

VII. REPORT OF THE COMMITTEE ON PUBLIC QUESTIONS, RELIGION & MORALS

1. Introduction

The issues which have occupied the Committee during the past year have been significant ones and some especially so. We have dealt with political, moral and religious developments which have the potential to affect our society for many generations to come. While our focus is on the welfare of our nation we do not lose sight of the fact that the matters which concern the Committee belong ultimately to a different realm. In one way or another they are all manifestations of the age-long conflict between the kingdom of darkness and the kingdom of light. The Word of God says: "Put on the whole armour of God, that ye may be able to stand against the wiles of the devil. For we wrestle not against flesh and blood, but against principalities, against powers, against the rulers of the darkness of this world, against spiritual wickedness in high places." (Eph. 6:11,12) Accordingly in a sermon on this text John Calvin declares: "Satan is the chief enemy we have, yes, and it is he whom we must withstand. And although he uses a variety of means to vex us and to turn us away from the fear of God, yet we must always have our eye upon him that we may beware of him."

With the many fronts on which the church must fight today we may become weary of the combat, particularly when we witness the progress which our great adversary is making in our nation. We may even be fearful for the future of the church in our land. Yet in reality we have no reason to be discouraged or afraid. In the end the contest is an unequal one for God's dominion is not in the least diminished by Satan and his hordes. As Calvin also explains, making reference to Job's trials: "It is true that he [the devil] seeks nothing but to pervert and ruin all things. But be that as it may, God reins him in, and carries out what he sees fit through him, insomuch that when the devils have devised all that they can, yet they cannot attempt anything without God's permission, yes, and except he has ordained it and given them express charge to do this or that."

There can only be one winner in this warfare for Scripture reveals that by His atoning death on the cross the Lord Jesus Christ has "spoiled principalities and powers...triumphing over them" (Col. 2:15). Our all-conquering Redeemer is even now seated at God's right hand, "Far above all principality, and power, and might, and dominion, and every name that is named, not only in this world, but also in that which is to come." (Eph. 1:21) From His exalted position Christ bestows salvation upon His blood-bought church. He powerfully defends her and defeats her every foe yet her struggles are real and His victory will not be evident to all until He returns. Therefore as Calvin says finally: "it is not enough for us to have fought stoutly for a month or for a year, but that we must persevere to the end, yes, even all our life long. For God has put us in this world to maintain the battle until we come to our rest in heaven."

In our report we cover the main matters which have been before the Committee over the past year. Some items have continued from the previous year while the rest are of more recent origin. All are dealt with briefly with the exception of one issue which the Committee felt required special attention.

1. Same-Sex Marriage

The issue of same-sex marriage has become something of a totem for the liberalising movements in both church and state. The campaign for its introduction and its acceptance by the general public amounts to an all-out assault on our customary moral standards and represents a blatant challenge to divine authority. That something so plainly unnatural and wicked as homosexual unions can find approval in our society

demonstrates how bold sin has become and how far Christian influence has declined.

In the civil realm the issue of same-sex marriage came to its legislative conclusion in Scotland on 4th February 2014 when the Scottish Parliament approved the Marriage and Civil Partnership (Scotland) Bill. When last year's report was being written an analysis of the responses to the Scottish Government's consultation on its draft Bill, which had been carried out from 12th December 2012 to 20th March 2013, was awaited. The Committee had contributed to the consultation and also engaged in correspondence with Alex Neil, Cabinet Secretary for Health and Wellbeing and with portfolio responsibility for the Bill. As will be remembered an initial consultation had sought views on the *principle* of same-sex marriage, with two-thirds of those responding expressing opposition to the idea: the second consultation sought views on the legislation that would introduce same-sex marriage and also allow civil partnerships to be registered through religious or belief ceremonies and make other changes to marriage law. The analysis of the responses to this second consultation was published on 27th June 2013. According to the Scottish Government website there were just over 15,000 responses, the majority (89%) of which were connected with campaigns co-ordinated by CARE Scotland, Scotland for Marriage and the Equality Network – the first two organisations being against same-sex marriage and the third in favour. Also on 27th June a call for evidence on the Bill was issued by the Parliament's Equal Opportunities Committee and the Committee responded to this on 23rd August, the date the call closed.

The Bill was introduced into Parliament on 26th June 2013. Prior to the Stage 1 Proceedings of the Bill on 20th November the Committee sent a letter by e-mail to all MSPs in which we reiterated our wholehearted opposition to the proposed legislation and urged MSPs to oppose the Bill by speaking and voting against it as opportunity arose during its progress. Replies were received from sixteen MSPs, including Alex Neil, and further correspondence was conducted with several of these. The vote at Stage 1 of the Bill was 98 to 15 with 5 abstentions.

Ahead of the Stage 3 Proceedings, the final stage of the legislation, which took place on 4th February the Committee sent a further letter by e-mail to all MSPs in which we indicated our Church's continued opposition to the Bill's proposals and made one further plea to them to vote against the Bill. Fifteen MSPs replied. The Bill was passed by 105 votes to 18 with no abstentions and received its Royal Assent on 12th March 2014. It is expected that the first same sex 'weddings' in Scotland will take place in October.

In our second letter we pointed out that the Bill presents a clear threat to our customary freedoms. We cited a number of events since the Stage 1 Proceedings which undermine any confidence one might have had in the promises which had been made of 'safeguards' for those who believe in 'traditional' marriage. One of these events concerned Rev. Donald M Macinnes, a Church of Scotland minister who was removed from his chaplaincy rôle at the state-run Glasgow Gaelic School because he had expressed the view on his personal Facebook page that homosexuality is a "disorder" and that according to the Bible it is a "perversion". We wrote to Mr Macinnes on 16th January stating our belief that his comments were entirely correct and faithful to the Word of God and expressing our sympathy with him. Mr Macinnes replied indicating his appreciation of the Committee's letter. Mr Macinnes also warned on his Facebook page, we believe with good reason, that at some point our politicians will likely introduce legislation preventing the proclamation of what the Bible has to say about homosexuality and other issues. Now that the same-sex marriage legislation has passed we will need to monitor developments closely.

The Marriage (Same Sex Couples) Bill which legalises same-sex marriage in England and Wales completed its passage through the UK Parliament on 16th July 2013 and received its Royal Assent the following day. The first same-sex 'weddings' took place on 30th March. We believe it to be more than a coincidence that Maria Miller, who as Secretary of State for Culture, Media and Sport was responsible for steering the legislation through the House of Commons, had to resign her post just ten days later following a controversy over her expenses.

The Committee issued a public statement entitled 'Same Sex Marriage in the United Kingdom' on 31st July 2013, the text of which is available on the Church website.

In the ecclesiastical realm the issue of same sex-marriage has not yet reached its conclusion. Last year we reported on the findings of the Theological Commission on Same-Sex Relationships and the Ministry which was set up by the General Assembly of the Church of Scotland in 2011 with a remit to examine, among other things, "whether persons, who have entered a civil partnership and have made lifelong commitments in a Church ceremony, should be eligible for admission for training, ordination and induction as ministers of Word and Sacrament." The Commission's Report was ambivalent in that it offered the Church two options – either to continue on the 'trajectory' towards homosexual ordination or to depart from it. The 2013 General Assembly produced an utter contradiction when it agreed to: "Affirm the Church's historic and current doctrine and practice in relation to human sexuality; nonetheless permit those Kirk Sessions who wish to depart from that doctrine and practice to do so."

In response to this perverse finding the Committee wrote on 3rd July 2013 to Rev. John P. Chalmers, the Church of Scotland's Principal Clerk. In it we expressed our shock that the Church of Scotland required a theological commission to consider this question, our alarm at the false doctrine of Scripture tolerated within the Church of Scotland and our concern that the Church of Scotland is rejecting the authority of Scripture. We also indicated our belief that the Assembly's decision was unbiblical, unpresbyterian and unprincipled. We concluded by saying: "The decision weakens not only the Church of Scotland but also the whole visible church in our nation as she fights against immorality in society with all its destructive consequences. It also sends out a very confusing and indeed harmful message to believers who are struggling with homosexual temptations. To us it is very sad to see the Church of Scotland following political correctness instead of the timeless truths of the historic Christian faith." A reply dated 9th July assured us that a copy of our letter would be passed to the Theological Forum. This year's General Assembly is expected to give a further endorsement to the ordination of homosexual clergy.

The legislation passed by the UK Parliament was designed so as to leave the Canon law of the Church of England and the Church in Wales unaffected, meaning that unless and until Canon law and the same-sex marriage legislation are both changed these two churches will be legally barred from performing same-sex marriages. On 27th January 2014 the Committee sent an e-mail to the members of the College of Bishops of the Church of England which was meeting that day to consider the Report of the House of Bishops Working Group on Human Sexuality (Pilling Report). The report contained recommendations for the recognition of same-sex relationships by the Church and suggested that the Church should ultimately allow clergy to bless same-sex partnerships, albeit in an informal way. Replies were received from six bishops and while the College failed to take a clear biblical stand on the issue they nevertheless put out a statement after their meeting indicating that no change was envisaged in the teaching of the Church on marriage. On 15th February the House of Bishops issued a statement of Pastoral Guidance on Same Sex Marriage which stated that it would be unacceptable for an ordained person to have a same-sex wedding and that someone in a same-sex marriage would not be ordained. This guidance has now been challenged by Canon Jeremy Pemberton, a divorced father of five, who on 12th April 'married' his male 'partner', leading to the evangelical church group Reform calling for "clear discipline" on the issue.

2. Assisted Suicide

In last year's report we referred to the Assisted Suicide (Scotland) Bill proposed by the Independent MSP Margo MacDonald who in 2002 revealed that she had been diagnosed with Parkinson's Disease. The Bill replaced her End of Life Assistance Bill which was defeated by 85 votes to 16 with 2 abstentions in a free vote in the Scottish Parliament on 1st December 2010. The new Bill was launched on 24th January 2012 and a consultation was held to which the Committee made a submission, the text of which was contained in last year's report. The consultation closed on 30th April 2012 and the Bill was formally introduced to Parliament by Margo MacDonald on 13th November 2013 and has been undergoing consideration by the

Health and Sport Committee. The Committee has issued a call for written evidence on the Bill and we intend to respond to this. The closing date is 6th June and thereafter selected witnesses will be called to give oral evidence to the Committee at some point towards the end of the year.

As the title of the Bill suggests its aim is to make it lawful, in certain circumstances, to assist another person to commit suicide. Those circumstances are when the person concerned has a terminal or life-shortening illness or a progressive condition which is terminal or life-shortening and wishes to end his or her life. It was with a deep sense of solemnity that we heard the news of the passing of the Bill's proposer who died at home on April 4th at the age of 70. Margo MacDonald had perhaps hoped to be able to end her own life at some point in the future but it was taken from her by the Lord, in whose hands we all are ultimately. What will now happen to her Bill is not known at present.

3. State Guardians for Children

The Children and Young People (Scotland) Bill was introduced into the Scottish Parliament by Alex Neil, Cabinet Secretary for Health and Wellbeing, on 17th April 2013 and was passed on 19th February by 105 votes to nil with 15 abstentions, receiving its Royal Assent on 27th March. As is stated in the official Summary of the Bill: "Throughout parliamentary consideration of the Bill, the most controversial aspect was the provision of a 'Named Person' service and associated information sharing duties. The Bill requires local authorities and health boards to provide a 'Named Person' for everyone aged 0 to 18. This person will be a point of contact for advice or concern about the child." The Summary goes on to insist: however "While there are duties for various public bodies to assist the Named Person and to share information with them, there are no new powers of compulsion. That is, the Bill does not give the Named Person any powers to force a child or family to do anything. If powers of compulsion are required, this can be done under existing child protection and Children's Hearings legislation."

On 19th February, the day of the Stage 3 Proceedings of the Bill, the Committee sent a letter by e-mail to all MSPs indicating why we believe the 'Named Person' proposal to be a dangerous one. We stated four concerns regarding this proposal, namely that it: (i) is incompatible with the proper relationship between the family and the state; (ii) is an unwarranted intrusion into family life, especially when on such a universal basis; (iii) gives great influence to individuals who have no natural tie to those they are supervising; (iv) means that the state will now determine what is best for children in Scotland rather than their parents. We concluded by saying: "We fear that this Bill is a real threat to any parents who are not bringing up their children 'properly' as the state sees it. If it is passed it is likely to lead to good, law-abiding parents, especially Christian ones, getting into trouble with what is increasingly becoming a nanny state." Replies were received from six MSPs. Sadly all the amendments which were tabled in an attempt to reduce the scope of the 'Named Person' plans were defeated.

The problem with this legislation, as is so often the case, is not necessarily in what is intended by those who have introduced it but in the use to which it may be put in the future. While there is a difficulty in understanding the precise implications of the Act we fear that it is another manifestation of the mistaken idea that children somehow belong to the state rather than to their parents, as Scripture teaches. The Christian Institute is so concerned about the imposition of 'state guardians' for Scotland's children that immediately after the legislation was passed it announced that it was going to seek a judicial review, based on a legal opinion by Aidan O'Neill QC. The Committee will continue to monitor this matter.

4. The Queen's Visit to the Pope

On 4th February it was made known that the Queen intended to make an 'informal' visit to Pope Francis on 3rd April – her first overseas visit for three years. There is by now a lengthy history to meetings between our present monarch and the Pope. In 1961 the Queen had a private audience with Pope John XXIII in the Vatican. In 1980 the Queen was the first British monarch to make a state visit to the Vatican where she met Pope John Paul II. In 1982 the Queen became the first British monarch since the Reformation to welcome a

Pope when she greeted John Paul II at Buckingham Palace during his 'pastoral' visit – the first papal visit to Britain for over four hundred years. In 2000 the Queen paid another state visit to the Vatican, meeting John Paul II once again. In 2010 the Queen met Pope Benedict XVI at Holyrood Palace during his state visit, the first ever official papal visit to the United Kingdom.

The Committee felt that it was right to express their concern at Her Majesty's proposed visit. In the providence of God the announcement of the visit coincided with the publication of a report by the United Nations Committee on the Rights of the Child which was severely critical of the Vatican's handling of the many cases where children have been sexually abused by priests. The Committee therefore sent the following letter to the Queen on 13th March:

Proposed Visit to the Pope

Madam,

We were informed recently that Your Majesty intends to have an audience with Pope Francis during the visit to Italy Your Majesty hopes to make with His Royal Highness the Duke of Edinburgh in April this year. We were disappointed and grieved at the news. We believe that the Reformation of the sixteenth century delivered Britain from the baneful influence of the Roman Catholic Church and that the freedoms we have enjoyed as a nation since then can, in great measure, be attributed to this divine mercy.

Your Majesty may remember that we wrote to you on 24th July 2010 expressing our opposition to Your Majesty's invitation to Pope Benedict XVI to undertake a state visit to our country in September of that year. In our letter we set out the religious and constitutional grounds for maintaining our national separation and isolation from the Papacy and we take this opportunity to remind you of them.

Firstly there is the fact that the Pope claims to be the rock upon which the Christian Church is built. This is a claim which no Protestant can accept, for the Bible teaches that the Lord Jesus Christ is the Rock of our salvation. Sadly we believe that Your Majesty's intended meeting with the present Pope will only serve to confirm him, and Roman Catholics worldwide, in this false claim.

Secondly there is the doctrinal position of the established churches in our country. Article XXXVII of the Thirty-nine Articles of the Church of England states: "The Bishop of Rome hath no jurisdiction in this Realm of England." Chapter 25 section 6 of the Westminster Confession of Faith, the historic subordinate standard of the Church of Scotland, states: "There is no other head of the church but the Lord Jesus Christ: nor can the Pope of Rome in any sense be head thereof; but is that antichrist, that man of sin, and son of perdition, that exalteth himself in the church against Christ, and all that is called God."

Thirdly and finally there is the Oath taken by Your Majesty at your Coronation in 1953. Your Majesty was asked the following questions: "Will you to the utmost of your power maintain the Laws of God and the true profession of the Gospel? Will you to the utmost of your power maintain in the United Kingdom the Protestant Reformed Religion established by law?" Your Majesty answered these questions in the affirmative.

In addition to these points we cannot ignore the moral corruption which pervades the Roman Catholic Church. Your Majesty will be aware that on 5th February, shortly after the announcement of Your Majesty's intended meeting with the Pope, the United Nations Committee on the Rights of the Child (UNCRC) published a report accusing the Vatican of putting the interests of the Roman Catholic Church above the interests of children who had been sexually abused by priests. The report demanded that the Vatican should "immediately remove" all clergy who are known or suspected child abusers and turn them over to civil authorities.

The UNCRC said it was gravely concerned that the Holy See had not acknowledged the extent of the crimes committed and expressed its “deepest concern about child sexual abuse committed by members of the Catholic churches who operate under the authority of the Holy See, with clerics having been involved in the sexual abuse of tens of thousands of children worldwide.”

The report stated that the Holy See should open its files on members of the clergy who had “concealed their crimes” so that they could be held accountable. It called on a Vatican commission created by Pope Francis in December to investigate all cases of child sexual abuse as well as the conduct of the Roman Catholic hierarchy in dealing with them.

The UNCRC also lambasted the “practice of offenders’ mobility” – the transfer of child abusers from parish to parish and sometimes abroad. It said that this practice placed “children in many countries at high risk of sexual abuse, as dozens of child sexual offenders are reported to be still in contact with children.”

That the largest representative organisation in the world feels the need to issue such a condemning report on what professes to be a Christian church with regard to such a solemn matter should make us all think. We find it incredible that an organisation which claims to be Christian should bring the precious name of Christ into such disrepute.

In the light of the above we would beseech Your Majesty to reconsider your intention to meet with the Pope during Your Majesty’s visit to Italy.

We have the honour to remain,

Madam,

Your Majesty’s most humble and obedient servants

On 18th March a reply was received from Buckingham Palace stating that “careful note” had been taken of all our comments.

5. Britain’s Relations with the Vatican

In conjunction with the previous item the Committee have been working on a document dealing with Britain’s political relations with the Vatican and the dangers involved. Diplomatic relations between England and the papacy were broken off in 1534 when the Anglican Church was established during the reign of Henry VIII; in Scotland the Reformation of 1560 led to a similar breach. It was not until 1914 that the United Kingdom established formal relations with the so-called ‘Holy See’, appointing an Envoy. The post was upgraded to an Ambassador in 1982. For its part the Holy See appointed an Apostolic Delegation to Great Britain in 1938, raising this to an Apostolic Nunciature in 1982.

The first Envoy Sir Henry Howard, who retired in 1916, was a Roman Catholic. In 1917 the Foreign Office issued a memorandum saying that Britain’s representative to the Holy See “should not be filled with unreasoning awe of the Pope.” Thereafter the policy was not to fill the post with a Roman Catholic. This changed in 2005 when Francis Campbell, a Roman Catholic and former policy adviser and private secretary to Prime Minister Tony Blair was appointed. Since 2011 the Ambassador has been Nigel Baker who has an Anglican background but whose wife is a ‘devout’ Roman Catholic. It is hoped that the document which is being compiled will lead to a letter to the Prime Minister in due course.

6. Scottish Independence

In last year’s report we indicated that it was likely that the Committee would be giving more thought to the

issue of Scottish independence in the year ahead. This has proven to be the case and the result is a lengthy examination of the Scottish Government's proposals which we present below. We trust that this treatment will prove useful and of some help to the people of our Church and indeed to others as they give thought to this important matter prior to the referendum which is due to take place this September.

