France, since Scotland had been its long-time ally. In 1604, the French ambassador, alarmed by the coincidence between the union and the Anglo-Spanish peace, offered to his master to try to break the union.⁵ If, as the French ambassador feared in 1604, the Anglo-Spanish peace had marked the beginning of a stable Anglo-Spanish alliance, this attempt might seriously have been made. James, however, settled down into a wary and flexible neutrality between France and Spain. Had he been a firm ally of either, the other might have tried to break the union. As it was, if either France or Spain had tried to do so, they would simply have tipped England into alliance with the other. Attempts to win the lesser prize of Scotland would have led to the loss of the greater prize of England. James was therefore remarkably free, from 1604 onwards, of such foreign intervention.

One of the very few places in which serious institutional union took place was the diplomatic service. This happened by the simple device of not appointing any Scottish ambassadors. James's ambassadors called themselves ambassadors of England, and were called by their hosts ambassadors

⁴ The words are those of John Hayward the civil lawyer (P.R.O., SP 14/9/37/1).

⁵ P.R.O., PRO 31/3/37, pp. 34-5, and *passim*.

of Great Britain. Sir Charles Cornwallis, ambassador to Spain, claimed, in words which very nearly refute themselves, that he had represented the Scots as well 'as he did those of his own country'.⁶ Anglo-Scottish foreign policy was in effect the policy of England, and it was not until war broke out in the reign of Charles I that this fact led England into any difficulties.

Another of the regular flashpoints of multiple kingdoms was the distribution of offices. James had before him a choice of two available models for distribution of power in an outlying kingdom. One was the pattern made familiar by the Spanish empire, of delegation of royal power to a viceroy, who then governed as a king, subject only to appeal to the monarch in the central capital. This pattern, as the Portuguese found, had the disadvantage of excluding subjects of the outlying kingdom from preferment at the centre. It had the further drawback of putting the viceroy's authority in the scales every time there was an appeal against one of his actions. This pattern was familiar to the English, since they used it in Ireland. James chose in Scotland to use the alternative model of devolution. This involved leaving a fully functioning government, with privy council and great officers in control of their offices, behind him in Edinburgh. James's famous claim that he governed Scotland with a stroke of the pen was a backhanded tribute to the devolved government run by the Scottish privy council in Edinburgh. It was they and their London contact men who prepared the paper on which the stroke of the pen was placed.

The key to this system lay in the communication between London and Edinburgh, a communication which was in the hands of the London Scots, and most of all in the hands of the Scottish members of the king's bedchamber. The rivalry between the bedchamber, the king's personal staff, and the council, the senior figures in his administration, was already an established fact in English political life. Under James national differences tended to coincide with institutional ones which served to heighten a well-established tension.

For the government of Scotland, the system worked well enough. We can see it in operation in the correspondence of the earls of Mar and Kellie. They were cousins, old friends and men who enjoyed that easy mutual trust which is the bedrock of any good political relationship. The earl of Mar was lord treasurer of Scotland, and a key figure in the government in Edinburgh. The earl of Kellie was groom of the stole, head of the king's bedchamber in London. While London-Edinburgh contact worked through this easy personal relationship, differences were easily accommodated.

The difficulty arose with English reluctance to accept this system. The English did not recognize any Anglo-Scottish relationship, and thought that the government of Scotland was not their problem. They therefore

⁶ P.R.O., SP 14/77/43.1.

regarded the coveted posts in the king's bedchamber as purely posts in the entourage of a king of *England*, and were extremely reluctant to accept a need to share any of them with Scots. This unwillingness to recognize that Scotland had a separate government extended so far that Sir John Stanhope, vice-chamberlain of England, was so shocked by the discovery that James also had a vice-chamberlain of Scotland that he stayed away from court in outrage.⁷ On another occasion Sir John Kennedy, one of the more badly behaved of the London Scots, was accused by his wife of bigamy on the ground that he already had a wife living in Scotland. The archbishop of Canterbury took his oath to examine him about this, although, having taken place in Scotland, the alleged previous marriage was outside his jurisdiction. The archbishop was surprised to get a message from the king saying that he should not have taken an oath for a matter transacted in Scotland, but that he should have left it to a commission of the privy council 'mixed of both nations'.⁸

This story illustrates why James insisted that the privy council of each nation should contain members drawn from the other: it was the ideal forum for the handling of such international issues. This disturbed the English too. A month after James's accession, while he was still on the way to London, the earl of Kinloss, one of the inner ring of James's Scottish advisers, arrived in the city with the king's letters admitting him to the privy council of England, 'to the disgust of the Lords, who pretended that no one but Englishmen should hold honours and office in England'.⁹ The Venetian ambassador, our informant, immediately went to pay a call on Kinloss.