Scottish Independence

An examination of the Scottish Government's proposals for Scottish independence

1. INTRODUCTION

On 10 January 2012 the Scottish Government announced its intention to hold a referendum on Scottish independence. Since then there have been a number of developments. On 15 October 2012 the United Kingdom Government and the Scottish Government signed the Edinburgh Agreement in which a temporary transfer of legal authority was granted from the UK Parliament to the Scottish Parliament to allow the referendum and the terms of the referendum were set out. All British, Commonwealth and European Union citizens resident in Scotland or registered to vote in Scotland and aged sixteen or over at the time of the referendum will be entitled to vote. The question to be asked, as recommended by the Electoral Commission, is "Should Scotland be an independent country?" On 21 March 2013 the Scottish Government put forward the Scottish Independence Referendum Bill setting 18 September 2014 as the date for the vote and on 14 November 2013 the legislation was passed by the Scottish Parliament. Then on 26 November the Scottish Government published its White Paper containing its detailed proposals on independence, indicating that if the referendum produces a majority in favour of independence then the transition to independence will be completed on 24 March 2016, designated as 'independence day', and the first elections to an independent Scottish Parliament will take place on 5 May 2016.

1.1. The Importance of this Issue

Clearly the issue of Scottish independence is a substantial one. It has major implications not only for the inhabitants of Scotland but also for those who live in the rest of the United Kingdom. In technical terms it would mean the country of Scotland ceasing to be part of the sovereign unitary state known as the United Kingdom of Great Britain and Northern Ireland and becoming a sovereign state in its own right once again. The political union between Scotland and the rest of the United Kingdom, a relationship which began with the Treaty of Union between England and Scotland in 1707, would be dissolved. The effect would be that three centuries of a shared national identity and common history would come to an end.

It is noticeable that thus far the public debate has tended to concentrate on the impact independence would have on things such as the economy, the currency, defence and the position of Scotland within the European Union. These are undoubtedly important subjects but we believe that there are other matters which are of greater significance and deserving of careful consideration, especially on the part of Christians. We believe that it would be highly regrettable if people were to cast their vote without hearing of these matters and giving some serious thought to them.

1.2. Our Justification for Examining this Issue

We must begin by asking the question, To what extent, if any, should the church get involved in an issue which many may regard as purely political? Our response is to say that Christians are bound to have an interest in and an involvement with the state. Civil government is something which God has specifically ordained in society (Rom. 13:1). We believe that civil magistrates are "under him over the people, for his own glory and the publick good" (*Westminster Confession of Faith*, 23:1). They are sent by God "for the punishment of evildoers, and for the praise of them that do well" (1 Pet. 2:14) and in the performance of their duties they are required to have a care for the church. As Christians we ought to have a concern to see that the state operates according to its divine mandate; as a church committed to the establishment principle our concern should be all the greater.

We are aware that “Synods and councils are to handle or conclude nothing but that which is ecclesiastical: and are not to intermeddle with civil affairs which concern the commonwealth” (*WCF*, 31:5). Certainly the church must not interfere in matters that are wholly political in character and so belong exclusively to the domain of the civil magistrate. It is difficult to see how the matter of Scottish independence can be so regarded however for it would appear to involve such important ecclesiastical and constitutional issues as the place of Protestantism and Presbyterianism in Scotland, the safety of our religious and civil liberties and the status of the Treaty of Union itself.

It is a fact that in the period since the Scottish Government announced the holding of a referendum on independence several Presbyterian churches have made a public statement on the issue or at least debated it (their viewpoints are given in a later section). Clearly these denominations do not believe that there is anything wrong with the idea that the church should handle this subject. It is also the case that in the period leading up to the Union the Scottish church was exercised by what was being proposed and was prepared to speak and act. It would therefore seem appropriate that the church today give consideration as to what the proposals for independence might mean, as far as it is possible to tell these things. Finally as a Committee charged by the Assembly to deal with Public Questions we submit that there could be few greater public questions than this one: we also believe that the current proposals have implications for the two other areas of responsibility entrusted to the Committee, namely Religion and Morals.

1.3. Our Approach to this Issue

We believe that our first concern in examining the proposals for Scottish independence should be to determine the biblical priorities which ought to govern our thinking on such a matter. Then in order to gain a proper understanding of what independence might mean we need to study the complex history behind this issue so that independence is set in its proper context: we will therefore survey the events leading to the Union of 1707 and look at the Treaty of Union itself before tracing the modern campaign for independence and examining the present proposals. Finally we will note the ecclesiastical opinion on our subject, make some observations and attempt to draw some conclusions. We will endeavour to be factual and objective throughout rather than subjective.

2. THE BIBLICAL PRIORITIES

Various factors weigh with people when they consider the question of Scotland’s political status. For some individuals the position they take is determined largely by their feelings: there is either an emotional leaning towards the idea of independence or a sentimental attachment to the Union; it is also possible that people may be torn both ways as they hear the competing arguments. For others their view is determined by more tangible factors such as how they think the differing options are likely to affect their material prosperity or the welfare which is provided by the state. Many of these things are difficult to quantify and as ever there is no guarantee that what is promised by politicians can actually be delivered.

For Christians there is another consideration – one which shapes our attitude to everything of importance. We want to know God’s mind on the matter. The Word of God is our all-sufficient rule for faith and life and so we must ask, What do the Scriptures say?

2.1. Does Scripture Address this Issue?

Clearly we cannot turn to the Bible and expect to find a passage or verse which speaks directly on the subject of Scottish independence. That does not mean that the Bible has nothing to say about the matter however. There are principles contained in Scripture which have a bearing on how we ought to view an issue like this.

Our supreme concern in this subject, as with everything else, must be the glory of God: “Whether therefore ye eat or drink, or *whatsoever ye do*, do all to the glory of God” (1 Cor. 10:31). The Lord has given us a duty in Scripture to pray “for kings, and for all that are in authority,” to the end “that we may lead a quiet

and peaceable life in all godliness and honesty” (1 Tim. 2:1,2). What are the implications of this command? According to John Calvin: “Princes, and all who hold the office of magistracy, are here reminded of their duty. It is not enough, if, by giving to every one what is due, they restrain all acts of violence, and maintain peace; but *they must likewise endeavour to promote religion, and to regulate morals by wholesome discipline.*”¹ [emphasis ours] As Christians we understand that our calling is to be obedient to the Lord in every relation of life, worshipping Him according to His Word and making known the gospel of Christ to our fellow men as we have opportunity. While we know that God is sovereign in all things, including the salvation of His people, and while we know that He is able to bless His cause even in the most difficult circumstances it should be our desire that He would grant us such civil conditions in our country as would be honouring to Him and helpful to His cause. As a result we want our government to frame righteous laws, parliament to pass them and the courts to administer them rigorously and fairly and we pray accordingly. We remember that when we make the petition “Thy kingdom come” we are asking that the church be “countenanced and maintained by the civil magistrate” (*Larger Catechism*, Q.191).

In terms of biblical teaching there is clearly nothing wrong with the idea of national independence. The problem lies in what independence might lead to in any particular case – including this one which is in many respects unique. While we belong to an earthly kingdom our first priority as Christians is the kingdom of God (Matt. 6:33) for it alone has respect to man’s deepest needs and no nation can truly prosper if it has no regard to it (Isa. 60:12). We cannot set aside our concern for God’s kingdom when giving consideration to something which to others is a merely temporal matter belonging to one of the kingdoms of this world. We want to know whether Scottish independence as proposed is likely to be beneficial to the kingdom of God or not.

2.2. The Relevant Questions

From a scriptural standpoint there are perhaps three key questions which should be pondered as we consider the proposals for independence in terms of the effect they might have upon the kingdom of God:

(1) *Is independence as proposed likely to affect our national righteousness?*

By “national righteousness” we mean the obedience which people give to God collectively. We read in Scripture, “Righteousness exalteth a nation: but sin is a reproach to any people.” (Prov. 14:34) Nations are judged over time and the welfare of any nation depends upon the place it gives in its affairs to the living and true God. Blessings and curses are promised alternately depending upon whether a nation is God-honouring or God-dishonouring (Psa. 33:12; Zech. 14:17-19). Thus the Lord declared to Israel through King David, “He that ruleth over men must be just, ruling in the fear of God.” (2 Sam. 23:3)

We cannot agree therefore with the idea that religion is a private matter only with no place in the public sphere. According to Scripture God has dominion over civil as well as ecclesiastical affairs and expects “the powers that be” to acknowledge Him and give Him obedience. As Thomas Chalmers said at the time of the Disruption, “every part and function of a commonwealth should be leavened with Christianity.”² It is our duty as individuals to confess Christ and to uphold His cause and those who hold public office are also bound to honour Him as God and to have respect to His church in the performance of their various functions. When a nation requires its “kings” and “judges” to “serve the Lord with fear” and to “kiss the Son” (Psa. 2:10-12) then it may be regarded as Christian.

Despite many adverse developments over recent decades the United Kingdom remains a Christian country in the sense we have just outlined – something which is particularly evident in the monarchy but also in the

1 Calvin, John, *Commentaries on the First Epistle to Timothy*. In: Calvin’s Commentaries, Vol. XXI (Grand Rapids, MI: Baker Book House, 1993), p. 53

2 Baillie, John (Ed.), *Proceedings of the General Assembly of the Free Church of Scotland; with a sketch of the Proceedings of the Residuary Assembly. 1843*. (Edinburgh: W. P. Kennedy, 1843), p. 12

Westminster Parliament and other aspects of British life. We therefore need to assess the proposals for independence in the light of this biblical requirement for civil righteousness.

(2) Is independence as proposed likely to affect our present establishment of religion?

In Scripture we find that God lays a particular obligation upon the civil power to endorse the church of Christ: this is what is meant by a “religious establishment”. The duty is revealed in these words: “And kings shall be thy nursing fathers, and their queens thy nursing mothers: they shall bow down to thee with their face toward the earth, and lick up the dust of thy feet.” (Isa. 49:23) According to Albert Barnes the favour which civil rulers are to show to the Lord’s cause is that: “they would patronize the church of God; they would protect it by their laws, and foster it by their influence, and become the personal advocates of the cause of Zion.”³ Without interfering in those affairs which belong properly to the church magistrates are to use their office appropriately in her interests, even as one day they shall be answerable to the Lord.

Since the Reformation the church in Scotland, as elsewhere in the United Kingdom, has benefited from such an establishment of religion, with the monarch as chief magistrate owing allegiance to Almighty God. We must therefore ask what place the church and Christianity in general would have in an independent Scotland.

(3) Is independence as proposed likely to affect our present religious and civil liberties?

Jesus said: “If the Son therefore shall make you free, ye shall be free indeed.” (John 8:36) The Bible and the salvation it declares form the basis for true personal liberty and a free society. As the historian J. H. Merle d’Aubigne wrote: “Religious liberty has been, and is still, the mother of every kind of liberty.”⁴ The Reformation, founded as it was upon the Bible, handed down to us a precious legacy of religious and civil liberty and while people today claim to value liberty sadly they have forgotten where it comes from and the debt they owe to the reformers.

There are four great liberties that we should particularly cherish. They are: *freedom of religion*, allowing us to manifest our religious beliefs in teaching, worship, practice and proselytism; *freedom of conscience*, allowing us to hold a viewpoint independent of others’ viewpoints and without fear of persecution; *freedom of expression*, allowing us to seek, receive and impart information or ideas; and *freedom of association*, allowing us to join with other individuals in order to collectively express, promote and defend common interests. These freedoms are obviously necessary for the church’s public worship and fellowship but they are also required if families and individuals are to live and serve in obedience to Christ. We need to consider what effect if any independence might have upon our hard-won freedoms.

Having set out these biblical priorities and identified the relevant questions we now look at the Union and Independence in turn.

3. THE UNION

The Union between Scotland and England is one of a series of political unions which brought about the United Kingdom as it exists today. During a period spanning several centuries four distinct political or territorial entities, namely England, Wales, Scotland and Northern Ireland, have joined together to form a single sovereign state. The land of Wales, which had never been a unified sovereign state, was formally incorporated into the English legal and parliamentary systems by the Laws in Wales Acts of 1536 and 1543 which were passed by the Parliament of England during the reign of Henry VIII. A Treaty of Union between England and Scotland was agreed on 22 July 1706 during the reign of Queen Anne following

3 Barnes, Albert, *Notes, Critical, Explanatory, and Practical, on the Book of the Prophet Isaiah, with a new Translation and introductory Dissertation*, Vol. II (London: Knight and Son, 1857), p. 271

4 D’Aubigne, J. H. Merle, *History of the Reformation in Europe in the Time of Calvin*, Vol. 5 (London: Longmans, Green, and Co., 1869), p. 468

negotiations between commissioners representing the parliaments of both countries. The Union began on 1 May 1707, forming what was then the Kingdom of Great Britain and the two parliaments were merged to create the Parliament of Great Britain.

The Kingdom of Great Britain was enlarged by further Acts of Union passed by the parliaments of Ireland and Great Britain in 1800 during the reign of George III, leading to the formation on 1 January 1801 of the United Kingdom of Great Britain and Ireland. The two parliaments were merged to form the Parliament of the United Kingdom. On 6 December 1921 during the reign of George V the Anglo-Irish Treaty was signed, leading to the establishment of the Irish Free State (later the Republic of Ireland) on 6 December 1922: the following day Northern Ireland exercised its right under the Treaty to opt out of the new state. The outcome of these various developments is the state with which we are familiar: the United Kingdom of Great Britain and Northern Ireland.

Our concern is with the Union of 1707 between Scotland and England. The precise reasons why the Union took place and the motives of its chief architects and leading supporters have long been debated and it is not our purpose to enter into these arguments. We are interested rather in the developments which preceded the Union and in the most significant factors at play on either side, which we believe to be the monarchy and the church. We will consider the chief events in the period leading up to the Union and what the Union involved.

3.1. The Events Leading to the Union

The Kingdom of Scotland developed in the eighth century from the kingdom of the Picts which was based in the east of modern day Scotland. From the early thirteenth century there was a parliament known as the ‘Estates of Scotland’ or the ‘Three Estates’ and by the end of the thirteenth century Scotland had more or less assumed its present borders, although Orkney and Shetland were to remain under Scandinavian rule until 1468.

The Auld Alliance (1295)

Following the death of Alexander III in 1286 there was a lengthy period of conflict between Scotland and England. Edward I, known as the ‘Hammer of the Scots’, was determined to enforce his will on the smaller nation and this led to an alliance between Scotland and France, a traditional enemy of England, beginning in 1295. From 1306 the throne of Scotland was occupied by Robert I (Robert the Bruce) and his successors. At the Battle of Bannockburn near Stirling on 24 June 1314 Robert I led the Scots to a decisive victory over the forces of Edward II of England.

The Declaration of Arbroath (1320)⁵

During the two Wars of Scottish Independence (1296-1328 and 1332-57) Scotland remained an independent country. In 1320 fifty-one leading Scottish nobles submitted a letter to Pope John XXII in which they asserted Scotland’s unity as a nation and her status as an independent kingdom. Known as the Declaration of Arbroath it was the world’s first documented statement of national independence. The Pope appeared to heed the arguments contained in the Declaration and exhorted Edward II of England to make peace with the Scots but the following year the Pope took England’s side again; it was not until 1324 that the Pope finally recognised Robert I as King of Scots.

In 1328 Robert the Bruce and Edward III of England concluded the Treaty of Edinburgh-Northampton in which all English claims to Scotland were renounced. The Treaty was overturned by Edward a few years later leading to the Second War of Independence which ended in 1357 with the signing of the Treaty of Berwick whereby Edward ceased his pursuit of Scotland.

⁵ Text available at: <http://www.nas.gov.uk/downloads/declarationArbroath.pdf>

The Stuart Dynasty (1371)

Following internal conflict the Bruce dynasty gave way to the Stuart dynasty in 1371. The new lineage began with Robert II and would only end with the death of Anne, Queen of Great Britain and Ireland, in 1714. Although sporadic warfare with England continued, by the early fifteenth century Scotland began to experience a greater material prosperity and enjoyed the influence of the European Renaissance of the late fifteenth and early sixteenth centuries. The last significant battle with England took place near Musselburgh in 1547.

The Reformation (1560)

The Protestant Reformation which began with the publication of Luther's Ninety-Five Theses in Germany in 1517 exerted a growing influence in Scotland and led ultimately to perhaps the most remarkable and comprehensive religious transformation of any of the European countries. Mary of Guise, who served as regent from 1554 in the name of her absent daughter Mary Queen of Scots, pursued a pro-French policy with the hope of keeping Scotland a Roman Catholic nation, being willing to use force against the Protestants and employing the help of French mercenaries. In 1557 a group of Protestant nobles who became known as the 'Lords of the Congregation' entered into a covenant to make Scotland a Protestant nation, receiving guidance from John Knox among others. Following military conflict with Mary's forces Edinburgh was taken by them in July 1559.

On 29 April 1560 the 'Great Council of Scotland' entrusted Knox and five other ministers with the task of compiling "the policy and discipline of the kirk" and the result was the First Book of Discipline⁶ which was submitted on 20 May. Mary of Guise died on 11 June and her daughter, resident in France, permitted the Parliament to meet. On 10 July the Lords of the Congregation summoned the Parliament and it appointed the same six ministers to prepare a confession of faith. This 'Reformation Parliament' passed the Confession of Faith Ratification Act⁷ on 17 August but Mary refused to approve what became known as the 'Scots Confession' and it and the other legislation of 1560 was not enacted until after her overthrow. What has become known as the First Reformation was essentially a reformation from Popery and on 24 August the Parliament passed three Acts in this regard: the Papal Jurisdiction Act⁸ repudiated Roman Catholic jurisdiction in Scotland and was accompanied by Acts for the Abolition of Idolatry⁹ and the Abolition of the Mass¹⁰. In December the first General Assembly of the reformed Church of Scotland met in Edinburgh.

In her great reformation year Scotland ended her long alliance with Roman Catholic France. On 5 July 1560 by the Treaty of Edinburgh Scotland allied herself instead with Protestant England which had finally broken with Rome under the Elizabethan Settlement of November 1558. French and English troops now withdrew from Scotland and in the years following the Treaty there were numerous proposals for a union between Scotland and England.

The Church Act (1567)¹¹

In 1567 Mary was forced to abdicate in favour of her only son who succeeded to the Scottish throne as James VI when aged just thirteen months. The Parliament now ratified the legislation of 1560 and also passed the Church Act, "Concerning the true and holy kirk and of them that are declared not to be of the same." The Act defined the Church of Scotland, making reference to the Scots Confession, and declared it to be the only true church within the realm. The Church Act was accompanied by two other significant Acts: the Coronation Oath Act¹² required all future monarchs to promise to protect the Church as established and the Church Jurisdiction Act¹³ acknowledged the sole ecclesiastical jurisdiction of the Church of Scotland within the realm.

6 Text available at: http://www.swrb.com/newslett/actualNLS/bod_ch03.htm

7 Text available at: <http://www.rps.ac.uk/trans/A1560/8/3>

8 Text available at: <http://www.rps.ac.uk/trans/A1560/8/4>

9 Text available at: <http://www.rps.ac.uk/trans/A1560/8/5>

10 Text available at: <http://www.rps.ac.uk/trans/A1560/8/6>

11 Text available at: <http://www.rps.ac.uk/trans/A1567/12/5>

12 Text available at: <http://www.rps.ac.uk/trans/A1567/12/7>

13 Text available at: <http://www.rps.ac.uk/trans/A1567/12/11>

The Second Book of Discipline (1581)¹⁴

The Second Book of Discipline was drawn up by Andrew Melville and approved by the General Assembly as one of her standards in 1581. It condemned episcopacy and set out the presbyterian form of church government, emphasising the parity of ministers. It also articulated the establishment principle, asserting the independence of the Church from the civil power in spiritual matters.