It was not only on international matters that the king of England wanted the advice of his Scottish privy councillors in London. James, when he arrived in London, came to an administrative system which was wholly strange to him. He came to a network of power relationships which was tight, entrenched and built up over a long time. He came, in particular, to the political dominance of one man, Robert Cecil, first earl of Salisbury. James appears to have been acutely aware of the risk that this well-established administrative machine might simply take him over and use him as a titular figurehead. He therefore desperately needed familiar men around him whom he could trust and whose advice he could evaluate. We see this system in operation in an undated letter written early in the reign by George Home, later earl of Dunbar, to Robert Cecil. Home told Cecil that he and the king had sat alone together in the king's carriage discussing how trustworthy they thought Cecil was. Being finally satisfied, they decided that Cecil was 'the meekest man to be counsellor

⁷ Sir Ralph Winwood, *Memorials of affairs of state in the reigns of Q. Elizabeth and K. James I*, ed. Edmund Sawyer (3 vols., 1725), ii. 57.

⁸ Historical Manuscripts Commission, *Salisbury MSS.*, xxi. 159.

⁹ *Calendar of State Papers, Venetian, 1603-7*, p. 10.

in all matters of estate'.¹⁰ The choice of Home to convey this information told Cecil very plainly by whose favour he held power. Such members of the head of government's personal staff are always resented, and if that resentment is clothed in the language of nationalism, it can only be increased.

Such feelings provoked an intense jealousy among English aspirants for office. In the words of Sir John Holles, a disappointed English office-seeker and member of parliament, 'the Scottish monopolize his princely person, standing like mountains betwixt the beams of his grace and us'. Since James was perennially short of money, this resentment fastened on to the alleged extravagance of his gifts to his Scottish followers. Sir John Holles wished 'the king's expense moderate, for unless the drain or outlet be stopped, be the inlet never so large, we may pour in, but never fill'. He claimed that 'the court is the cause of all for by the reception of the other nation that head is too heavy for this small body of England'.¹¹ It is hard to read the words of Holles and his fellow complainants without hearing the desire to retreat behind a tariff barrier. Like modern men complaining of being passed over in order to appoint a woman, they are tempted to equate any competition with unfair competition.

There was, of course, another side to this story. James's well-established extravagance on both sides of the border is fact. The proportion of that spending which took the form of gifts to London Scots, although it has not yet proved possible to quantify it exactly, seems not to have been nearly as dramatic as James's critics, searching for a panacea, were tempted to allege. Moreover, it is hard to resist the feeling that for Holles and his like, *any* spending on Scots would have been excessive. This was clearly unrealistic. The presence of London Scots was obviously necessary to the working of the government of Scotland, and the king's desire to have some servants of his own nation whom he knew was not unreasonable. The more aware he became of English national dislike of the Scots, the stronger his desire to have Scottish servants became. As he told Salisbury in 1610, 'that nation cannot be hated by any that loves me'.¹²

These Scottish servants had to live, and to live in a way which enabled them to keep up their status in the face of repeated English attempts at snobbish disapproval of 'beggarly Scots'. The Scottish exchequer, being almost empty, could contribute nothing to this. Attempts to live in London on Scottish rents were handicapped by the comparative poverty of the Scottish nobility, as the earl of Mar pointed out.¹³ If, as seems

¹⁰ Hist. MSS. Comm., *Salisbury MSS.*, xvi. 252. I would like to thank Neil Cuddy for this reference. For a fuller account of the bedchamber, see N. Cuddy, 'The revival of the entourage: the bedchamber of James I, 1603–25', in *The English Court: from the Wars of the Roses to the Civil War*, ed. D. Starkey (1987), pp. 173–225.

¹¹ Hist. MSS. Comm., *Portland MSS.*, ix. 113.

¹² Hist. MSS. Comm., *Salisbury MSS.*, xxi. 265.

¹³ K. M. Brown, 'Noble indebtedness in Scotland between the Reformation and the Revolution', *Hist. Research*, lxii (1989), 260–75, at p. 261n.

possible, the fixed exchange rate of twelve Scottish pounds to one English pound undervalued the former, the task would have been even harder. Grants to Scots out of the English exchequer were essential to the maintenance of the union, but it is not clear either that the English knew this, or that they would have cared if they did.

The majority English view of the relationship between England and Scotland was that expressed by Thomas Wentworth during the parliamentary session of 1606–7. He thought that the countries were ‘two distinct Kingdoms, two Commonweals. They acknowledge no Crown, no King, but of Scotland: We acknowledge none, but that of England’.¹⁴ This was emphatically a vision of a Britain of nation states, whose sovereignty allowed for no possibility of any legal relationship between them, still less for anything which could properly be called a union. In 1607, when James proposed a bill for abolishing hostile laws, its preamble said it was for the ‘continuance and preservation’ of the union. The house of commons would not agree to this, ‘which they said seemed to presuppose an union already made, to which they would not in any wise assent, noe nor to any naming of the union at all in title’. Salisbury’s secretary, the author of this report, noted ‘it seemed they thought the word “union” a spirit, for they shunned the very shaddowe and the name of it’.¹⁵

The big obstacle to this English approach to the union was the problem of the succession. If England and Scotland were two sovereign nation states, they had two different laws of succession, and therefore at some future date their union might be ended by the succession of two different kings in England and Scotland. This problem had been spotted by 1604.¹⁶ In the end, it was the problem which terminated the union of the crowns, and replaced it with the much fuller union of the parliaments of 1707. The prospect of two different successions worried the English, since it meant that a foreign power would again be able to use Scotland as a landing point for an invasion of England. It would be a threat to English security.

James could not deal with this problem by altering the law of succession of either England or Scotland by an act of its national parliament. He had had to block up this route in order to legitimize his own succession to England. Henry VIII’s will, sanctioned by act of parliament, had barred a Stuart succession in favour of the English-born Grey line, and James had evaded this prohibition, in his opening Act of Recognition, by claiming that the divine right of hereditary succession could not be barred by any act of parliament. Having written this into the act of parliament recognizing his own title, he could not, a mere few weeks later, attempt

¹⁴ *Commons Journals*, i. 1015.

¹⁵ P.R.O., SP 14/21/17. Bodleian Library, MS. Tanner 280 fo. 25r.

¹⁶ *Letters of Sir John Holles*, iii, ed. P. R. Seddon (Thoroton Soc., xxxvi, Nottingham, 1986), p. 521; C.J., i. 184; Sir Edward Coke, *The Fourth Part of the Institutes of the Laws of England* (1648), p. 347.

to alter the succession by another act of parliament without denying his own title to the English throne.

This was the problem James tried to bypass by changing the names of his two kingdoms to a single kingdom of Great Britain, or, as he sometimes preferred, 'Great Brittainy'. The change of name, however vague its effects might be, would nevertheless transform the two bodies over which he ruled into one, which would then be capable of having a single succession, and therefore of remaining united. As James and his supporters ceaselessly reiterated, it would transform England and Scotland into 'one body'. James's draft Naturalization Act of 1607 claimed that 'by [this] blessed union the people and subjects of both the said realmes are made members of one entire body under one head'.¹⁷ Salisbury, writing in 1608 to Lord Dunfermline, lord chancellor of Scotland, referred to 'God, who hath made us one body under one head'.¹⁸

To many Englishmen, and especially to many members of parliament and common lawyers, this notion appeared to subvert the sovereignty of England, because they could not imagine any political entity being 'one body' unless it had a single system of law and a single legislative sovereignty. They do not seem to have appreciated that this was a test so strict that it is doubtful whether any other state in Europe could pass it. Brian Levack has described the English common law as 'the only distinctively national body of law in all Europe'.¹⁹ In almost every other state in Europe, even in France, perhaps the most unitary of them, provincial estates and local customs resulted in a patchwork quilt state which could not pass strict English tests for a unitary sovereign state. This body of ideas, popularized in Henry VIII's Reformation statutes, had never been universal – an older, natural law-based tradition which denied or limited the concept of legislative sovereignty survived, and again gained in strength as the seventeenth century progressed – but these Henrician doctrines of sovereignty were riding exceptionally high in 1603. They had been developed and elaborated under Henry VIII as a way of defending English sovereignty against the pope, and had therefore enjoyed a new lease of life between 1585 and 1603, during a long war which was regularly presented to the English public as a war against papal conquest. The added convenience of these ideas as a weapon against the Scots gave them a popularity between about 1603 and 1610 which was perhaps greater than at almost any other period of English history.