The Black Acts (1584)¹⁵

Although the Second Book of Discipline defined the Church of Scotland as presbyterian James VI was determined to have bishops and in May 1584 he constrained the Parliament to pass the ‘Black Acts’ – a series of Acts which condemned presbyteries, introduced two bishops and forbade the General Assembly to meet without royal permission. Twenty years later James would give the following admonition in a meeting with representatives of the Church of England: “If you aim at a Scottish presbytery, it agrees as well with monarchy as God and the Devil...No bishop, no king.”¹⁶ James believed that only through bishops which he appointed could he manage a church which might otherwise pose a threat to his form of rule. In turn Episcopalians in Scotland regarded the Stuart monarchs as head of their church.

James’s attitude drew forth Melville’s famous utterance when the two met in 1596: “I must tell you, there are two kings and two kingdoms in Scotland: there is King James, the head of the commonwealth, and there is Christ Jesus, the King of the Church, whose subject James the Sixth is, and of whose kingdom he is not a king, nor a lord, nor a head, but a member. Sir, those whom Christ has called and commanded to watch over his Church, have power and authority from Him to govern his spiritual kingdom, both jointly and severally; the which no Christian king or prince should control and discharge, but fortify and assist; otherwise they are not faithful subjects of Christ and members of his Church.”¹⁷

The Treaty of Berwick (1586)

In 1586 a “league of amity” was agreed in Berwick upon Tweed by Queen Elizabeth I of England and King James VI of Scotland. The Treaty of Berwick amounted to a mutual defence pact between the two countries in which aid was guaranteed should either country be invaded. There was a perceived threat to the two countries, both now Protestant, from the two major Roman Catholic powers of the time, namely France and Spain.

The General Assembly Act (1592)¹⁸

In 1592 the Scottish Parliament passed the General Assembly Act (sometimes called the ‘Golden Act’ in contrast to the Black Acts, which were thereby repealed). The Act ratified the Second Book of Discipline and settled the presbyterian form of church government as the only legal form in Scotland. The Act was deficient in one key respect: it contained no formal acknowledgment of the headship of Christ over the church. While it reaffirmed the church’s spiritual independence it also allowed for the continuance of the practice of patronage for by it presbyteries were “bound and astricted to receive and admit whatsoever qualified minister, presented by his majesty or lay patrons.”

The Union of the Crowns (1603)

In the latter part of the sixteenth century it was foreseen that at some point the royal lines of Scotland and England were likely to converge. Elizabeth I, of the House of Tudor and the last-surviving of Henry VIII’s

14 Text available at: http://www.swrb.com/newslett/actualNLS/bod_ch04.htm

15 Text available at: <http://www.rps.ac.uk/trans/1584/5/7> (and following)

16 Quoted in: Aikin, Lucy, *Memoirs of the Court of King James the First*, Vol. I (London: Longman, Hurst, Rees, Orme and Brown, 1822), pp. 179-80. The occasion was the Hampton Court Conference which took place in January 1604.

17 Hetherington, William M., *History of the Church of Scotland: From the Introduction of Christianity to the Period of the Disruption* (Edinburgh: John Johnstone, 1843), p. 60

18 Text available at: <http://www.rps.ac.uk/trans/1592/4/26>

legitimate issue, had succeeded to the English throne in 1558. However Elizabeth was unmarried and so the line of Tudor would come to an end with her reign. James VI of Scotland had the senior genealogical claim to the English throne, the families being linked through James's great-grandmother who was Henry's oldest sister. Importantly despite his Roman Catholic background James had been raised as a Protestant within the Church of Scotland. From 1601 there was both a public and a secret correspondence between Scotland and England by which the succession was settled.

When Elizabeth died in 1603 James VI was proclaimed King of England and Ireland (an Act of the Irish Parliament in 1542 declared that kings of England were automatically kings of Ireland). The result was a personal Union of the Crowns as the three realms of Scotland, England and Ireland were united under one monarch while they remained separate, sovereign states. James left Edinburgh for London and would return to Scotland only once.

James VI and I, as he was now styled, held to the theory of the "divine right of kings," believing that his right to rule came direct from God rather than via the people or parliament and consequently he was not subject to any earthly authority in either civil or spiritual matters. He had ambitions for a political union between Scotland and England, claiming to the Parliament of England that there was a divine mandate for such a relationship: "Hath he not made us all in one island, compassed with one sea, and of itself, by nature, so indivisible?"¹⁹ Although the English Parliament had refused him the title 'King of Great Britain' James assumed it nonetheless.

Soon after the Union of the Crowns and at James's instigation the English Parliament passed the Union of England and Scotland Act 1603²⁰ ("An Act authorizing certain Commissioners of the realm of England to treat with Commissioners of Scotland, for the weal of both kingdoms"), the aim being to investigate the possibility of a formal political union between the two countries. In 1604 commissioners were appointed by the Scottish Parliament and by an "Act in favour of the kirk"²¹ were declared to have no power to "do anything that in any manner of way may be hurtful or prejudicial to the religion presently professed in Scotland, acts of parliament made in favour of the same religion and discipline established and observed for maintenance and preservation thereof." The two deputations met and drew up a Treaty of Union, to be proposed to their respective parliaments.

In the Scottish Parliament the whole treaty was passed but in the English Parliament where there was strong opposition it was not ratified and so never became valid. Some of the treaty's articles were later incorporated into two Acts of the English Parliament however, including one of 1606 with the long title: "An Act for the utter Abolition of all Memory of Hostility, and the Dependances thereof, between England and Scotland, and for the repressing of Occasions of Discord and Disorders in Time to come."²²

There were further unsuccessful attempts to unite the two countries by similar Acts passed by the two parliaments in 1606, 1667 and 1670. In 1689 the Estates of Scotland appointed commissioners but this was not reciprocated by the English Parliament. In 1702 and 1704 the English Parliament appointed commissioners but this was not reciprocated by the Scottish Parliament. There were other proposals for political union which did not proceed as far as this and on several occasions the Scottish Parliament expressed itself in favour of a federation rather than the incorporation being offered by the English Parliament. There were also moves in the Scottish Parliament (1664) and in the English Parliament (1674 and 1685) to achieve a commercial rather than a political union but these too ended in failure.

19 Quoted in: *Cobbett's Parliamentary History of England*, Vol. I (London: 1806), col. 979.

20 Raithby, John (Ed.), *The Statutes at Large, of England and of Great-Britain: from Magna Carta to the Union of the Kingdoms of Great Britain and Ireland*, Vol. IV (London: 1811), pp. 585-6

21 Text available at: <http://www.rps.ac.uk/trans/1604/4/20>

22 Raithby, John (Ed.), *The Statutes at Large, of England and of Great-Britain: from Magna Carta to the Union of the Kingdoms of Great Britain and Ireland*, Vol. IV (London: 1811), p. 680

The Articles of Perth (1618)²³

Upon his accession to the English throne James VI and I sought to conform the Church of Scotland to the Church of England. He halted meetings of the General Assembly and in 1610 increased the number of Scottish bishops, a move which met with strong opposition in Scotland. James visited Scotland in 1617 and attempted to implement Anglican ritual in the Scottish church in the form of the Five Articles of Perth, which he had written himself. These required kneeling to receive the Lord's supper, private communion for the sick, private baptism when necessary, confirmation by bishops and the observance of holy days, including Christmas and Easter. The Articles were reluctantly adopted by the General Assembly in 1618 and ratified by the Scottish Parliament in 1621. Some ministers who would not accept them were removed from their charges and even imprisoned.

The National Covenant (1638)²⁴

James VI and I died in 1625 and was succeeded by his son Charles I whose belief in the divine right of kings was even stronger. Charles was Anglican by religious profession and his coronation at St Giles Cathedral (more properly known as the High Kirk of Edinburgh) was with Anglican rites but he was married to a French Roman Catholic. Charles sought to impose religious uniformity throughout his three kingdoms but like his father he met with resistance. In England his attempts, in conjunction with Archbishop William Laud, to secure liturgical conformity within the Anglican Church and to remodel it along Arminian lines angered the Calvinist Puritans who saw it as the beginning of a return to Rome. In Scotland from 1635 episcopalianism, supported by the Crown, briefly gained the ascendancy and in 1637, with help from the Scottish bishops and Archbishop Laud, Charles imposed a version of the English prayer book. Although some of the elements it contained were widely regarded as popish, ministers were ordered to use it and threatened with severe sanctions if they did not. An attempt to introduce the new liturgy in St Giles on 23 July caused a disturbance and rioting in the streets of Edinburgh. The prayer book had not been authorised by the General Assembly or the Parliament but Charles was intransigent. The opposition to his policy marked the beginning of the Second Reformation, which was the reformation from Prelacy, and led to the signing of the National Covenant.

The National Covenant was a renewal of the covenant known as the King's Confession which had been drawn up by John Craig in 1581 and subscribed on several occasions thereafter. It was drafted by Alexander Henderson, a theologian and ecclesiastical statesman and by Archibald Johnston, Lord Wariston, a leading lawyer and politician. It set forth an alternative vision for church and state to that espoused by the Stuart kings. In particular it affirmed the Scots Confession of 1560 and cited Acts of parliament condemning popery and other unbiblical innovations. While the Covenant acknowledged the king's rightful authority it also asserted the spiritual independence of the church.

The National Covenant was first subscribed in Greyfriars Kirk, Edinburgh on 28 February 1638, an event referred to by Lord Wariston as "that glorious marriage day of the Kingdome with God."²⁵ Support for the Covenant and the number of 'Covenanters' grew rapidly. In November 1638 the first free General Assembly for thirty-six years met in Glasgow: it repealed the Articles of Perth and agreed to depose the bishops and abolish the prayer book. On 30 August 1639 the General Assembly approved the Covenant and ordained subscription to it and this was ratified by the Scottish Parliament on 11 June 1640. Ultimately the Covenant would be taken by over 300,000 of all ranks, some signing in their own blood.

23 See: *The booke of the universall kirk, Acts and proceedings of the general assemblies of the kirk of Scotland, 1560-1618*, Vol. III (Edinburgh: Maitland Club, 1839), pp. 1143-67.

Text available at: <http://www.british-history.ac.uk/report.aspx?compid=59010>

24 Text available at: <http://www.swrb.com/newslett/actualNLS/natcov.htm>

25 Quoted in: Fleming, David H. (Ed.), *Diary of Sir Archibald Johnston of Wariston*, Vol. I (Edinburgh: T. & A. Constable, 1911), p. 322

The Bishops' Wars (1639)

Charles responded to this defiance by launching a military campaign in Scotland in June 1639 but without the support of the English Parliament. Minor skirmishes occurred between Covenanters and Scottish royalist forces followed by an interlude during which the General Assembly met and confirmed the decisions of the previous November and the Scottish Parliament abolished episcopacy altogether and declared itself free from Charles's control. In 1640 the Parliament, now led by Covenanters, authorised war against Charles and a Covenanter army occupied northern England for a year, being welcomed by a mostly Puritan English Parliament largely Presbyterian in sympathy. The army only withdrew when Charles agreed to ratify the Acts of the Scottish Parliament abolishing episcopacy. For a time Charles appeared willing to grant all the Covenanters' demands for both church and state and enjoyed their support. These 'Bishop's Wars' were the first in a series of conflicts in Scotland, Ireland and England from 1639-51, known as the Wars of the Three Kingdoms.

The English Civil Wars (1642)

In England Charles I continued to act as an absolute monarch and to enforce episcopacy in the face of demands by the Parliament for constitutional monarchy and more ecclesiastical reform. The result was a series of wars from 1642-51, often referred to as the English Civil Wars, between the forces of the English Parliament and the Royalists who supported Charles. In the early stages of the conflict Roman Catholics in Ireland, who had recently rebelled against English administration and massacred Protestants, were threatening to join the Royalist side and the English Parliament was desperate for military help from Scotland. The Covenanters were sympathetic to the English parliamentarians with their desire for the further reformation of the Church of England and saw an opportunity to realise their own great ideal of ecclesiastical uniformity in the three kingdoms.

The Solemn League & Covenant (1643)²⁶

In August 1643 a committee appointed by the General Assembly and joined by a committee of the Convention of Estates, a sister institution to the Scottish Parliament, met with commissioners sent by the House of Commons who were accompanied by two members (one Presbyterian and one Independent) of the Westminster Assembly which had begun its meetings on 1 July. After lengthy negotiations the two sets of commissioners agreed on a document which had been drafted by Alexander Henderson and was designed to satisfy the chief interests of both parties.

The Solemn League & Covenant was at one and the same time a civil treaty, a military league and a religious covenant. Those who subscribed it promised first of all: "That we shall sincerely, really, and constantly, through the grace of God, endeavour, in our several places and callings, the preservation of the reformed religion in the Church of Scotland, in doctrine, worship, discipline, and government, against our common enemies; the reformation of religion in the kingdoms of England and Ireland, in doctrine, worship, discipline, and government, according to the Word of God, and the example of the best reformed Churches; and shall endeavour to bring the Churches of God in the three kingdoms to the nearest conjunction and uniformity in religion, Confession of Faith, Form of Church Government, Directory for Worship and Catechising; that we, and our posterity after us, may, as brethren, live in faith and love, and the Lord may delight to dwell in the midst of us."

The General Assembly approved the Solemn League & Covenant on 17 August 1643 and on 25 September it was signed by both Houses of the English Parliament in a joint meeting with the Westminster Assembly, having been approved with some slight modifications. The Covenant was ratified by an Act of the Scottish Parliament on 15 July 1644. The parliaments of England and Scotland required that all persons above the age of eighteen in both countries swear to the Covenant and it was subscribed by many in Ireland also. Other important documents of the Westminster Assembly soon received sanction in Scotland. The

26 Text available at: <http://www.swrb.com/newslett/actualNLS/CRTSol.htm>

Directory for Publick Worship was approved by the General Assembly on 3 February 1645 and ratified by the Scottish Parliament on 6 February. The Form of Presbyterial Church-Government was approved by the General Assembly on 10 February 1645. The Directory for Family-Worship was approved by the General Assembly on 24 August 1647. The Confession of Faith, the Larger Catechism and the Shorter Catechism were approved by the General Assembly on 27 August 1647, 2 July 1648 and 28 July 1648 respectively and were ratified by the Scottish Parliament on 7 February 1649. The Church of Scotland was now thoroughly reformed by measures which enjoyed the approval of both Assembly and Parliament.

The Engagement (1647)

As a consequence of the Solemn League & Covenant a Scottish army marched into England early in 1644. With their assistance the English parliamentary army vanquished the Royalists and the First English Civil War was over by 1646. However divisions were beginning to appear in England between the Parliament which favoured Presbyterianism and the army in which Independents were influential. The Covenanters were becoming disillusioned with the sectarianism and radicalism among their English allies and particularly with their lack of willingness to implement the Solemn League & Covenant. This was compounded when in March 1646 the English Parliament set up a limited form of presbyterianism in the Church of England in which the Church remained subordinate to Parliament.

After a series of defeats for the Royalists Charles surrendered himself to the Covenanter army at Newark in May 1646 and was taken north to Newcastle upon Tyne. Charles could not be persuaded to take the Covenant and following lengthy negotiations with the English Parliament he was handed over in January 1647. With their frustrations over the situation in England and their fears as to where it might lead many Covenanters remained sympathetic to Charles and he saw an opportunity to set his opponents against each other.

Charles appeared to soften his antagonism towards the Covenanters and their aims and in a secret treaty called the 'Engagement' signed on 26 December 1647 he promised one element among them that if they would invade England and help restore him to power then in a free English Parliament he would confirm the Covenant, establish presbyterial church government and worship for three years and have heresy and schism suppressed. The proposal was agreed by the Scottish Parliament but the General Assembly was not united on it. The Covenanters divided into two factions: the 'Engagers' who approved the proposal and the 'anti-Engagers' who objected to it on the grounds that Charles had refused to take the Covenant personally and was unlikely to honour the agreement. The Engagers prevailed and when the Second English Civil War began in May 1648 they sent an army to England to support the Royalists but were routed by the English parliamentary army at the Battle of Preston in August 1648, which signified the end of the Second War. Following this defeat the stricter Covenanters obtained control of the Scottish Parliament and on 4 January 1649 the Act of Classes²⁷ was passed removing Engagers from the army and other civil posts.

The Commonwealth (1649)

Within a week Charles I had been tried for treason by the English Parliament and executed. On 6 February 1649 the Scottish Parliament proclaimed his son Charles II King of Great Britain and Ireland, inviting him to Scotland from his exile in the Netherlands and promising him their support if he would subscribe the Covenants and maintain Presbyterianism in Scotland. After much hesitation Charles eventually made the journey and on 23 June 1650 he landed at Garmouth on Speyside where he was required to sign the Covenants.

The English Parliament declared the Scottish proclamation unlawful and the Third English Civil War ensued. An English army under the parliamentarian and Puritan Oliver Cromwell, now a leading figure in the forces opposing the King, immediately crossed the border. Cromwell, an Independent, wrote to the

²⁷ Text available at: <http://www.rps.ac.uk/trans/1649/1/30>

General Assembly on 3 August claiming that his enemies were Charles and the Engagers, not the Scottish people themselves. In his letter he challenged the Church over its support for the king: "I beseech you, in the bowels of Christ, think it possible you may be mistaken."²⁸ His plea was dismissed however and on 3 September the Scots were heavily defeated by Cromwell at the Battle of Dunbar.

Thereafter Cromwell's campaign made little headway and Scottish resistance became linked to royalist sympathy. At his coronation at Scone near Perth on 1 January 1651 Charles again signed the Covenants. On 31 July a Scottish army marched into England with Charles at its head and hoping for the support of English Presbyterians, only to be defeated by Cromwell's forces at the Battle of Worcester in September 1651, the final battle of the English Civil Wars. Charles then fled to France.

From 1649 a period known as the Commonwealth ensued during which England was effectively a republic with firstly Oliver Cromwell and then briefly his son Richard as head of state. The English parliamentary army conquered and occupied Ireland and Scotland in 1651, imposing political unions with England. The Tender of Union of 1652 declared Scotland incorporated into the Commonwealth, to enjoy free trade with England. The Scottish Parliament was to be abolished and Scotland was to have thirty representatives in the united Parliament; few ever went to Westminster however. The incorporation became effective in 1654 and the parliamentary union in 1657.

The Scottish church was still bitterly divided over matters relating to Charles II. The majority were 'Resolutioners' because they agreed with resolutions passed by the Parliament and General Assembly allowing the reinstatement of those who had been removed from their posts because of their support for the Engagement; the minority were 'Protesters' because they disagreed with these resolutions. Cromwell favoured the Protesters because he perceived them to be anti-royalists. In 1653 the Commonwealth government dissolved the General Assembly and it did not meet again until 1690. The government extended religious toleration to all "whose conscience was not satisfied with that [Presbyterian] form and bade them worship God in other Gospel ways"²⁹ but such toleration was not popular in Scotland where 'sectaries' were regarded with no more favour than popery or prelacy. The idea of uniting the two kingdoms was discredited for a time because of its association with Cromwell's regime.