To James, who, like most Scotsmen before 1603, probably knew as much about France as he did about England, these ideas were entirely unintelligible, and he proceeded to fall foul of them without understanding the nature of the obstacle over which he was falling. As he explained

¹⁷ British Library, Cotton MS. Titus F iv fos. 81v–82r.

¹⁸ P.R.O., SP 14/32/60X.

¹⁹ B. Levack, *The Formation of the British State* (Oxford, 1987), p. 18.

in his big speech to parliament in 1607, difference in detail of laws was entirely compatible with the existence of a single state, provided that there was a common source of authority, and that the laws rested on a general foundation of common principles.²⁰ In April 1604, he instructed Cecil to ask the judges whether he could use the name of Britain without direct abrogation of all the laws, and whether the name 'is absolutlie incompatible with the present distinction of lawes between the realmes'. He instructed the judges to judge without 'curious wresting of the common law of England against all reason'. The judges replied that from the change of name to Britain 'there follows a distraction, or rather an utter extinction, of all the lawes now in force', and, because they were extinct, they 'hereafter must have a new creation'. Cecil reported to Elphinstone, Scottish Secretary of State, that this was 'a very good stoppe to the work so much desired of his Majesty'. The barely concealed satisfaction of this letter suggests that neither the government of England nor the government of Scotland much wished to have its authority muffled in a common identity.²¹ We have another report of this judicial opinion from Sir Edward Coke, who was attorney-general at the time. He said that James 'endeavoured . . . to have erected a new kingdome of Great Britain'. The judges, in response to this proposal, 'unanimously resolved (I being then Attorney Generall, and present) that Anglia had lawes, and Scotia had lawes, but this new erected kingdome of Britannia should have no lawe'. Coke said that there could not be a union of Britain until there was union of laws. He justified this by saying: 'I never read of any union of divided kingdomes, and therefore I conceive it to be without president [*sic*]'.²² Since Britain was united in 1707 without a union of laws, and indeed union of laws between England and Scotland has not yet been achieved, this opinion must be said to have been falsified by events.

James was profoundly unimpressed by this view, and proposed to ignore it. Thomas Wilson, Salisbury's secretary, said that 'the king hath power, by his proclamation, to dissolve the state and erect a new, as well as he can assume a new title'.²³ It is at this point that James's proposals for union began to spread acute constitutional alarm about the government of England. Sir Edwin Sandys, in parliament, said that they had no authority to agree with anything like this without 'especiall commission from the country'.²⁴ Another speech in parliament, possibly also by Sandys, argued that changing the name of England 'were as yf to make a conquest of our name, which was more than ever the Dane or Norman could do'.²⁵ The

²⁰ *A Collection of Scarce and Valuable Tracts . . . of the late Lord Somers*, ed. W. Scott (13 vols., 1809–15), vi. 120.

²¹ P.R.O., SP 14/7/38 and 85.

²² Coke, p. 347.

²³ P.R.O., SP 14/23/62.

²⁴ P.R.O., SP 14/7/74.

²⁵ Bodl. Libr., MS. Tanner 280 fo. 24.

speaker was right that the authority of conquest was, in English legal thought, the only authority which could change law without consent, and that the authority of a conqueror was of the unlimited type described in Hobbes's *Leviathan*. He was entitled to his alarm, but it did not occur to him that the problem arose in part from parliamentary refusal to take any action to meet an undoubtedly genuine problem.

In October 1604, six months after his rebuff from the judges, James did what he had been threatening to do, and issued a proclamation changing his style to 'King of Great Britain' by his own personal authority. He even made a virtue of the lack of parliamentary consent, saying that the union was not 'contracted by doubtfull and deceivable points of transaction', but was 'the worke of God and nature . . . whereunto the workes of force or policie cannot attaine'.²⁶ James was claiming the authority of God for his own political choices. His underlying thinking was that his own personal authority, by being common to both realms, turned them into a single kingdom, all laws, parliaments and councils notwithstanding. It was an alarming personalization of the concept of authority, and his English subjects were entitled to fear that it entailed a threat to the rule of law. They seem to have evaded the threat by treating this proclamation as if it had not been made, but the alarm remained.