The Restoration (1660)

In 1660 the monarchy was restored in England and the Commonwealth was dissolved, ending the first, brief political union between Scotland and England. As a result of the new situation the English army withdrew from Scotland. The Scottish Parliament was re-established in 1661 and being largely sympathetic to Charles II and submissive to him one of its first actions was to pass the 'Recissory Act'³⁰ on 28 March which rescinded and annulled the "pretended parliaments" held from 1640 to 1648 and "all acts and deeds passed and done in them," declaring them to be "void and null." By this Act all that the church had done and the state had done for her (including the adoption of the Covenants and the authorisation of the Westminster Standards) during the period from the signing of the National Covenant in 1638 to the Restoration was stigmatised as treasonable and rebellious. It marked a second and longer period during which episcopalianism was in the ascendant. Within one week in 1661 three Protester Covenanters, the Marquis of Argyll, James Guthrie and William Govan, were beheaded or hung and in March 1662 Charles remarked to his adviser the Earl of Clarendon: "For my part, rebel for rebel, I had rather trust a Papist rebel than a Presbyterian one."³¹

On 27 May 1662 the Scottish Parliament passed an "Act for the restitution and reestablishment of the ancient government of the church by archbishops and bishops."³² The worship of the church, which had

28 Quoted in: Gardiner, Samuel R., *Oliver Cromwell* (London: Longmans, Green & Co., 1901), p. 184

29 Burleigh, J. H. S., *A Church History of Scotland* (Edinburgh: Hope Trust, 1983), p. 232

30 Text available at: <http://www.rps.ac.uk/trans/1661/1/158>

31 Quoted in: Macdiarmid, John, *Lives of British Statesmen* (London: L. A. Lewis, 1838), pp. 462-3, fn

32 Text available at: <http://www.rps.ac.uk/trans/1662/5/9>

returned to its presbyterian and biblical form during the time of the Covenanter ascendancy, was left unchanged. Although Charles had personally sworn the Covenants an “Act for preservation of his majesty’s person, authority and government”³³ passed on 24 June 1662 condemned them as “unlawful oaths” and declared that “there lies no obligation upon any of the subjects from the said oaths.” Copies of the Covenants were publicly burned and ministers were required to swear allegiance to the King and bishops and renounce the Covenants, or be prevented from carrying out their duties. The reintroduction of episcopacy into the Church of Scotland led to the departure of a third of its ministers, many of them from congregations in the south-west where the Covenanting movement was strongest.

After their Restoration the Stuarts placed less emphasis on the idea of a politically-unified kingdom and more on the personal rôle of the monarch in providing religious and civil order. On his deathbed in 1685 Charles was received into the Roman Catholic Church and as he had no legitimate issue the throne passed to his brother James.

The Test Act in England (1673)³⁴

James VII and II had taken refuge in France with Charles during the Commonwealth and had also come under Roman Catholic influence. He secretly converted to Rome after his return to England, a move which was exposed when he refused to take the Test Act of 1673 passed by the English Parliament. This Act, with the long title “An act for preventing dangers which may happen from popish recusants,” required those holding civil and military office to take an oath whereby they denied the transubstantiation of the elements in the Lord’s supper; it also required them to receive the sacrament according to the rites of the Church of England. In 1678 the Act was extended to members of both Houses of Parliament.

Later in 1673 James married an Italian Roman Catholic and as his reign continued he expressed his disdain for Protestantism and sought toleration for Roman Catholics north and south of the border, permitting them to hold the highest offices in the two kingdoms. He also granted relief to Protestant Dissenters, thereby alienating the hierarchy of the Church of England.

The Killing Time (1680)

In Scotland the granting of Indulgences by the Privy Council, an advisory body to the King, in 1669 and 1672 failed to persuade the stricter Covenanters to return: they would not take licence from the bishops, acknowledge any head of the church but Jesus Christ or have anything to do with Charles II until he had repented of his renunciation of the Covenants. This militant section, led by Richard Cameron, published the Sanquhar Declaration³⁵ on 22 June 1680 in which they not only disowned Charles but also “declare[d] a war with such a tyrant and usurper, and all the men of his practices, as enemies to our Lord Jesus Christ.” The ‘Cameronians’ were the precursors of the Reformed Presbyterian Church. A period of severe persecution followed, beginning under Charles in 1680, intensifying during the last years of his reign and continuing when James VII came to the throne in 1685, during which thousands were harried, imprisoned, transported, tortured and even killed in an attempt to end the ‘rebellion’.

The Test Act in Scotland (1681)³⁶

On 31 August 1681 the Scottish Parliament passed an “Act anent religion and the Test” under which anyone seeking public office in Scotland, including ministers of the gospel, had to swear an oath of unconditional loyalty to Charles II and his heirs and lawful successors. In swearing the oath the individual agreed that it was “unlawful for subjects, upon pretence of reformation or any other pretence whatsoever, to enter into covenants or leagues, or to convocate, convene or assemble in any councils, conventions or assemblies, to treat, consult or determine in any matter of state, civil or ecclesiastic, without his majesty’s

33 Text available at: <http://www.rps.ac.uk/trans/1662/5/20>

34 Text available at: <http://www.british-history.ac.uk/report.aspx?compid=47451>

35 Text available at: <http://www.covenanter.org/CivilGovt/sanquhardeclaration.htm>

36 Text available at: <http://www.rps.ac.uk/trans/1681/7/29>

special command or express licence had thereto;" the swearer also affirmed that "there lies no obligation on me from the National Covenant or the Solemn League and Covenant (so commonly called) or any other manner of way whatsoever, to endeavour any change or alteration in the government, either in church or state, as it is now established by the laws of this kingdom."

The Revolution (1688)

The last Covenanter to be martyred was James Renwick who was hanged on 17 February 1688. When ordered to swear loyalty to King James he said: "I own all authority that hath its prescriptions and limitations from the Word of God, but I cannot own this usurper as lawful king, seeing both by the Word of God, and likewise by the ancient laws of the kingdom, which admit none to the crown of Scotland until he swear to defend the Protestant religion (which a man of his profession could not do), such an one is incapable to bear rule."³⁷ Yet within months of Renwick's death the Stuarts would be forced into exile.

In June 1688 a son and heir was born to James, heightening the fear that both England and Scotland could soon be returned to the orbit of Rome with a new Roman Catholic dynasty. The concern prompted English nobles to invite the Dutch statesman, William Prince of Orange, to invade England and safeguard the Protestant and parliamentary nature of church and state. In the 'Glorious Revolution' at the end of 1688 James was deposed by William, who had married James's daughter Mary in 1677, and the couple ruled jointly as William III and Mary II. James fled to France and the following year he landed in Ireland where he was still regarded as King and began an attempt to regain the throne; this move coincided with an uprising in Scotland led by Graham of Claverhouse, Viscount Dundee. However James was defeated in Ireland by William at the Battle of the Boyne on 11 July 1690 and fled again to France. Those who continued to support James and his descendants in their claim to the throne after the Revolution were termed 'Jacobites'; the Scottish Episcopal Church has its origin from among them. On 26 July the last raid by the French on England.

The Bill of Rights (1689)³⁸

By this time the theory of the divine right of kings had more or less been abandoned and in 1689 the Revolution led to the passing by the English Parliament of the Bill of Rights, "An Act for declaring the Rights and Liberties of the Subject and for settling the Succession of the Crown." The Act established the idea of parliamentary sovereignty and a constitutional monarchy in which the monarch exercises his or her power in and through parliament rather than over it. The people, embodied in the Parliament, were granted immutable civil and political rights including the following: freedom from royal interference with the law; freedom to elect members of Parliament without interference from the Sovereign; and freedom of debate, such that members of Parliament could not be impeached or questioned in any court outside of Parliament for things said in Parliament.

The Bill of Rights also declared that by his flight into exile James II had abdicated the throne, that his successors were William of Orange and his wife Mary and that the line of succession would go through William and Mary to their Protestant heirs. The Bill prohibited Roman Catholics from inheriting the throne of England by the provision that "all and every person and persons that is, are or shall be reconciled to or shall hold communion with the see or Church of Rome, or shall profess the popish religion, or shall marry a papist, shall be excluded and be forever incapable to inherit, possess or enjoy the crown." The reason the Bill gave for this bar was: "it hath been found by experience that it is inconsistent with the safety and welfare of this Protestant kingdom to be governed by a popish prince."

The Claim of Right (1689)³⁹

On 11 April 1689 the Convention of Estates in Scotland adopted a Claim of Right which listed the

37 Quoted in: Howie, John, *The Scots Worthies* (Edinburgh: Oliphant, Anderson, & Ferrier, n.d.), p. 541

38 Text available at: http://avalon.law.yale.edu/17th_century/england.asp

39 Text available at: <http://www.rps.ac.uk/trans/1689/3/108>

requirements of Scottish constitutional law and asserted the Protestant and Presbyterian character of the nation. In this connection it stated that “prelacy and the superiority of any office in the church above presbyters, is and has been a great and insupportable grievance and trouble to this nation, and contrary to the inclinations of the generality of the people ever since the reformation (they having reformed from popery by presbyters) and therefore ought to be abolished.” The Claim of Right declared that because King James had “invaded the fundamental constitution of the kingdom and altered it from a legal limited monarchy to an arbitrary despotic power” and had “exercised the same to the subversion of the Protestant religion,” he had forfeited the right to the Scottish crown. The Convention of Estates unanimously agreed to offer the crown to William and Mary and after their acceptance on 11 May they were proclaimed King and Queen of the Scots. On 22 July the Parliament passed an Act abolishing prelacy⁴⁰.

The Confession of Faith Ratification Act (1690)⁴¹ (Revolution Settlement)

The Scottish Parliament was now in a position to redo what had been undone at the Restoration in 1660. On 7 June 1690 the Scottish Parliament passed an “Act ratifying the Confession of Faith and settling presbyterian church government.” Acknowledging “the great deliverance that God has lately wrought for this country and kingdom” the aim of the Act was “to settle and secure therein the true Protestant religion according to the truth of God’s word as it has of a long time been professed within this land.” Prelacy, which had been abolished the previous year, was again condemned and the Act went on to state: “Therefore their majesties, with advice and consent of the said three estates, do hereby revive, ratify and perpetually confirm all laws, statutes and acts of parliament made against popery and papists and for the maintenance and preservation of the true reformed Protestant religion and for the true church of Christ within this kingdom, in so far as they confirm the same, or are made in favour thereof.”

The position established by this Act is generally known as the ‘Revolution Settlement’. In reviving the Presbyterian establishment the Act of 1690 took the Church back to the General Assembly Act of 1592. It passed over the attainments of the Second Reformation and left the Recissory Act of 1661 unrepealed. Dissatisfaction with the basis of the Revolution Settlement led the Cameronians to continue their separate existence from the established Church of Scotland.

Writing a few years before the Disruption Robert Buchanan stated that the Act of 1690 did not abolish patronage but “only transferred from the hands of one set of lay patrons to another – from the lay patrons to the heritors and elders of parishes.”⁴² Shortly after the Disruption Robert Shaw wrote: “Though the sole headship of Christ is explicitly asserted in our Confession of Faith, yet it is deeply to be regretted that this vital principle was not more effectually guarded in the Revolution Settlement.”⁴³ Yet while it is certainly the case that in the years after the Revolution Settlement the Church of Scotland suffered Erastian encroachments upon areas belonging to her jurisdiction it could be argued that these were not so much the fault of the Settlement itself as of bad faith on the part of some who had pledged to uphold it. The Revolution Settlement would form the basis of the Act of Security of 1706 which in turn would be fundamental to the Union of 1707.

The Darien Scheme (1698)

On 26 June 1695 following battles against the Jacobites who were attempting to regain the throne, several poor harvests and a general decline in the economy the Scottish Parliament passed an “Act for a company trading to Africa and the Indies,”⁴⁴ creating the Company of Scotland which it was hoped would open up

40 Text available at: <http://www.rps.ac.uk/trans/1689/6/36>

41 Text available at: <http://www.rps.ac.uk/trans/1690/4/43>

42 Buchanan, Robert, *The Presbyteries of the Church of Scotland Threatened with Imprisonment in the Discharge of their Official Duty, in an Address from the Lord President of the Court of Session, with an Answer to the Same, in two Letters to his Lordship, by a Minister of the Church of Scotland* (Glasgow: William Collins, 1839), p. 7

43 Shaw, Robert, *The Reformed Faith: An Exposition of the Westminster Confession of Faith* (Inverness: Christian Focus Publications, 1973), p. 270

44 Text available at: <http://www.rps.ac.uk/trans/1695/5/104>

trade between Scotland and potential colonies in Africa, India and elsewhere. In 1698 there was an attempt to establish a colony called New Caledonia on the Gulf of Darien in Spanish-controlled Central America in an area which is now part of Panama. The project was abandoned after two years of struggle and the death of most of the colonists. The Company of Scotland collapsed and as the venture had been backed by a quarter of the money circulating in Scotland there were devastating consequences for many nobles and landowners and there was a depressing effect on the whole nation.

The Act of Settlement (1701)⁴⁵

In 1701 the English Parliament passed the Act of Settlement which built upon the provisions of the Bill of Rights regarding the succession to the throne. Its long title is, “An Act for the further Limitation of the Crown and better securing the Rights and Liberties of the Subject.” Queen Mary died childless in 1694 and William did not remarry. The next in line to the throne was Mary’s younger sister Anne who was a Protestant but by 1700 had no surviving children. The rest of the Stuarts were Roman Catholics. In seeking a continuing Protestant succession the Parliament was therefore limited in its choice to the descendants of Elizabeth of Bohemia, the only other child of James VI and I who survived to adulthood. The Act of Settlement settled the succession to the English and Irish thrones on Sophia, Electress of Hanover, granddaughter of James I; although her line was the most junior among the Stuarts she and her five surviving children were committed Protestants.

The Act was designed to secure the Protestant succession to the English throne and did so in three ways:

- (i) Following the Bill of Rights the Act makes “all and every Person and Persons that then were or afterwards should be reconciled to, or shall hold Communion with, the See or Church of Rome, or should profess the Popish Religion, or marry a Papist” forever incapable “to inherit, possess, or enjoy the Crown and Government of this Realm.” It further states that “in all and every such Case and Cases the people of these Realms shall be and are thereby absolved of their Allegiance.”
- (ii) The Act provides “that every King and Queen of this Realm, who shall come to and succeed in the Imperial Crown of this Kingdom by virtue of this Act, shall have the Coronation Oath administered to him, her, or them, at their respective Coronations.” The Oath referred to dated from 1688 when in the first year of William and Mary’s reign “An Act for Establishing the Coronation Oath”⁴⁶ was passed.
- (iii) The Act requires “That whosoever shall hereafter come to the Possession of this Crown, shall join in Communion with the Church of England, as by Law established.”

When William died on 8 March 1702 the crowns of England, Ireland and Scotland duly passed to Anne. In England there was concern that unless a political union with Scotland could be accomplished then in choosing their monarch the Scots might turn to the Roman Catholic James Edward Stuart, the exiled son of James II and half-brother of Anne, instead of a Protestant monarch from Hanover. The two countries of England and Scotland were currently involved in the War of the Spanish Succession in which they were pitted against France and for Anne and England’s Protestants in general the return of a Jacobite to the Scottish throne, supported by Louis XIV of France who represented the chief threat to England’s security, was to be avoided at all costs. It was seen that a political union with Scotland would prevent that possibility. However negotiations between the two kingdoms during 1702 and 1703 ended in failure.

The Act of Security (1704)⁴⁷

During the latter years of King William’s reign and the early years of Queen Anne’s Scotland had followed its own foreign policy, especially in relation to France, and had also demanded limitations on the powers of the monarch. The Scots had not been consulted over the choice of Sophia of Hanover in the Act of

45 Text available at: <http://www.british-history.ac.uk/report.aspx?compid=46986>

46 Raithby, John (Ed.), *The Statutes at Large, of England and of Great-Britain: from Magna Carta to the Union of the Kingdoms of Great Britain and Ireland*, Vol. VI (London: 1819), pp. 56-7. Text available at: <http://www.british-history.ac.uk/report.aspx?compid=46292>

47 Text available at: <http://www.rps.ac.uk/trans/1704/7/68>

Settlement and on 5 August 1704 the Scottish Parliament responded by passing an “Act for the security of the kingdom” which provided for a Protestant Stuart succession upon the death of Queen Anne, assuming that she had no further children. According to this Act the individual chosen could not be the successor to the English throne unless the Scottish government, parliament, religion, liberty and trade were secure from “English or any foreign influence.” There was now a real danger that Scotland might choose a different monarch to succeed to its crown than the one already chosen to succeed to England’s crown.

The Alien Act (1705)⁴⁸

The Scottish Parliament’s refusal to accept the Act of Settlement persuaded England to push for a full incorporating union with Scotland. The English Parliament passed the ‘Alien Act’ of 1705 which had the long title: “An Act for the effectual securing the Kingdom of England from the apparent Dangers that may arise from the several Acts lately passed in the Parliament of Scotland.” The Act provided that commissioners who would be nominated by the Queen would meet with commissioners to be authorised by the Scottish Parliament with regard to a union of the two kingdoms. The Act required that the English commissioners “should not treat of or concerning any Alteration of the Liturgy, Rites, Ceremonies, Discipline or Government of the Church as by Law established within this Realm.”

The Act also provided that unless the Scottish Parliament had entered into treaty negotiations and accepted the Hanoverian succession by Christmas Day 1705 Scottish nationals in England would be regarded as foreigners and estates held in England by Scottish nationals would be considered as alien property in law. An embargo would also be placed on major Scottish products being imported into England: at the time almost 50% of Scottish exports entered the English market. The Scots reluctantly agreed to the terms demanded in order not to suffer such penalties. However the Scottish Parliament went on to pass two important Acts concerning matters which it regarded as non-negotiable.

The Act for a Treaty with England (1705)⁴⁹

In 1705 the Parliament of Scotland passed an Act appointing commissioners to meet with commissioners from the Parliament of England for the purpose of conferring on the proposed union between the two kingdoms. The Act excluded the subject of religion from the negotiations, requiring that “the said commissioners shall not treat of or concerning any alteration of the worship, discipline, and government of the Church of this kingdom, as now by law established.”

The thirty-one Scottish commissioners, who would meet with an equal number from England, were named by Queen Anne and were all pro-union apart from Sir George Lockhart of Carnwath, a Jacobite. The negotiations began on 16 April 1706 and on 22 July a Treaty of Union⁵⁰ containing twenty-five articles was agreed. On 3 October the Scottish Parliament began its consideration of the Treaty. On 1 November the Parliament resolved to proceed to a detailed consideration of the articles, each of which would be voted on separately.

The Protestant Religion and Presbyterian Church Act (1706)⁵¹ (Act of Security)

During November and December 1706 various concessions were made to Scotland in the areas of trade and tax and these had the effect of strengthening support for the Union. The most significant move however was taken by the Scottish Parliament. The security of the Church of Scotland in the proposed Union remained the greatest concern of many and on 17 October the Parliament heard an “Address of the commission for the late general assembly of the church of this kingdom, for establishing and confirming the

48 Raithby, John (Ed.), *The Statutes at Large, of England and of Great-Britain: from Magna Carta to the Union of the Kingdoms of Great Britain and Ireland*, Vol. VI (London: 1819), pp. 484-5.

49 Text available at: <http://www.rps.ac.uk/trans/1705/6/194>

50 Text available at: <http://www.parliament.uk/documents/heritage/articlesofunion.pdf>

51 Text available at: <http://www.rps.ac.uk/trans/1706/10/251>

true Protestant religion and government of the church as by law established therein.” The Parliament declared that before concluding the union “they would take the said address to their consideration and would do everything necessary for securing the true Protestant religion and church government presently established by law in this kingdom.”⁵² On 2 November prior to the debate on the first Article of the Treaty the Parliament approved “that immediately after the said first article the parliament will proceed to an act for security of the doctrine, discipline, worship and government of the church as now by law established within this kingdom.”⁵³

Article I, which establishes the Union, reads: “That the Two Kingdoms of Scotland and England shall upon the first day of May next ensuing the date hereof and forever after be United into One Kingdom by the Name of Great Britain.” The debate on Article I was opened by Alexander Seton, Lord Pitmedden, one of the commissioners, who stressed that the Article was the foundation of the whole Treaty and that the approving or rejecting of it must determine whether there would be union between the two kingdoms or not. He referred to “the languishing condition” of the nation and how Scotland had been “behind all other nations of Europe, for many years, with respect to the effects of an extended trade.” He viewed an incorporating union with the larger neighbour as the only realistic way of overcoming Scotland’s economic difficulties. Seton stated: “In general, I may assert, that by this union, we will have access to all the advantages in commerce the English enjoy: we will be capable, by a good government, to improve our national product, for the benefit of the whole island; and we will have our liberty, property, and religion, secured under the protection of one Sovereign, and one Parliament of Great Britain.”⁵⁴

Seton was followed by John Hamilton, Lord Belhaven, a leading opponent of the Treaty of Union, who expressed the following concern among others: “I think I see a national church, founded upon a rock, secured by a Claim of Right, hedged and fenced about by the strictest and pointedest legal sanction that sovereignty could contrive, voluntarily descending into a plain, upon an equal level with Jews, Papists, Socinians, Arminians, Anabaptists, and other sectaries.”⁵⁵

On 4 November Article I was passed by 116 votes to 83 (from a total of 227 members). Before the vote was taken John Murray, Duke of Atholl, gave in a protest that an incorporating union with a unified Parliament “is contrary to the honour, interest, fundamental laws and constitution of this kingdom, the birthright of the peers, the rights and privileges of the barons and burghs, and is contrary to the Claim of Right.”⁵⁶ 66 members adhered to his protest. Murray subsequently sat in the House of Lords as a Scottish Representative Peer and remained loyal to the government of Great Britain.

On 12 November the Scottish Parliament passed the Protestant Religion and Presbyterian Church Act, an “Act for securing of the Protestant religion and presbyterian church government” and thus known as the Act of Security. In its opening section the Act states: “it being reasonable and necessary that the true Protestant Religion as presently professed within this Kingdom with the Worship, Discipline and Government of this Church should be effectually and unalterably secured...” Pursuing the Claim of Right of 1689 the Act of Security ratified the Confession of Faith Ratification Act 1690 and related Acts with the requirement that it be included in any legislation enacting a Treaty of Union with England. Its overall design was to ensure that the Church of Scotland would be unaffected by the impending Union.

Before the vote Lord Belhaven entered a protest to the effect that: “this act is no valid security to the church of Scotland as it is now established by law in case of an incorporating union, and that the church of

52 Text available at: <http://www.rps.ac.uk/trans/1706/10/18>

53 Text available at: <http://www.rps.ac.uk/trans/1706/10/36>

54 Quoted in: Defoe, Daniel, *The History of the Union between England and Scotland, with a Collection of Original Papers relating thereto* (London: John Stockdale, 1786), pp. 312, 313, 316

55 Quoted in: Defoe, Daniel, *The History of the Union between England and Scotland, with a Collection of Original Papers relating thereto* (London: John Stockdale, 1786), p. 317

56 Text available at: <http://www.rps.ac.uk/trans/1706/10/40>

Scotland can have no real and solid security by any manner of union by which the Claim of Right is unhinged, our parliament incorporated and our distinct sovereignty and independency entirely abolished.”⁵⁷ 23 members adhered to the protest. The Act was passed by 112 votes to 38. While it is known as the Act of Security the 1706 Act must be distinguished from the Act of 1704 of the same name.

The Maintenance of the Church of England Act (1706)⁵⁸

In the same year the English Parliament passed an equivalent Act designed to safeguard the position of the Church of England in the approaching Union. The Act of 1706 has the long title “An Act for securing the Church of England as by Law established.” The introduction gave the reasons for passing the Act, noting that the Scottish Parliament had agreed upon the Treaty of Union and then stating: “whereas it is reasonable and necessary that the true Protestant Religion professed and established by Law in the Church of England and the Doctrine, Worship, Discipline and Government thereof should be effectually and unalterably secured.”

The Union with England Act (1707)⁵⁹

The Scottish Parliament approved the twenty-fifth and final article of the Treaty on 14 January 1707. On 16 January the Union with England Act was passed by 110 votes to 69, ratifying the Treaty. There were majorities in all three estates: the peers, the representatives of the royal burghs and the representatives of the shires. The Act contained the Treaty followed by the Act of Security and a declaration that “the Parliament of England may provide for the security of the Church of England as they think expedient to take place within the bounds of the said Kingdom of England and not Derogating from the security above provided for Establishing of the Church of Scotland within the bounds of this Kingdom.”

The Union with Scotland Act (1707)⁶⁰

On 22 January 1707 the English Parliament began debate on the equivalent Union with Scotland Act. The Act contained the Treaty followed by the Act of Security and the Maintenance of the Church of England Act. The Union with Scotland Act was passed on 4 March with minimal opposition, ratifying the Treaty.

The Union (1707)

On 6 March 1707 the Acts of Union were approved by Queen Anne. The Parliament of Scotland met for the last time on 25 March when it passed an Act of adjournment⁶¹ beginning: “The queen’s majesty declares this parliament current and adjourns the same to 22 April next to come.” There is no evidence that the Parliament ever reconvened and it was dissolved by royal proclamation on 28 April. The Parliament of England met for the last time on 24 April when it was prorogued until 30 April. By a royal proclamation on 29 April, making use of a clause in Article XXII of the Treaty of Union, the Parliament was revived. On 1 May the Union took effect and England and Scotland became the Kingdom of Great Britain and on 5 June by another royal proclamation the first session of the new Parliament of Great Britain was appointed for 23 October.⁶² The Parliament met in the former home of the English Parliament at the Palace of Westminster and retained the procedures of that parliament.

3.2. What the Union Involved

As we have noted the two Acts of Union contained the twenty-five articles of the Treaty of Union. Fifteen of the articles have to do with economic matters such as trade and taxation but there are also articles securing institutions distinctive to and of particular importance to Scotland. In the religious realm two things stand out:

57 Text available at: <http://www.rps.ac.uk/trans/1706/10/58>

58 Raithby, John (Ed.), *The Statutes at Large, of England and of Great-Britain: from Magna Carta to the Union of the Kingdoms of Great Britain and Ireland*, Vol. VI (London: 1811), p. 581

59 Text available at: <http://www.rps.ac.uk/trans/1706/10/257>

60 Text available at: <http://www.legislation.gov.uk/aep/Ann/6/11/contents>

61 Text available at: <http://www.rps.ac.uk/trans/1706/10/467>

62 *Cobbett's Parliamentary History of England*, Vol. VI (London: 1810), cols. 581-2.

(i) A Protestant Throne

The Union of 1707 secured the Protestant succession to the throne of Great Britain. Article II of the Treaty of Union states:

“That the Succession of the Monarchy to the United Kingdom of Great Britain, and of the Dominions thereto belonging, after Her Most Sacred Majesty, and in Default of Issue of Her Majesty, be, remain, and continue to the Most Excellent Princess Sophia, Electoress and Dutchess Dowager of Hanover, and the Heirs of her Body being Protestants, upon whom the Crown of England is settled by an Act of Parliament made in England in the twelfth Year of the Reign of his late Majesty King William the Third, Intituled, An Act for the further Limitation of the Crown, and better securing the Rights and Liberties of the Subject: *And that all Papists, and Persons marrying Papists, shall be excluded from, and forever incapable to inherit, possess, or enjoy the Imperial Crown of Great Britain, and the Dominions thereunto belonging, or any Part thereof,* and in every such Case the Crown and Government shall from time to time descend to, and be enjoyed by such Person being a Protestant, as should have inherited and enjoyed the same in case such Papist or Person marrying a Papist, was naturally Dead according to the Provision for the Descent of the Crown of England, made by another Act of Parliament in England in the first Year of the Reign of their late Majesties King William and Queen Mary entituled An Act declaring the Rights and Liberties of the Subject, and settling the Succession of the Crown.” [emphasis ours]

Article II refers firstly to the Act of Settlement of 1701 and then to the Bill of Rights of 1689. By the Treaty of Union both pieces of legislation were extended to Scotland and became part of Scots law. The effect of Article II is to exclude Roman Catholics and those who marry Roman Catholics from the throne of Great Britain.

Queen Anne was occupying the throne in 1707 and lived through the first years of the Union. Upon her death in 1714 the House of Hanover acceded to the throne of Great Britain as required by Article II. As Sophia, Electress of Hanover, had died a month before Anne it was her eldest son who ascended the throne, as George I.

(ii) A Presbyterian Establishment

The Union of 1707 secured the Presbyterian establishment in Scotland, with its doctrine, worship, discipline and government. Appended to the Articles of Union is the Act of Security, the full text of which states:

“Our sovereign lady and the estates of parliament, considering that by the late act of parliament for a treaty with England for a union of both kingdoms it is provided that the commissioners for that treaty should not treat of or concerning any alteration of the worship, discipline and government of the church of this kingdom, as now by law established, which treaty, being now reported to the parliament, and it being reasonable and necessary that the true Protestant religion as presently professed within this kingdom, with the worship, discipline and government of this church, should be effectually and unalterably secured, *therefore, her majesty, with advice and consent of the said estates of parliament, does hereby establish and confirm the said true Protestant religion and the worship, discipline and government of this church, to continue without any alteration to the people of this land, in all succeeding generations. And more especially, her majesty, with advice and consent foresaid, ratifies, approves and forever confirms the fifth act of the first parliament of King William and Queen Mary entituled, act ratifying the Confession of Faith and settling presbyterian church government, with the whole other acts of parliament relating thereto in prosecution of the declaration of the estates of this kingdom, containing the Claim of Right, bearing date 11 April 1689. And her majesty, with advice and consent foresaid, expressly provides and declares that the foresaid true Protestant religion contained in the above-mentioned Confession of Faith, with the form and purity of worship presently in use within this church, and its presbyterian church government and discipline, that is to say the government of the church by kirk sessions, presbyteries, provincial synods and general assemblies, all established by the foresaid acts of parliament pursuant to the Claim of Right, shall remain and continue unalterable, and*

that the said presbyterian government shall be the only government of the church within the kingdom of Scotland. And further, for the greater security of the foresaid Protestant religion and of the worship, discipline and government of this church as above established, her majesty, with advice and consent foresaid, statutes and ordains that the universities and colleges of St Andrews, Glasgow, Aberdeen and Edinburgh, as now established by law, shall continue within this kingdom forever, and that, in all time coming, no professors, principals, regents, masters or others bearing office in any university, college or school within this kingdom be capable, or be admitted or allowed to continue in the exercise of their said functions, but such as shall own and acknowledge the civil government in manner prescribed, or to be prescribed by the acts of parliament. As also, that before or at their admissions, they do and shall acknowledge and profess and shall subscribe to the foresaid Confession of Faith as the confession of their faith, and that they will practise and conform themselves to the worship presently in use in this church, and submit themselves to the government and discipline thereof, and never endeavour, directly or indirectly, the prejudice or subversion of the same, and that before the respective presbyteries of their bounds by whatsoever gift, presentation or provision they may be thereto provided. And further, her majesty, with advice foresaid, expressly declares and statutes that none of the subjects of this kingdom shall be liable to, but all and every one of them forever free of, any oath, test or subscription within this kingdom contrary to or inconsistent with the foresaid true Protestant religion and presbyterian church government, worship and discipline as above established, and that the same within the bounds of this church and kingdom shall never be imposed upon or required of them in any sort. And lastly that, after the decease of her present majesty, whom God long preserve, the sovereign succeeding to her in the royal government of the kingdom of Great Britain shall, in all time coming, at his or her accession to the crown, swear and subscribe that they shall inviolably maintain and preserve the foresaid settlement of the true Protestant religion with the government, worship, discipline, right and privileges of this church as above established by the laws of this kingdom, in prosecution of the Claim of Right. And it is hereby statute and ordained that this act of parliament, with the establishment therein-contained, shall be held and observed, in all time coming, as a fundamental and essential condition of any treaty or union to be concluded between the two kingdoms, without any alteration thereof or derogation thereto in any sort forever. As also, that this act of parliament and settlement therein-contained shall be inserted and repeated in any act of parliament that shall pass for agreeing and concluding the foresaid treaty or union between the two kingdoms, and that the same shall be therein expressly declared to be a fundamental and essential condition of the said treaty or union in all time coming.” [emphasis ours]

The Act of Security is cited in the Regency Act 1937.⁶³ The Regency Act provides, among other things, that a regent (a person appointed to be in charge when the monarch is a minor or otherwise unable to carry out his or her functions) may not assent to any bill for repealing or altering the Act of Security.

In the civil realm the following provisions of the Treaty of Union are of note:

A United Parliament

Article III of the Treaty of Union states: “That the United Kingdom of Great Britain be Represented by one and the same Parliament to be stiled the Parliament of Great Britain.” By this Article a single parliament and government in London was created, the parliaments of Scotland and England being adjourned *sine die*. According to Article XXII in the new Parliament of Great Britain Scotland was to have 45 representatives in the House of Commons and 16 in the House of Lords at the time of Union. England and Wales would continue to have the 513 MPs and 190 peers which had previously sat in the Parliament of England. Scotland was under-represented in terms of her population but over-represented in terms of her taxable capacity.

Separate Legal Systems

Article XVIII prescribes that after the Union Scots law, with the exception of any laws contrary to or

⁶³ Text available at: <http://www.legislation.gov.uk/ukpga/Edw8and1Geo6/1/16/section/4>

inconsistent with the Treaty, would “remain in the same force as before...but alterable by the Parliament of Great Britain.” Article XIX prescribes that after the Union the Court of Session “remain in all time coming within Scotland, as it is now constituted by the laws of that Kingdom.” Except in civil cases no appeal would be permitted from Scotland to English courts of law: for Scottish criminal cases the final court of appeal would remain the High Court of Justiciary in Edinburgh which had been established in 1672.

Other Matters

The Treaty of Union guaranteed free trade for Scotland, as indicated in Article IV: “That all the Subjects of the united Kingdom of Great Britain shall, from and after the Union, have full Freedom and Intercourse of Trade and Navigation, to and from any Port or Place within the said United Kingdom, and the Dominions and Plantations thereunto belonging.” There would be a common currency with the separate Scottish Pound being phased out, as specified in Article XVI: “That from and after the Union, the Coin shall be of the same Standard and Value throughout the United Kingdom, as now in England.” There would also be common taxation, as indicated in Article XVIII: “That the laws concerning Regulation of Trade, Custom, and such Excises, to which Scotland is, by virtue of this Treaty, to be liable, be the same in Scotland, from and after the Union, as in England.”

In addition England would pay Scotland a sum of money termed the Equivalent, amounting to “three hundred ninety-eight thousand and eighty-five Pounds ten Shillings” (Article XV). The Equivalent paid off the debts resulting from the failure of the Darien Scheme; it also took account of the contribution which taxpayers in Scotland would henceforth be making towards servicing the English national debt and mitigated the effects on the Scottish economy of higher taxes under the Union. A new flag of Great Britain would be created symbolising the union of the two kingdoms: “the Crosses of St. Andrew and St. George be conjoined in such a manner as her Majesty shall think fit, and used in all Flags, Banners, Standards, and Ensigns, both at Sea and Land” (Article I). Scotland’s “Crown, Scepter, and Sword of State,” with all parliamentary and other records, would remain in Scotland “in all Time coming, notwithstanding of the Union” (Article XXIV).

4. INDEPENDENCE

Having considered the Union we now trace the moves in the direction of independence.

4.1. The Campaign for Independence

It could be argued that the first move towards independence took place in 1713, just six years after the Union. In that year a bill for the repeal of the Union was introduced into Parliament by James Ogilvy, 1st Earl of Seafield. Ogilvy had served as Secretary of State and Lord Chancellor, in which latter capacity he had signed the Act of Union. He had been a commissioner for the Union and a strong supporter of it. He was given a seat in the House of Lords during three separate periods from 1707 as one of the sixteen Scottish Representative Peers but his views changed significantly for he came to believe that the anticipated good effects of the Union had not materialised. Ogilvy moved for the dissolution of the Union but with the continuance in Scotland of the Protestant succession of the House of Hanover. The motion was supported by all the Scottish Lords but was defeated by just four votes.

The modern campaign for Scottish independence began to take shape in the mid-nineteenth century and has continued down to the present day with varying levels of political interest and public support. The most significant event thus far has been the granting a measure of devolution which occurred when a Scottish Parliament was created at the end of the twentieth century.

4.1.1. Events Leading to Devolution

In 1853 a desire for a devolution of control over national affairs led to the formation of the short-lived National Association for the Vindication of Scottish Rights which was associated with the Conservative Party. There was a feeling that the government was giving more support to Ireland than it was to Scotland.

In 1885 the Scottish Office was created and the post of Secretary for Scotland was re-established, having been set up after the Union of 1707 but abolished in 1746 after the Jacobite rebellion. (In 1926 the post was upgraded to Secretary of State for Scotland enjoying full membership in the Cabinet.) When the Irish Home Rule Bill with its proposal of a devolved assembly for Ireland was introduced in 1886 many Scots began to regard the position of their own country as inadequate in comparison and a Scottish Home Rule Association was formed that year. However the Irish Bill was defeated in the House of Commons at its second stage. Although home rule for Scotland was debated in Parliament on a number of occasions over the next thirty years and several bills were introduced they made no progress.

In 1913 a Scottish Home Rule Bill was presented to Parliament and passed its second reading in the House of Commons. However the progress of the Bill, along with the implementation of the Irish Home Rule Act 1914, was halted by the advent of World War I. In 1921 the Scots National League began, a left-wing organisation based originally in London and advocating independence for Scotland. In 1928 it helped to form the National Party of Scotland, a left-of-centre body favouring home rule. This was followed by the formation of the Scottish Party in 1932 which was set up by members of the Unionist Party who supported home rule and wanted to see a Scottish Parliament within the British Empire. In 1934 the National Party and the Scottish Party merged to form the Scottish National Party (SNP) which initially had a devolutionist stance but by 1942 had committed itself to campaign for independence.

During the late 1940s a body called the Scottish Covenant Association organised a petition to the government seeking home rule for Scotland. The signatories to the 'Scottish Covenant'⁶⁴ pledged themselves as follows: "in all loyalty to the Crown and within the framework of the United Kingdom, to do everything in our power to secure for Scotland a Parliament with adequate legislative authority in Scottish affairs." Although by 1950 the petition had been signed by two million individuals or nearly two-fifths of the total population of Scotland it was dismissed by the Labour government of the day, the Labour Party by then having abandoned its previous support for home rule.

Notable by-election victories for both Welsh and Scottish nationalists in the mid-1960s caused the two main political parties to rethink their position, at least temporarily. In 1968 the Conservative Party committed itself to Scottish devolution and in 1970 the Conservative government of the day published the document *Scotland's Government* which recommended that a Scottish assembly be set up. In 1969 the then Labour government established a Royal Commission on the Constitution of the United Kingdom (the Kilbrandon Commission) which reported finally in 1973; by a majority the Commission recommended a devolved legislature for Scotland. In 1978 Parliament passed the Scotland Act which provided for the setting up of a devolved Scottish Assembly with limited powers but made this subject to a referendum in which 40% of the Scottish electorate would have to approve of the provisions of the Act being put into effect. The question asked at the referendum on 1 March was: "Do you want the provisions of the Scotland Act 1978 to be put into effect?" The result was 51.6% in favour but as the turnout was only 63.8% it meant that just 32.5% of the electorate had voted in favour and so the threshold which had been set was not reached.