James claimed a unity of laws, not in identity, but because 'there is a greater affinity and concurrence betweene most of the ancient lawes of both kingdomes, than is to be found betweene those of any other two nations'. Under this rather vague phrase, anyone familiar with discussion of this subject on the Scottish side of the border would have recognized the views of Sir Thomas Craig, a leading Scottish lawyer who was in London at the time acting as a commissioner for the union. Craig found behind English and Scottish law a series of common principles derived from feudal law, and believed that, in order to achieve legal union, it was not necessary to make the laws identical, but only to 'harmonize' them – the word is Craig's own. Behind this in turn was an innately federal Scottish approach to political authority. When the Scots thought of union, their instinctive models were usually Dutch or Spanish – both federal unions which were entirely compatible with considerable variation between the parts. To the English, such an idea appeared to be a contradiction in terms: in the words of Sir Edwin Sandys, 'a kingdome is indivisible, and may not contain several kingdomes'.²⁷ In 1607, he spelt this out further, and insisted that the English and the Scots could not be one people until they had one common parliament for making laws.²⁸

²⁶ *Stuart Royal Proclamations*, i, ed. J. F. Larkin and P. L. Hughes (Oxford, 1973), p. 95.

²⁷ P.R.O., SP 14/7/63.

²⁸ *The Parliamentary Diary of Robert Bowyer, 1606–7*, ed. D. H. Willson (repr. New York, 1971), pp. 256n., 258–9.

The English parliament's belief in its legislative sovereignty was not the only obstacle to attempts to make England and Scotland one body. Difficulties quite as formidable were posed by the English common law, a precedent-based system of law which did not rest on the authority of any legislator but on prescription from time beyond the memory of man. In 1607, one of the judges, possibly Sir Edward Coke, claimed that he was the first to have conceived that the change of name could not be undertaken with safety to the king and kingdom. He argued that no other nations had conquered and inhabited their land, and that neither the Britons, Saxons nor Danes had changed the fundamental laws of England. 'The king cannot change the natural law of a nation. This foundaçon is a firm foundaçon.'²⁹ Perhaps the most fundamental thing he meant by the 'natural law' of a nation was that English common law did not rest on the will of a lawgiver, and that James therefore could not change it to accommodate the needs of Scotland. Sir John Davies, James's solicitor-general in Ireland, spelt out the point with greater clarity:

Neither could any man ever vaunt that, like Minos, Solon or Lycurgus, he was the first lawgiver to our nation; for neither did the king make his own prerogative, nor the judges make the rules or maximes of the law, nor the common subject prescribe . . . the liberties which he enjoyeth by the law . . . Long experience, and many trials of what was best for the common good, did make the common law.³⁰

It was this principle that James's attempt to create a single state was carelessly threatening. Scotland was outside the compass of the common law, and any attempt to unite England with any territory not governed by the common law must, it appeared, threaten the law which was part of England's sense of its national identity. Craig's manifold attempts to prove that the common law derived more of its principles from civil law roots than the English supposed merely fell on deaf ears. Sir Maurice Berkeley, speaking in parliament in 1607, said 'those laws [are] written in the Blood of our Ancestors. Never believe, that these Laws should admit such Inconveniencies, as the Participation under one personal Subjection'.³¹ In the words of Serjeant Hutton in court, 'allegiance follows the crowne, not the person of a king'.³² By contrast, Salisbury, who was trying to argue that the law was changed simply by the fact of the king's accession, was forced to aver that 'there was a paternall government before there was any sovereignty'.³³ The question of the change of name to Great Britain had opened up some very big questions about the nature of authority in the English state.

²⁹ P.R.O., SP 14/26/64.

³⁰ J. G. A. Pocock, *The Ancient Constitution and the Feudal Law: a Study of English Historical Thought in the 17th Century* (Cambridge, 1957), p. 41.

³¹ C.J., i. 1024.

³² P.R.O., SP 14/34/10.

³³ P.R.O., SP 14/26/76.

James retreated from his attempt to change the name. By 1607, he was pursuing much more limited objectives: the first was abolition of hostile laws; the second, abolition of the separate legal status of the Borders; the third, a commercial union; and the fourth, mutual naturalization of English and Scots born after his accession. In the first two, he was successful. The commercial union produced a brief discussion of the possibility of a single currency, but the proposal was never floated in public.³⁴ In the case of commerce the idea of union was, for once, advanced by the English and opposed by the Scots, and Salisbury argued that there was 'no way so good, as to equal all custom'.³⁵ It was the Scots, refusing to abandon their commercial privileges in France, who made a level playing field impossible.