The Conservative government which was elected in May 1979 was opposed to devolution. The Campaign for a Scottish Assembly was launched in 1980 to keep up the pressure and this body was behind *A Claim of Right for Scotland*,⁶⁵ a document asserting the right of the Scottish people to choose the form of government which best suited them. In 1989 the Scottish Constitutional Convention was established with support from most political parties except the Conservatives (the SNP eventually withdrew because of the Convention's unwillingness to consider independence as an option). Other civic bodies were involved and the Church of Scotland and the Roman Catholic Church were represented: the chairman was an Episcopalian clergyman, Canon Kenyon Wright. In 1995 the Convention published its blueprint for devolution entitled *Scotland's Parliament: Scotland's Right*.⁶⁶

64 Text available at: http://en.wikipedia.org/wiki/Scottish_Covenant

65 Text available at: http://en.wikipedia.org/wiki/Claim_of_Right_1989

66 *Scotland's Parliament: Scotland's Right* (Edinburgh: Scottish Constitutional Convention, 1995), 36 pp.

The Labour Party won the general election in May 1997 with a manifesto which included a commitment to hold a referendum on devolution for Scotland. At the referendum on 11 September 1998 voters were asked their response to two questions: “I agree/I do not agree that there should be a Scottish Parliament” and “I agree/I do not agree that a Scottish Parliament should have tax-varying powers.” The turnout was 60.4% with 74.3% in favour of the first proposal and 63.5% in favour of the second.

4.1.2. The Scottish Parliament

Following the referendum the UK Parliament passed the Scotland Act 1998⁶⁷ which created a Scottish Parliament. The first elections for the new Parliament were held on 6 May 1999 and the Parliament first met on 12 May 1999.

The Scotland Act lists the ‘reserved’ matters for which the UK Parliament continues to hold responsibility. The ‘devolved’ matters on which the Scottish Parliament can act and make laws are therefore all those matters which have not been specifically reserved, namely:

Health

Education and training

Local government

Social work

Housing

Planning

Tourism, economic development and financial assistance to industry

Some aspects of transport, including the Scottish road network, bus policy and ports and harbours

Law and home affairs, including most aspects of criminal and civil law, the prosecution system and the courts

The police and fire services

The environment

Natural and built heritage

Agriculture, forestry and fishing

Sport and the arts

Statistics, public registers and records

Air guns unless classified as “specially dangerous”

Certain forms of taxation (local taxes, such as council tax and non-domestic rates; taxes on land and building transactions; taxes on waste disposal to landfill)

The Scottish Parliament also has powers to vary the standard rate of Income Tax by up to three pence in the pound.

The 1998 Act allowed for some adjustment of the powers belonging to the Scottish Parliament and Government, with the consent of both the Scottish and UK Parliaments. In 2007 the Scottish Parliament established the Commission on Scottish Devolution (the Calman Commission) with the following terms of reference: “To review the provisions of the Scotland Act 1998 in the light of experience and to recommend any changes to the present constitutional arrangements that would enable the Scottish Parliament to serve the people of Scotland better, improve the financial accountability of the Scottish Parliament, and continue to secure the position of Scotland within the United Kingdom.”⁶⁸ The minority SNP government opposed the creation of the Commission, holding a ‘National Conversation’ instead in which the merits of further devolution or independence were considered.

The Calman Commission was accountable to both the Scottish Parliament and the UK Government and

67 Text available at: <http://www.legislation.gov.uk/ukpga/1998/46/contents>

68 Text found at: <http://www.commissiononscottishdevolution.org.uk/about/index.php>

issued its final report entitled *Serving Scotland Better: Scotland and the United Kingdom in the 21st Century*⁶⁹ on 15 June 2009, recommending a further devolution of powers to the Scottish Parliament, including more control over the raising of revenues. Most of its recommendations were incorporated into the Scotland Bill which was introduced into the UK Parliament on 30 November 2010 and having received the legislative consent of the Scottish Parliament on 18 April 2012 and Royal Assent on 1 May became the Scotland Act 2012.⁷⁰ Under the Act the Scottish Parliament has a responsibility for setting a Scottish Rate of Income Tax up to ten pence in the pound different from that elsewhere in the UK.

4.1.3. The Scottish Parliament Election of 2011

At the 2011 Scottish Parliament election the SNP won an overall majority of the seats on a manifesto which included a commitment to hold a referendum on Scottish independence. In the Edinburgh Agreement of 2012 the UK Government and the Scottish Government agreed to make use of the Scotland Act 1998 to allow the Scottish Parliament to legislate for a single-question referendum on Scottish independence with the aim that it should “deliver a fair test and decisive expression of the views of people in Scotland and a result that everyone will respect.” They also committed themselves to continue to work together constructively in the best interests of the people of Scotland and the rest of the United Kingdom, whatever the outcome of the referendum might be.

4.2. The Proposals for Independence

While Scottish independence has long been mooted it is only with the signing of the Edinburgh Agreement and the setting up of a referendum on independence that the drafting of comprehensive proposals for independence has been necessary. The Scottish Government’s White Paper published last November is entitled *Scotland’s Future* and subtitled *Your Guide to an Independent Scotland*.⁷¹

An important point should be made before we consider the proposals in the White Paper. *Scotland’s Future* contains many statements as to what an independent Scottish Government will do. However such promises can only be made with respect to the present administration and therefore the promises must be fulfilled within a very narrow window of opportunity between 14 March 2016 and 5 May 2016: these are the dates of the projected ‘independence day’ followed by the first elections to an independent Scottish Parliament and clearly there is the possibility that the government might change at those elections. Consequently many of the statements in the White Paper must be regarded as less of a case for independence and more of a manifesto by the SNP for the next elections to the Scottish Parliament.

4.2.1. An Overview of the Proposals

Scotland’s Future runs to 649 pages (plus xviii) and begins with a Preface by the First Minister Alex Salmond (pp. viii-xi), an Introduction to the document (pp. xii-xviii) and a Summary of its contents (pp. 1-32). The main content is divided into five parts and ten chapters, as follows: Part 1 contains Chapter 1. The Case for Independence (pp. 35-62); Part 2 contains Chapter 2. Scotland’s Finances (pp. 65-80); Part 3 contains Chapter 3. Finance and the Economy (pp. 83-132), Chapter 4. Health, Wellbeing and Social Protection (pp. 133-80), Chapter 5. Education, Skills and Employment (pp. 181-204), Chapter 6. International Relations and Defence (pp. 205-52), Chapter 7. Justice, Security and Home Affairs (pp. 253-74), Chapter 8. Environment, Rural Scotland, Energy and Resources (pp. 275-306) and Chapter 9. Culture, Communications and Digital (pp. 307-28); Part 4 contains Chapter 10. Building a Modern Democracy (pp. 331-70); Part 5 contains “the answers to 650 questions about independence that have been asked of us” (pp. 373-582). Finally there are five Annexes: A. Scotland’s Constitutional Journey (pp. 583-8); B. Main Devolved and Reserved Responsibilities (pp. 589-94); C. Scotland’s Public Finances (pp. 595-606); D.

69 Text available at:

<http://www.commissiononscottishdevolution.org.uk/uploads/2009-06-12-csd-final-report-2009bookmarked.pdf>

70 Text available at: <http://www.legislation.gov.uk/ukpga/2012/11/contents/enacted>

71 *Scotland’s Future: Your Guide to an Independent Scotland* (Edinburgh: The Scottish Government, 2013). 649 pp (+ xviii) Downloadable at: <http://www.scotland.gov.uk/Publications/2013/11/9348/0>

Equality Considerations (pp. 607-9); E. Other Scottish Government Publications on Constitutional Reform (p. 611). There are also extensive Endnotes (pp. 613-48).

4.2.1.1. *The Purpose of Independence*

The opening chapter of *Scotland's Future* on 'The Case for Independence' indicates the purpose for which independence is being sought:

"The central purpose of independence is to make life better for people living in Scotland." (p. 40)

"There are three over-riding reasons for Scotland to become an independent country. These are:

1. To create a more democratic Scotland
2. To build a more prosperous country
3. To become a fairer society" (pp. 40-4)

"With independence we can create a social nation: a country that acts and feels like a community, a vibrant society where we know the benefits of looking out for each other. Independence is about empowering the people and communities of Scotland as much as it is about empowering our Parliament and government. It will give us the ability, collectively, to choose the path ahead that is right for us and for those we work with and live beside.

Driving our ambition is the firm knowledge that Scotland, and all of the people who live here, should be enjoying the benefits of higher levels of sustainable economic growth. There is so much more we can achieve with all the advantages that we enjoy." (pp. 44-5)

4.2.1.2. *The Transition to Independence*

Scotland's Future gives some indication of the method of achieving independence and the mechanisms which will bring it about:

"Soon after a Yes vote in the referendum, the Westminster and Scottish Parliaments will need to pass legislation to give the Scottish Parliament powers to: declare independent statehood for Scotland in the name of the sovereign people of Scotland; amend the Scotland Act 1998; and extend the powers of the Scottish Parliament and Scottish Government into all policy areas currently reserved to Westminster, in order to make preparations for independence." (p. 52)

"Following a Yes vote, the Scottish Government will negotiate to ensure that Scotland can become an independent country within the EU, with a fair allocation of assets and liabilities between Scotland and the rest of the UK and arrangements to ensure public services continue to be delivered in the interests of the people of both countries." (p. 332)

"Existing constitutional arrangements in Scotland will provide the basis for the transition to independent statehood, with additional powers transferred as soon as possible after the referendum, giving the Scottish Parliament the ability to declare independent statehood for Scotland in the name of the sovereign people of Scotland.

The key legislative steps towards independence will then be taken by the Scottish Parliament, following the initial transfer of responsibilities. As with the referendum, independence will be made in Scotland. Some parallel legislation, dealing with matters relating to the rest of the UK, will be taken forward at Westminster." (p. 338)

We believe that logically and legally independence must involve the repeal of the Acts of Union of 1707 and the revocation of the Treaty of Union of 1706 and yet *Scotland's Future* makes no specific mention of this. In our view this is a significant omission and we are left wondering exactly how such a thing is to be done.

4.2.2. An Analysis of the Proposals

Our particular interest is in any proposals in *Scotland's Future* which may have a bearing on the position of the Christian faith in Scotland and especially on the legal status of the Protestant reformed religion and the Presbyterian establishment. The relevant proposals may be gathered into five subject areas:

4.2.2.1. *The Monarchy*

There are effectively seven statements concerning the monarchy:

“On independence Scotland will be a constitutional monarchy, continuing the Union of the Crowns that dates back to 1603, pre-dating the Union of the Parliaments by over one hundred years. On independence in 2016, Her Majesty The Queen will be head of state.” (p. 22)

“Will we keep The Queen?”

Yes. The Queen will remain head of state in Scotland. An independent Scotland will have a written constitution which sets out how we are to be governed.” (p. 30)

“On independence, Her Majesty The Queen will remain our head of state, just as she is for 16 Commonwealth countries. Scotland will be a constitutional monarchy for as long as the people of Scotland wish us to be so.” (p. 45)

“Legislation during the transition period will put in place a constitutional platform for independence. It will...provide for the continuity of the monarchy in Scotland.” (p. 340)

“On independence Scotland will be a constitutional monarchy, continuing the Union of the Crowns that dates back to 1603, pre-dating the Union of the Parliaments by over one hundred years. The position of Her Majesty The Queen and head of state will form an intrinsic part of the constitutional platform in place for independence in 2016.” (p. 353)

“254. What will the relationship be between an independent Scotland and the rest of the United Kingdom?”

Under our proposals, we will keep our close links of family and friendship through an ongoing social union and will continue to share the Queen as head of state, as 16 Commonwealth countries already do, and we will share the pound as our currency.” (p. 456)

“581. Will the Queen be head of state in an independent Scotland?”

Yes. Scotland will remain a constitutional monarchy with Her Majesty The Queen as head of state. Her Majesty will be succeeded by Her heirs and successors according to law.

As is the case in the UK, if a party in favour of changing this position was to gain enough support to form a government, it would be open to it to propose a change. The current Scottish Government does not support such a change.” (p. 562)

The sum of these statements is that the monarchy will be retained in an independent Scotland but only provisionally: the retention is dependent upon how the constitution develops and ultimately upon the will of the people, however that might be assessed. The SNP's own policy on the matter is somewhat ambiguous. From its inception in 1934 the party was in favour of retaining the monarchy in an independent Scotland but at the SNP conference in 1997 a motion demanding a referendum on the monarchy post-independence was passed by 177 votes to 164.⁷² An SNP document entitled ‘A Constitution for a Free Scotland’⁷³ published in September 2002 declared: “The SNP is committed to holding a referendum in the term of office of the

72 http://www.thinkscotland.org/todays-thinking/articles.html?read_full=12297

73 Text available at:

http://www.constitutionalcommission.org/production/byre/images/assets/file/Resources%20Folder/SNP_2002_text.pdf

first independent Parliament of Scotland on whether to retain the monarchy.” The same year the SNP published a booklet entitled ‘Talking Independence,’⁷⁴ which provided answers to the most common questions asked on independence. It was authored by Dr. Alasdair J. Allan⁷⁵ who is now the MSP for Na h-Eileanan an Iar (formerly known as the Western Isles) and stated: “The constitution which the SNP favours will define the powers of the Monarch, removing a number of her present powers, though she will still confirm Parliament’s nomination of a Prime Minister.... If, in the future, the people of Scotland wished to change these arrangements, they would be free to do so by amending the constitution through a referendum, and it is the SNP’s policy that the issue should be tested by such a referendum once Independence is fully in effect. Ultimately, the decision rests with the people of Scotland.”⁷⁶ However at the SNP conference in 2007 delegates backed a White Paper on independence which stated that: “the current parliamentary and political union of Great Britain and Northern Ireland would become a monarchical and social union – United Kingdoms rather than a United Kingdom – maintaining a relationship first forged in 1603 by the Union of the Crowns.”⁷⁷

Scotland’s Future makes no mention of a referendum on the question of retaining the monarchy but it is certainly the case that among the supporters of independence there are many who want to transform Scotland into a republic; they include many members of the SNP and a number of ministers in the current SNP government.

4.2.2.2. *The Establishment of Religion*

There is only one statement on the establishment of religion in *Scotland’s Future*. (By way of comparison there are thirteen questions and answers on Broadcasting, nine on the National Lottery and six on Sport.) Significantly the statement does not appear as part of the proposals but in answer to one of the questions which have been asked about independence:

“590. What will be the position of churches and religion in an independent Scotland?

We propose no change to the legal status of any religion or of Scotland’s churches.” (p. 564)

While the current government may not be proposing any change to Scotland’s Presbyterian establishment it is a fact, as will become apparent in a later section on the constitution, that in the sort of Scotland envisaged in *Scotland’s Future* there can be no guarantee against alterations affecting even such ancient and familiar institutions. We must regard the retention of our Presbyterian establishment also as a provisional position only.

4.2.2.3. *The Protestant Succession*

The statements on the monarchy and the establishment of religion, with their general message of “no change”, are no doubt meant to offer some reassurance: these institutions will remain, at least for the time being. But are these statements as reassuring as they seem to be? We ask that in light of another statement found in *Scotland’s Future*:

“Earlier this year the rules on succession to the Crown were amended (for Scotland and elsewhere) to remove outdated gender discrimination. An independent Scottish Government will promote, and support amongst the Commonwealth States with the Queen as Head of State, a similar measure to remove religious discrimination from the succession rules.” (p. 354)

The statement is referring to the Succession to the Crown Act which was passed by the UK Parliament on 23 April 2013 and received its Royal Assent two days later. The Act removed so-called “gender discrimination” in that male heirs to the throne born after 28 October 2011 do not now precede their elder sisters in the line of succession. It also repealed the rule under the Act of Settlement whereby marriage to a

74 Text available at: <http://www.scotsindependent.org/features/talking.htm>

75 Publication details found at: https://openlibrary.org/books/OL18581937M/Talking_independence

76 Text available at: <http://www.scotsindependent.org/features/talking18.htm>

77 Text found at: http://www.thinkscotland.org/todays-thinking/articles.html?read_full=12297

Roman Catholic disqualifies a person from succeeding to the throne. The promise in *Scotland's Future* that an independent Scottish Government will promote and support a “measure to remove religious discrimination from the succession rules” must therefore refer to something else in the Act of Settlement – something which was left untouched by the recent Succession to the Crown Act. It must have to do with those sections of the Act of Settlement which bar Roman Catholics from succeeding to the throne.

Over the last twenty years an alliance has developed between the Roman Catholic Church in Scotland and the SNP and high on its agenda is the repeal of the Act of Settlement. At the Monklands East by-election on 30 June 1994 the victorious Labour candidate alleged that the SNP candidate had “played the Orange card”⁷⁸ during the campaign and shortly afterwards the SNP leader Alex Salmond sought a meeting with Thomas Winning, Roman Catholic Archbishop of Glasgow. The contact led to a close political friendship which has proven to be mutually beneficial. Within a matter of months, on 28 April 1995, Salmond made a speech at Stirling University in which he said it was “a scandal of immense proportions” that no Roman Catholic could take the throne or marry the heir to it and indicated that the SNP would make a clean break with such discrimination.⁷⁹

Shortly after it was re-established in 1999 the Scottish Parliament debated a motion on the Act of Settlement in the name of Michael Russell, an SNP member. The Parliament came to the following resolution on the subject: “That the Parliament believes that the discrimination contained in the Act of Settlement has no place in our modern society, expresses its wish that those discriminatory aspects of the Act be repealed, and affirms its view that Scottish society must not disbar participation in any aspect of our national life on the grounds of religion, recognises that amendment or repeal raises complex constitutional issues, and that this is a matter reserved to UK Parliament.”⁸⁰

In January 2001 Winning, now a Cardinal, wrote an article for the *Scottish Catholic Observer* in which he repeated words of the former Scottish Secretary Michael Forsyth, describing the Act of Settlement as “the ‘grubby little secret’ which shames our nation.”⁸¹ In February 2005 his successor Keith O’Brien called for the repeal of the Act of Settlement. Pointing out that the Scottish Executive was in the process of examining the causes and effects of sectarianism he said: “The time may be opportune to examine the impact of existing blatant anti-Catholic legislation.”⁸² O’Brien’s call was echoed the following week by Alex Salmond who had returned to the leadership of the SNP in 2004 after a gap of four years: dismissing as tokenism the recent ‘summit to end sectarianism’ which had been held by the Labour-run Scottish Executive he said that the Act of Settlement “sanctifies religious bigotry”.⁸³ On 17 June 2006 it was announced that Alex Salmond and Cardinal O’Brien had agreed a pact to campaign together against the Act. A spokesman for Salmond said: “Both agreed to work at ending the poison and hatred sectarianism brings to Scotland. That is why it is so important that the Act of Settlement is abolished because sectarianism is inherent in the Act.”⁸⁴

In June 2007, shortly after he became First Minister, Alex Salmond told the *Scottish Catholic Observer* that the Act of Settlement was “a blot on our culture” and that he had agreed to hold discussions on its repeal with Gordon Brown as soon as he became Prime Minister.⁸⁵ However nothing came of this at the time, principally because the position the monarch occupies as head of the Church of England makes the matter

78 Stuart, Mark, *John Smith. A Life* (London: Politico’s, 2005), p. 392

79 Text found at:

<http://archive.thetablet.co.uk/article/6th-may-1995/29/snp-would-end-anti-catholic-bias-the-scottish-nati>

80 Text available at: <http://www.scottish.parliament.uk/parliamentarybusiness/28862.aspx?r=4200>

81 Text found at: http://www.rcag.org.uk/documents/cardinal_actofsettlement.pdf

82 Text found at: <http://archive.thetablet.co.uk/article/19th-february-2005/41/church-call-to-repeal-act-of-settlement>

83 Text found at: <http://www.theguardian.com/politics/2005/feb/20/scotland.religion>

84 Text found at:

<http://www.scotsman.com/news/politics/top-stories/salmond-joins-o-brien-to-campaign-against-shameful-act-of-settlement-1-1412721>

85 <http://www.heraldscotland.com/salmond-will-raise-issue-of-act-of-settlement-with-new-pm-1.842579>

very complex. The abolition of the Act would produce a momentum towards disestablishment of the Church of England for if a Roman Catholic occupied the throne then he or she would not be able to serve as ‘Supreme Governor’ of the Church of England, a rôle which the monarch has filled since 1534.

On 5 February 2010 Pope Benedict XVI addressed the Bishops’ Conference of Scotland and said: “The Church in your country, like many in Northern Europe, has suffered the tragedy of division. It is sobering to recall the great rupture with Scotland’s Catholic past that occurred four hundred and fifty years ago. I give thanks to God for the progress that has been made in healing the wounds that were the legacy of that period, especially the sectarianism that has continued to rear its head even in recent times.”⁸⁶ According to Rome the blame for ‘sectarianism’ lies squarely at the door of the Reformation. In her eyes the problem in Scotland is actually ‘anti-Catholicism’. Sadly it would appear that Alex Salmond – and presumably the SNP – agree.

The attempt to link the Act of Settlement with sectarianism was repeated by Cardinal O’Brien on 18 May 2011. Shortly before the Offensive Behaviour at Football and Threatening Communications (Scotland) Bill was introduced into the Scottish Parliament O’Brien called for the repeal of the Act, insisting that it was hampering efforts to curb sectarianism and claiming that it amounts to sectarianism just as much as chanting bigoted songs on the football terraces.⁸⁷

Given all this it is no surprise that Professor Tom Devine, a leading Scottish historian, was able to claim on 9 March this year at a public meeting as part of Coatbridge St Patrick’s festival that Scots of an Irish-Catholic background are more likely to vote for independence in the forthcoming referendum than those who identify with the Church of Scotland or profess no religion.⁸⁸

As we saw in our section on the monarchy *Scotland’s Future* proposes that after independence, “Her Majesty will be succeeded by Her heirs and successors according to law.” (p. 562) The question is *which* law? Is it the law of the United Kingdom or the law of an independent Scotland? After ‘independence day’ it must surely be the latter. Thus the document ‘A Constitution for a Free Scotland’ referred to in our section on The Monarchy stated: “The Head of State shall be Queen Elizabeth and her successors as determined by the law of Scotland, acting in right of Scotland.”

If the monarch is to hold title in Scotland according to the law of Scotland then presumably an independent Scottish Parliament could at some point alter the law of Scotland as it relates to succession to the throne by removing from the Act of Settlement the proscriptions against Roman Catholics inheriting the Crown. But such a step, unless accompanied by corresponding action in the Westminster Parliament – which is highly unlikely while the monarch is designated ‘Supreme Governor’ of the Church of England and required to “join in communion with the Church of England” – and in those Commonwealth countries which have the Queen as their head of state might well lead to a unilateral rewriting of the Coronation Oath in Scotland to remove the monarch’s pledge to uphold the Protestant reformed religion in Scotland. The joint monarchy which is envisaged post-independence would obviously require agreed rules of succession: it might also require a dual coronation or even separate coronations.

4.2.2.4. *The Constitution*

In many ways the most radical proposals contained in *Scotland’s Future* are those which concern the constitution of a future independent Scotland. The clear intention is that after the first election to an independent Scottish Parliament a new written constitution will be produced:

“A key responsibility of the first parliament of an independent Scotland will be to put in place a written

86 *Address by Pope Benedict XVI to the Bishops’ Conference of Scotland*. Text found at: <http://www.scmo.org/articles/pope-benedict-xvi-confirms-he-will-visit-scotland.html>

87 <http://www.bbc.co.uk/news/uk-scotland-13449886>

88 <http://www.irishpost.co.uk/news/irish-scotlands-struggle-recognition-debated-coatbridge>

constitution to underpin the democratic gains of independence. A written constitution will be a significant step forward for an independent Scotland. It will replace the central principle of the UK constitution – the absolute sovereignty of the Westminster Parliament – with the sovereignty of the people of Scotland, which has been the central principle in the Scottish constitutional tradition.” (pp. 334-5)

“The creation of a written constitution will be an important development for Scotland. A written constitution is more than a legal document. It is a statement of intent for the nation. The process of coming together to develop, draft and approve such a document is an important part of defining the sort of nation we wish Scotland to be.” (p. 337)

“The constitution of a country defines who makes decisions on behalf of its people and how the people choose those decision-makers and influence their decisions. A constitution is the basis of everyday life, not separate from it. It sets out the rights of citizens and the rôle of government. It defines how decisions are made about spending on health and welfare, about the laws of the land and about peace and war.

A written constitution should also set out the aspirations we have for our country and our vision for the future.

One of the first and most fundamental tasks of the parliament of an independent Scotland will be to establish the process for preparing Scotland’s first written constitution through an open, participative and inclusive constitutional convention. A written constitution should be designed by the people of Scotland, for the people of Scotland.

The process by which Scotland adopts a written constitution is as important as its content. The process will ensure that it reflects the fundamental constitutional truth – that the people rather than the politicians or state institutions, are the sovereign authority in Scotland.” (p. 351)

“A constitutional convention will ensure a participative and inclusive process where the people of Scotland, as well as politicians, civic society organisations, business interests, trade unions, local authorities and others, will have a direct rôle in shaping the constitution.” (p. 352)

“Many voices will contribute to the debate and help shape the content of Scotland’s written constitution. Key equality and human rights principles, including the requirements of the European Convention on Human Rights (ECHR), would be embedded in the written constitution. Beyond those there are certain provisions that the present Scottish Government will propose for consideration by the constitutional convention:

- equality of opportunity and entitlement to live free of discrimination and prejudice
- entitlement to public services and to a standard of living that, as a minimum, secures dignity and self-respect and provides the opportunity for people to realise their full potential both as individuals and as members of wider society
- protection of the environment and the sustainable use of Scotland’s natural resources to embed Scotland’s commitment to sustainable development and tackling climate change
- a ban on nuclear weapons being based in Scotland
- controls on the use of military force and a rôle for an independent Scottish Parliament in approving and monitoring its use
- the existence and status of local government
- rights in relation to healthcare, welfare and pensions
- children’s rights
- rights concerning other social and economic matters, such as the right to education and a Youth Guarantee in employment, education or training” (pp. 352-3)

It is obvious that every state must have a constitution of some sort. The United Kingdom does not have a

written constitution in the sense of a single document which embodies all its principles and is referred to as 'the constitution' (New Zealand and Israel are the same in this respect, although the former has a Constitution Act covering the monarchy, government, parliament and the judiciary). However the UK certainly has a constitution – one which is continually being defined and refined by acts of its Parliament and decisions of its law courts. Ironically perhaps the closest the UK has ever come to a written constitution of the type planned in *Scotland's Future* is the Treaty of Union of 1707.

It would appear from the statements in *Scotland's Future* that at the point at which independence occurs there will be no written constitution in place: it will be drawn up afterwards by the proposed constitutional convention. How the final text will be determined is unspecified: we presume that the Scottish Parliament will have the last word as there is no mention of subjecting the constitution to a referendum. There is also the question of how any new constitution will be amended. Again *Scotland's Future* does not refer to this but the document 'A Constitution for a Free Scotland' envisaged that the constitution might be amended by a majority of three-fifths of the membership of the Scottish Parliament followed by a national referendum in which a majority vote in favour of the proposed measure.

A further development took place on 24 March this year when the deputy First Minister Nicola Sturgeon announced that a draft Scottish Independence Bill, including an interim Scottish constitution, will be released for consultation before the Scottish Parliament enters its summer recess on 28 June.

4.2.2.5. *Other Matters*

We refer finally to some other matters in *Scotland's Future* which are of particular interest to us as Christians.

Abortion

Although health is a devolved matter abortion policy is a reserved matter. There is one reference to abortion:

"211. What will the law on abortion be in an independent Scotland?

On the principle of continuation of existing law, current legislation on abortion will continue to apply within an independent Scotland until such times as that legislation is amended or repealed by the Parliament of an independent Scotland. There are no plans to change the current abortion time limit." (p. 442)

Sadly it seems as though the removal of this shameful blot upon our nation is not a priority or even a desire of those who are leading the moves for independence: it looks likely that the killing of innocent children in their mothers' wombs will continue.

Charities

Among the questions regarding charities this is perhaps of the greatest interest:

"649. Will charities continue to benefit from relief on charitable donations after independence?

Yes. The current Scottish Government will ensure that charities continue to benefit from tax relief on charitable donations." (p. 581)

Civic Society

There are several statements concerning civic society, the following one being the most significant:

"Business philanthropists, churches, co-operatives and mutuals, trade unions, charities and many other organisations and individuals have contributed significantly to the Scotland we know today. ...Civic groups and voluntary groups have been particularly important in shaping Scotland's approach to major issues such as violence against women, community ownership and shifting attitudes on matters such as same sex marriage and independent living for disabled people." (pp. 368-9)

We view the church as unique among the many organisations to be found in this world, being the creation of Jesus Christ by His Spirit and existing for the worship of God to all eternity. *Scotland's Future* would appear to regard the church as just another element of Scotland's civic society alongside all the rest.

We find the approving reference to the rôle of civic groups and voluntary groups in “shifting attitudes to matters such as same sex marriage” quite disturbing. It would be of interest to know how, in a future independent Scotland, those churches which do *not* share the apparent enthusiasm of the rest of ‘civic society’ for something like same sex ‘marriage’ will be regarded. Will they continue to enjoy the freedom, according to our historic religious and civil liberties, to oppose homosexual unions, believing according to the Bible that they are sinful? Will they be permitted, by the law of the land, to try to shift attitudes to homosexual unions in a negative direction without incurring any penalty?

Denominational Schools

There is one question on denominational schools:

“230. What will independence mean for denominational schools?

The present system will continue. Faith-based education makes an important and valued contribution to Scottish society and the right of parents to make that choice for their children will remain.” (p. 448)

By “denominational schools” is really meant Roman Catholic schools for they make up 99% of such schools in Scotland. It is strange how a government which insists that it wants an ‘inclusive’ society (see references e.g. on pp. 162, 254, 271 & 494 of *Scotland's Future*) is content with the situation which has existed since the Education (Scotland) Act 1918 of separate Roman Catholic state schools fully funded by the state. Indeed the First Minister Alex Salmond has been fulsome in his praise for Roman Catholic education. Speaking at the Cardinal Winning Education Lecture on 2 February 2008 he said: “What the 1918 Act introduced was an unprecedented concordat between church and state in the provision of education. I’m not sure that it has been paralleled elsewhere.” That the First Minister should use the term ‘concordat’ is significant: it stands historically for agreements reached between the Holy See and sovereign states whereby recognition is granted to Rome and her interests, including in secular matters. Salmond concluded his speech by saying: “Today I am proud to join with you in celebrating the particular contribution of Catholic schools to our society. To our education system. And to this country. ...From today’s perspective, we can see the Education Act of 1918 as a huge positive step in the history of this nation of Scotland. I see every reason to expect us to be celebrating its full century in another ten years’ time. I look forward to many more years of successful partnership between us. And you know that you will always have my support – and the support of my government.”⁸⁹

While the Roman Catholic Church enjoys generous treatment from the state for her separate education system the Protestant Church receives no such favours. In her schools Rome is able to promote her beliefs unhindered whereas in non-denominational state schools secular values are fast replacing biblical ones to the consternation of Christian parents — yet the government refuses to provide any funding for schools which concerned Christians may wish to establish. It seems that this inequity is set to continue under independence.

Equality and Human Rights

The following statements are made on the subject of equality and human rights:

“It has been common in modern democratic states for equality and human rights to be treated as distinct and different spheres of concern by national governments, international institutions and civil society. While we recognise this, we also see the right to equality and protection from discrimination as integral parts of human rights in a modern society, and human rights as a fundamental part of a truly democratic state.” (p. 356)

89 Text found at: <http://www.scotland.gov.uk/News/Speeches/Speeches/First-Minister/cardwinlecture>

“Following independence, full powers also offer Scotland scope to consider strengthening or extending equality and human rights legislation and to develop an enforcement and promotion infrastructure which considers the appropriate alignment of equality and human rights. As a government we would develop any future changes in full consultation with the people of Scotland, including with the Third Sector, public authorities, businesses, trade unions and equality communities.” (p. 357)

“If in government in an independent Scotland we will ensure that Scotland’s institutions have equality and diversity at the heart of their governance. We will expect public and private institutions to improve the diversity and gender balance of their governance.” (p. 359)

It is evident from these statements that the types of ‘equality’ and ‘human rights’ which are likely to feature in an independent Scotland are not those which have characterised our nation to date. One wonders, for instance, what is meant by “equality communities”? Also when it is said that “private institutions” will be expected to “improve the diversity and gender balance of their governance” is there an implicit threat here to churches and other Christian organisations which follow the Bible’s teaching on male headship and therefore exclude women from office?

Flag

There is one question and answer about Scotland’s flag:

“586. What will Scotland’s flag be and what will happen to the Union Flag?

Scotland’s national flag will remain the Saltire or Cross of St. Andrew. It will be for the rest of the UK to decide what its flag will be. It is possible for the rest of the UK to retain the Union Flag if that is what it wants.

The Union Flag, the first version of which dates from 1606 – before the political union of 1707 – could be used in Scotland as people think fit. For example, the Union Flag is flown in some Commonwealth countries along with the country’s own national flag.” (p. 563)

Flags are symbols which indicate an identity and inspire a loyalty. Presumably the expectation is that the loyalty of citizens in an independent Scotland will be to Scotland rather than to what may remain of the United Kingdom.

National Anthem

There is also one question and answer on Scotland’s national anthem:

“588. What will Scotland’s national anthem be?

A decision on Scotland’s official national anthem will be for the first Scottish Parliament of an independent Scotland following consultation with the people of Scotland.

Songs such as ‘Flower of Scotland’ and ‘Scots Wha Hae’ will continue to be sung as unofficial national anthems in the meantime.” (p. 564)

National anthems tell us something about countries and their sympathies, including their religious ones. The present anthem of the United Kingdom, “God Save the Queen”, refers to God in all three verses of the standard version, being couched in the form of a prayer for divine blessing upon the monarch as representing the nation. While it remains to be seen what sort of national anthem the Scottish Parliament would decide upon in the event of independence our fear must be that in the present climate it is unlikely to be one which makes any mention of the Lord.

Nationality

On nationality itself there are a number of statements which indicate what is planned for those who live in Scotland should the country become independent:

“At the point of independence, this Government proposes an inclusive model of citizenship for people whether or not they define themselves as primarily or exclusively Scottish or wish to become a Scottish

passport holder. People in Scotland are accustomed to multiple identities, be they national, regional, ethnic, linguistic or religious, and a commitment to a multicultural Scotland will be a cornerstone of the nation on independence.

We plan that British citizens *habitually resident* in Scotland on independence will be considered Scottish citizens. This will include British citizens who hold dual citizenship with another country. Scottish born British citizens currently living outside of Scotland will also be considered Scottish citizens.” (p. 271)

“375. Must I be a Scottish citizen? Can I opt out of Scottish citizenship and retain my British citizenship? Our proposals will allow people to opt out of Scottish citizenship. However, under international law, when setting nationality rules a country has a duty to avoid making people stateless. Therefore, those people who would automatically be considered a Scottish citizen will only be able to opt out if they already hold citizenship of another nation.

British nationality rules will be a matter for the rest of the UK. Should you qualify for British citizenship under the rest of the UK’s rules post-independence then you will be able to opt out of Scottish citizenship or hold dual citizenship. Information on how to opt out will be made available before independence. We aim to keep the process simple yet robust.” (p. 497)

“376. Can I have both Scottish and British citizenship?

Our proposals for citizenship in an independent Scotland are based upon an inclusive model and will include dual citizenship, recognising our shared history with the UK. We will not place obstacles in the way of individuals holding Scottish citizenship alongside British or any other citizenship.

The UK allows dual or multiple citizenship for British citizens. If a British citizen acquires citizenship and a passport of another country, this does not affect their British citizenship, right to hold a British passport or right to live in the UK. It will be for the rest of the UK to decide whether it allows dual UK/Scottish citizenship, but if Westminster decided that Scottish citizens could not also be UK citizens it would be inconsistent with its approach to every other country.” (p. 497)

It appears that British subjects resident in Scotland at the time of independence will be able to choose whether they wish to be Scottish citizens, British citizens or both.

5. THE ECCLESIASTICAL OPINION

As indicated in our Introduction the church has not been silent on the question of Scotland’s political status and in this section we look at ecclesiastical opinion on the Union and Independence.

5.1. The Church and the Union

The church’s attitude to the Union may be divided into how the prospect of the Union was regarded and how the Union has been viewed since it occurred.

5.1.1. Before the Union

The General Assembly of the Church of Scotland was in session when the commissioners for union began their meetings in 1706. In its concluding Act the Assembly appointed a Solemn National Fast, part of the purpose being that prayers should be offered for those “commissioned both in this [Kingdom] and the Kingdom of England, for treating about a union of both kingdoms, that all may be done to the glory of God and the good of this Church, and all her Majesty’s dominions.”⁹⁰

The concern of Presbyterians in general was that the Church of Scotland would suffer in a union where English Episcopalians would dominate the legislature, Anglican bishops having a permanent presence in the House of Lords. Conversely while Scottish Episcopalians were of the view that if a union took place on

90 Text available at: <http://www.british-history.ac.uk/report.aspx?compid=60108#s20>

suitable terms they would gain support from the Church of England in their efforts to regain their previous ascendancy in Scotland they were also anxious that if the terms of union confirmed the existing Presbyterian establishment then their aims would be frustrated forever.

Ultimately the strongest opposition to the Union came from two contrasting and mutually-opposed parties – the Jacobites and the Cameronians. The Jacobites remained loyal to the main Stuart line in exile and opposed the Treaty of Union because a Protestant throne and Presbyterian establishment were integral to it, ruining their hopes of restoring the Stuart dynasty. The Jacobites constituted an ongoing threat to the new British state and from 1708 they organised a series of attempted invasions or uprisings to place James Francis Edward Stuart (the ‘Old Pretender’) on the throne as ‘James VIII and III’, notably the one which took place in 1715. Eventually the economic benefits of the Union began to be felt in Scotland and the final Jacobite rising of 1745, in favour of James’s son Charles Edward Stuart (‘Bonnie Prince Charlie’, the ‘Young Pretender’), though it was a serious threat for a time failed to gain widespread support, the Jacobite forces being finally vanquished at the Battle of Culloden on 16 April 1746. After this last significant challenge to the Union was defeated the Presbyterian church was secure and Scotland became more reconciled to the Union.

The Cameronians opposed the Union because although it secured Presbyterianism in Scotland it also preserved Prelacy in England – something they viewed as a betrayal of the Solemn League and Covenant with its requirement “to promote the reformation of religion in the kingdoms of England and Ireland” and “to endeavour the extirpation of Popery and Prelacy.” As the prominent anti-Union minister James Webster of Edinburgh wrote, while the Covenant obliged its signatories to “reform England in worship and government” the Union would lay an “eternal embargo upon all such endeavours.”⁹¹ The binding obligation of the Covenants had effectively been passed over by the state since the Restoration of 1660 and the Covenants were not revived after the Revolution of 1688 or subsequently.