The naturalization issue led to another massive argument, because, most unfortunately, it developed into a dispute about whether allegiance was due to the king or to the law. If it was due to the king, who was one, English and Scots could enjoy a common citizenship. If it was due to the laws, which were several, then English and Scots had two separate citizenships because they obeyed two different laws. The arguments raised by this issue were essentially the same as those raised by the change of name. The question was whether the king or the law was the ultimate seat of authority. James, who believed all those born after his accession enjoyed common citizenship *ipso facto* because they were his subjects, could not see any need for a decision on this question. He thought it already settled. This, however, involved a personalization of authority extreme enough to be alarming, and the parliamentary session of 1607 dug in its heels as firmly as the session of 1604 had done. They would not on any account give James what he wanted. The judges, to whom the case was referred after the end of the parliament, were this time rather more prudent. They gave James the judgement he desired in return for his recognition that the courts had the authority to determine the question. In the long run, this decision may have ensured the survival of the common law, but in the short term, it severely diminished the judges' reputation.

Behind this story at all stages lies the fact that the English and the Scots had different models of union. For the Scots, whose models were largely continental, plural unions, without a single uniform law or a single sovereign power, this was so normal that they (including James) could not understand why anyone was worried by the lack of them. For the English, the main models of which they thought were Ireland and Wales. In both cases, English authority rested on conquest, and therefore these two countries were not seen as any theoretical threat to English sovereignty. Ireland, moreover, was a dependency rather than a kingdom united with

³⁴ *Cal. S.P. Ven. 1603–7*, p. 192. Sir Thomas Craig, *De Unione Regnorum Britanniae Tractatus* (Scottish Historical Soc., lx, Edinburgh, 1909), pp. 284–90.

³⁵ P.R.O., SP 14/24/3.

England. Its status, although more full of anomalies than the doctrine of the Trinity, had more in common with Massachusetts than with Scotland. The parallel to which the English constantly turned was that of Wales. Wales was a conquered country, with no surviving legal institutions of its own, and therefore presented no challenge to English sovereign power. Henry VIII's Act of Union with Wales was a simple exercise of sovereign power by the parliament of England. There was no need to recognize any equal authority with which the English might have to negotiate. The English simply applied English law, in its entirety, to Wales in return for Welsh representation in the parliament of England. The result, at least in legal terms, was a fully integrated unitary state.

This provided no training for the quite different situation involved in dealing with the equal sovereign power of Scotland, and it is this difference between Scotland and Wales to which the English never adjusted. All through the debates on union with Scotland there runs a constant irritation with Scotland because it would not be like Wales. If only it had been, all the problems of rival sovereignties and of conflict of laws would instantly have disappeared. Nicholas Fuller, in 1604, said that in Henry VIII's time a commission was sent into Wales to examine the laws there before union, and that they should do the same with Scotland. This wilfully misses the point that England had no authority to send a commission into Scotland, as it did into Wales.³⁶ It is the same hankering after the Welsh model which shows up in Sandys's demand that 'the government of other countries shall be brought to ours'.³⁷ John Thornborough, bishop of Bristol, said that all dangers had been avoided when Wales was incorporated into the kingdom of England, and 'all inheritances made of English tenure'.³⁸ Sandys, in 1607, was still talking of 'the Scottish yielding to our lawes, which maketh the perfect sovereignty'.³⁹ It was the success of the English in imposing this pattern on Wales which made it so easy for them to fail to recognize the differences arising from the fact of Scottish sovereignty, and so easy for them to despair of achieving any relationship if once they recognized that sovereignty. It was because they had not had to compromise their sovereignty in their dealings with Wales that it was so easy for them to claim that it was impossible to do so. It was because England had had no effective experience of having to share its sovereignty since King John had lost Normandy in 1204 that the English had acquired the attitudes of a confirmed bachelor nation. As a member, probably Sir Edwin Sandys, speaking in the parliament of 1604, put it: 'so that we cannot be other than we are, being English we cannot be Britaynes'.⁴⁰

³⁶ *C.J.*, i. 177.

³⁷ *C.J.*, i. 179.

³⁸ John Thornborough, *A Discourse of Union* (1604), Ep. Ded.

³⁹ *Diary of Robert Bowyer*, p. 261.

⁴⁰ Bodl. Libr., MS. Tanner 280 fo. 24.