When the contents of the proposed Treaty of Union were published in October 1706 there was considerable popular unrest in parts of Scotland. Demonstrations were staged outside the Scottish Parliament and there was daily rioting in Edinburgh which spread to Glasgow by early November. In towns which were strongly Presbyterian in sympathy the text of the Treaty was burned at the town crosses. One example occurred on 20 November when three hundred armed Cameronians entered Dumfries, ceremonially burning the articles of union as “utterly destructive of the nation’s independency, crown rights, and our constitute laws, both civil and sacred.”⁹² As the threat of disorder, violence and even armed revolt increased the Parliament issued a series of proclamations on 25 October,⁹³ 29 November⁹⁴ and 27 December⁹⁵ against meetings described variously as “tumultuary”, “irregular” and “illegal”.

A total of 96 anti-union petitions, predominantly from the west of Scotland, were submitted to the Scottish Parliament prior to the passing of the Acts of Union. Taking Scotland as a whole between November 1706 and January 1707 a total of 15 shires (out of 34), 22 royal burghs (out of 66), 9 towns (number not known), 67 parishes (out of 938) and 3 presbyteries (out of 68) petitioned the Parliament, some jointly and many using a template which indicated opposition to an incorporating union.⁹⁶

The Commission of Assembly submitted three petitions to the Parliament. The first was the address “for

91 Webster, James, *Lawful Prejudices against an Incorporating Union with England; or Some Modest Considerations on the Sinfulness of this Union, and the Danger Flowing from it to the Church of Scotland* (Edinburgh: 1707), pp. 4-5

92 Ferguson, William, *Scotland’s Relations with England: A Survey to 1707* (The Saltire Society, 1977), p. 268

93 Text available at: <http://www.rps.ac.uk/trans/1706/10/9>

94 Text available at: <http://www.rps.ac.uk/trans/1706/10/36>

95 Text available at: <http://www.rps.ac.uk/trans/1706/10/62>

96 Information found in: *Aiming High in Higher Scottish History: a Conference for Teachers and Learners. The Treaty of Union Session II*. Dr Karin Bowie. 1 December 2012. Available at: http://www.gla.ac.uk/media/media_248884_en.pdf

establishing and confirming the true Protestant religion and government of the church”⁹⁷ (referred to already in connection with the Act of Security) which was heard on 17 October 1706. Then on 8 November a petition of the Commission of Assembly “representing several difficulties in relation to some of the articles of union, and craving suitable remedies”⁹⁸ was read. Finally on 15 November a petition “representing the increase of popery, profanity and other irregularities, and craving the same may be restrained and that the succession to the crown may be established in the Protestant line”⁹⁹ was read.

To some extent the different ecclesiastical viewpoints were reflected in the Parliament. The largest grouping was the Court party which traditionally supported the Crown and was in favour of union with England. The Country party was against union, advocating Scottish interests over against English. The Cavalier party was also against union but was composed of Jacobites and often disagreed with the Country party. The small New party consisted mainly of Presbyterian nobles and held the balance, eventually coming down on the side of union. In the end the Court party won every vote on the Treaty.

The divided nature of the opposition to the Union, with the various ecclesiastical interests and political groupings having widely-differing and indeed conflicting reasons for their stance, meant that no concerted campaign could be mounted against the proposals for union. William Hetherington states: “In this we cannot but see the hand of a superintending Providence, bringing order out of chaos, and over-ruling the elements of danger to the production of peace and safety.”¹⁰⁰ Crucially when the Parliament passed the Act of Security much of the Presbyterian opposition to the Treaty within and without the Parliament began to subside.

5.1.2. After the Union

In 1744, nearly forty years after the Union, John Willison made the following arresting statement concerning the Church of Scotland: “her degeneracy and defection have of late years become too visible; and our union with England, in 1707, may be looked upon as the chief source thereof, next to the corruption of our hearts.”¹⁰¹ The reason for Willison’s comments lay chiefly in the fact that in the years immediately following the Union there were two Acts of Parliament which infringed the terms of Union and caused much disquiet within the Church. The first granted religious toleration to episcopalians and the second gave approval to lay patronage.

The Scottish Episcopalian Act (1712)¹⁰² (Toleration Act)

In 1709 a case arose in Edinburgh where James Greenshields, who had been ordained after the abolition of episcopacy at the Revolution Settlement, opened an episcopalian place of worship. The Presbytery of Edinburgh found him not qualified to minister within their bounds. The civil courts sanctioned the finding but Greenshields appealed to the House of Lords which found in his favour on 1 March 1711.

The Greenshields case led to the Scottish Episcopalian Act or ‘Toleration Act’. On 21 January 1712 a Bill was introduced to Parliament “to prevent the Disturbing of those of the Episcopal Communion in Scotland in the Exercise of their Religious Worship, and in the Use of the Liturgy of the Church of England.” A clause was added requiring the Oath of Abjuration to be taken by all holders of public office in Scotland, meaning that it was imposed on all ministers, both Episcopalian and Presbyterian. The Oath was contained

97 Text available at: <http://www.rps.ac.uk/trans/1706/10/18>

98 Text available at: <http://www.rps.ac.uk/trans/1706/10/47>

99 Text available at: <http://www.rps.ac.uk/trans/1706/10/66>

100 Hetherington, William M., *History of the Church of Scotland: From the Introduction of Christianity to the Period of the Disruption* (Edinburgh: John Johnstone, 1843), pp. 580-1

101 Willison, John, *A fair and impartial testimony: essayed in name of a number of ministers, elders, and Christian people of the Church of Scotland, unto the laudable principles, wrestlings and attainments of that Church; and against the backslidings, corruptions, divisions, and prevailing evils, both of former and present times*. In: *The Practical Works of the Rev. John Willison* (Glasgow: Blackie and Son, n.d.), p. 899

102 Text available at: <http://www.legislation.gov.uk/apgb/Ann/10/10>

in the Security of the Succession Act 1702¹⁰³ passed by the English Parliament: it demanded loyalty to the Protestant succession and a rejection of the pretended James III's claim to the English throne. Presbyterians objected to the Oath, not because it required them to abjure the Stuart dynasty but because they believed that it required them to submit to the principle that the heirs to the throne must be members of the Church of England.

On 5 March the Commission of Assembly made representations to the Queen on the Toleration¹⁰⁴ and the Oath,¹⁰⁵ maintaining them to be contrary to the Treaty and Articles of Union. Despite this and other protests the Act was passed, leading the General Assembly to make a further representation regarding the Oath¹⁰⁶ on May 14, on the same ground as previously. Resistance on the part of many ministers in the years following and a yet further representation by the Assembly led to the objectionable terms of the Oath of Abjuration being amended by the Religious Worship Act 1718.¹⁰⁷

While the Toleration Act purported to grant a legal toleration to Episcopalian dissenters in Scotland by repealing acts of the Scottish Parliament which subjected them to the jurisdiction of Presbyterian church courts Presbyterians understood what lay behind it. William Hetherington comments on the framers of the Act: "They wished for toleration that they might obtain ascendancy. They were anxious to open Episcopalian chapels, only that they might soon have it in their power to shut Presbyterian churches. And they were eager to overthrow the Presbyterian Church, because they knew that the principles of religious and civil liberty had there obtained a safe retreat, till they issued forth triumphantly at the Revolution, which they wished to destroy, driving from the throne the popish tyrant, whose lawless despotism they were conspiring to restore."¹⁰⁸

The Church Patronage (Scotland) Act (1712)¹⁰⁹

On 14 April 1712 Parliament passed the Church Patronage (Scotland) Act, which had the long title, "An Act to restore the Patrons to their ancient Rights of presenting Ministers to the Churches vacant in that Part of Great Britain called Scotland." The effect of the Act was to return the Church to the position it had been in following the passing of the General Assembly Act in 1592. Before the Act was passed the Commission of Assembly made a representation to the Queen,¹¹⁰ maintaining patronage to be contrary to the Church's Presbyterian constitution secured by the Treaty of Union, and from 1712 until 1784 the General Assembly made an annual plea to Parliament for its abolition.

William Hetherington, writing in 1841, made this comment on the Patronage Act: "it was manifestly contrary to the Act of Security, and therefore was either essentially and necessarily invalid, then and for ever, or to whatsoever extent its validity might be supposed to reach, to that extent it was a repeal of the Union, and a deadly stab to the British constitution; and its consequences as subsequent times have too amply testified, have been and are fatally pernicious to the spiritual integrity and the national usefulness of the Church of Scotland. That it must be swept away sooner or later, is absolutely certain."¹¹¹

103 Raithby, John (Ed.), *The Statutes at Large, of England and of Great-Britain: from Magna Carta to the Union of the Kingdoms of Great Britain and Ireland*, Vol. VII (London: 1820), pp. 747-50

104 Text available at: <http://www.british-history.ac.uk/report.aspx?compid=60114#s11>

105 Text available at: <http://www.british-history.ac.uk/report.aspx?compid=60114#s17>

106 Text available at: <http://www.british-history.ac.uk/report.aspx?compid=60114#s18>

107 Pickering, Danby, *The Statutes at Large, From the Fifth to the Ninth Year of King George I*, Vol. XIV (Cambridge, 1765), p. 15

108 Hetherington, William M., *History of the Church of Scotland: From the Introduction of Christianity to the Period of the Disruption* (Edinburgh: John Johnstone, 1843), p. 600

109 Stephens, Archibald J., *The Statutes relating to the Ecclesiastical and Eleemosynary Institutions of England, Wales, Ireland, India, and the Colonies; with the Decisions thereon*, Vol. I (London: John W. Parker, 1845), pp. 702-4

110 Text available at: <http://www.british-history.ac.uk/report.aspx?compid=60114#s11>

111 Hetherington, William M., *History of the Church of Scotland: From the Introduction of Christianity to the Period of the Disruption* (Edinburgh: John Johnstone, 1843), pp. 609-10

Principal Robert Story of Glasgow wrote concerning the two offending Acts: “The toleration of Episcopalians and the restoration of patronage were...advocated for the sole purpose of regaining their lost ascendancy to the Episcopalians and Jacobites of Scotland.... The religious and political interests were again inextricably woven; and behind the shield of the toleration of Episcopal worship, the bigotry and monarchical fanaticism of the Jacobites strove to inflict a fatal wound on the rights secured to Scotland by the Revolution.”¹¹²

In the early nineteenth century the strength of the evangelical party in the Church of Scotland increased and in 1834 the General Assembly legislated on ministerial calls, passing the Veto Act¹¹³ which opened with the declaration, “that it is a fundamental law of this Church, that no pastor shall be intruded on any congregation contrary to the will of the people.” The Act instructed Presbyteries to reject any person for a call where the majority of “male members of families...in full communion with the Church” disapproved of that person. Shortly afterwards a probationer was presented to the parish of Auchterarder but was overwhelmingly rejected by the congregation. The patron appealed to the higher courts without success and then took legal action. On 8 March 1838 the Court of Session pronounced its judgement. It overruled the Veto Act, declaring the Church to have acted *ultra vires*. Further cases followed in connection with settlements in Lethendy and Marnoch and the tension between church and state escalated, leading eventually to the Disruption of 1843 and the formation of the Free Church of Scotland.

It is significant that in asserting the Church’s sole jurisdiction in ministerial calls and settlements those who opposed the practice of patronage were able to appeal not only to the law of the land and the constitution of Scotland but also to the Treaty of Union. The twin principles of the Church’s spiritual independence and the duty of the civil magistrate to protect this had been recognised by the Revolution Settlement and were guaranteed by the Act of Security which was incorporated in the Treaty of Union.

Two important constitutional documents of the Free Church, namely the *Claim, Declaration and Protest* of 1842¹¹⁴ and the *Protest* of 1843¹¹⁵, refer to the Treaty of Union on numerous occasions. The first document, which was enacted by the General Assembly in the year before the Disruption, concerned the encroachments of the Court of Session and affirms in its opening section that the “liberties, government, jurisdiction, discipline, rights, and privileges” of the Church of Scotland are “unalterably settled by the Treaty of Union.” The second document, which was enacted by the reconstituted General Assembly immediately after the Disruption, expresses the view that the state “by the acts of the Parliament of Scotland, for ever and unalterably secured to this nation by the Treaty of Union,” had repudiated any power in the Civil Courts to pronounce “decrees as to matters spiritual and ecclesiastical.” Another document, the *Catechism on the Principles and Constitution of the Free Church of Scotland*,¹¹⁶ which was sanctioned by the General Assembly in 1847, states that the Act of 1712 restoring Patronage was “a breach of the Union Treaty” (Q.215) and indeed “broke the Treaty of Union” (Q.199).

The right of Church of Scotland congregations to elect their own ministers was finally granted when Parliament passed the Church Patronage (Scotland) Act 1874¹¹⁷ which had the effect of repealing the Act of 1712. The Act stated: “The right of electing and appointing ministers to vacant churches and parishes in Scotland is hereby declared to be vested in the congregations of such vacant churches and parishes

112 Story, Robert H., *William Carstares* (London: 1874), p. 328

113 Text available at: <http://www.british-history.ac.uk/report.aspx?compid=60236#s13>

114 Claim, Declaration, and Protest, anent the Encroachments of the Court of Session. In: *The Subordinate Standards and other Authoritative Documents of the Free Church of Scotland* (Edinburgh: Free Church of Scotland, 1933), pp. 339-53

115 Protest by those Commissioners to the General Assembly appointed to meet on 18th May 1843, by whom this Assembly was constituted. In: *The Subordinate Standards and other Authoritative Documents of the Free Church of Scotland* (Edinburgh: Free Church of Scotland, 1933), pp. 354-7

116 *Catechism on the Principles and Constitution of the Free Church of Scotland* (Edinburgh: James Gemmell, 1882), 159 pp.

117 Text available at: <http://www.legislation.gov.uk/ukpga/Vict/37-38/82/contents>

respectively, subject to such regulations in regard to the mode of naming and proposing such ministers by means of a committee chosen by the congregation, and of conducting the election and of making the appointment by the congregation as may from time to time be framed by the General Assembly of the Church of Scotland.”

There is one provision of the Treaty of Union which appears to have been completely set aside. The Act of Security, which is part of the Treaty and was quoted in an earlier section, requires that office-bearers “in any University, College, or School within this Kingdom” must subscribe the Confession of Faith, conform themselves to the worship and submit themselves to the government and discipline of the Church. However Burleigh informs us: “In 1853 theological tests for university professors in other than divinity faculties were abolished in spite of the fact that they had been imposed under one of the ‘entrenched clauses’ of the Treaty of Union; and this link between church and university was broken.”¹¹⁸

In 1851 the Free Church expressed its general opinion on the Revolution Settlement (and by implication the Union) when it passed an “Act and Declaration anent the Publication of the Subordinate Standards.”¹¹⁹ The Act stated that the Church had never maintained that the Revolution Settlement was in all respects satisfactory. Various circumstances had hindered the Church from “realising fully the attainments that had been reached during the Second Reformation.” The Revolution Settlement failed in “adequately acknowledging the Lord’s work done formerly in the land” and yet all the same “it would be in a high degree ungrateful to overlook the signal and seasonable benefits which the Revolution Settlement really did confer upon the Church, as well as upon the nation.” In particular the Revolution Settlement “secured effectually, as was then universally believed, the exclusive spiritual jurisdiction of the Church, and her independence in spiritual matters of all civil control.”

On several occasions the General Assembly of the Free Church has made reference to the Union in its Loyal and Dutiful Address to the Sovereign. In 1871 the Address referred to “the happy and blessed union of England and Scotland.”¹²⁰ In 1920 the Address referred to “the happy settlement of 1690 and 1707 which, under the blessing of Heaven and in connection with the Protestant Succession to the throne was productive of untold good to Scotland.”¹²¹

5.2. The Church and Independence

As we indicated in our Introduction several of the Presbyterian churches in Scotland have considered the subject of Scottish independence and we now give their findings. It should be noted that these findings were arrived at before the White Paper with its specific proposals for independence was published and consequently they are likely to be added to or even amended now that *Scotland’s Future* has appeared:

Free Presbyterian Church of Scotland. The Free Presbyterian Church considered Scottish independence at its Synod in 2012 and issued a public statement as follows:

“The Synod of the Free Presbyterian Church of Scotland, met at Glasgow, on the 23rd day of May, 2012, desires to place on record its deep concern at the proposed intention of the present Scottish Government to abrogate the Treaty of Union of 1707.

The Synod is of the view that the Treaty of Union is inviolable and cannot be lawfully overturned in all time coming and is a fundamental guarantee of the civil and religious liberties of the people of Scotland

118 Burleigh, J. H. S., *A Church History of Scotland* (Edinburgh: Hope Trust, 1983), p. 382

119 Act and Declaration anent the Publication of the Subordinate Standards. In: *The Subordinate Standards and other Authoritative Documents of the Free Church of Scotland* (Edinburgh: Free Church of Scotland, 1933), pp. v -xv

120 Address to Her Majesty, with reference to the Anniversary of Her Majesty’s Birthday, &c. In: *The Principal Acts of the General Assembly of the Free Church of Scotland Convened at Edinburgh May 1871* (Edinburgh: Free Church of Scotland, 1871), No. 1 of Class II

121 Act anent Address to His Majesty the King. In: *The Principal Acts of the General Assembly of the Free Church of Scotland Convened at Edinburgh May 1920* (Edinburgh: Free Church of Scotland, 1920), No. 1 of Class II

which cannot be tampered with except at great peril to our spiritual and temporal welfare.

- The Treaty of Union expressly provides for the security of the Protestant religion and Presbyterian Church government;
- The current proposed constitutional arrangements envisaged by the Scottish Government would lead to a secularisation of the nation's constitution by neglecting to give the Christian Church its rightful place as the established and only religion of the realm;
- The desire to change from a Protestant constitution to a secular one represents a great provocation of the God of glory, and of the Lord Jesus Christ, Who is the king of nations;
- The influence of the Roman Catholic Church in particular and false religion in general is likely to be excessive in an independent Scotland where Protestantism is marginalised;
- The breach of the Union would be a national manifestation of the sin of unthankfulness for the multitudes of blessings the people of the United Kingdom have known from the hand of the Lord in both spiritual and temporal matters since 1707;
- The breaking of the Union would represent the sin of covenant-breaking before the Lord, in violation of the moral and spiritual obligations of the *Solemn League and Covenant* of 1643, in which the mutual welfare of all the parts of these islands became a sacred bond of trust between the three kingdoms down to the end of time,

The Synod warns the people of the Church, the Scottish Government, the British Government and the people of the United Kingdom, of the great dangers threatened in abrogating the Treaty of Union and solemnly remind them that the Lord will deal with the sins of unthankfulness, covenant-breaking and weakening the cause of Christ in the nation in His own time and way, 'Remove not the ancient landmark, which thy fathers have set' (Proverbs 22:28).¹²²

Free Church of Scotland. The Free Church debated Scottish independence at its General Assembly in 2013 and came to the following finding:

"The General Assembly instruct the Communications Committee, in consultation with appropriate bodies, to explore the potential implications which the forthcoming independence referendum might have in terms of 1) the Establishment Principle, and 2) the recognition and place of Christianity, the Committee to report to the 2014 Assembly."¹²³

Church of Scotland. The Church of Scotland considered a report on the implications of Scottish independence for the denomination itself at its General Assembly in 2013 and came to the following finding:

"The General Assembly:

1. Call on the Scottish Government to publish any draft Constitution which it may propose for an independent Scotland in advance of a referendum on independence.
2. Urge that, in recognition of the historic and continuing rôle of the Christian faith in Scottish society, any constitutional arrangements which may be made for an independent Scotland must continue to recognise the Claim of Right, should recognise that human realms are under the authority of God, and should also recognise the rôle of religion in general and the Church of Scotland in particular.
3. Establish an interfaith conversation to propose how recognition of religion should be addressed in the constitutional arrangements for Scotland following upon a vote for independence, to report to the General Assembly in 2014.
4. In the event of Scottish independence, believes:
 - a. that the Queen (and her heirs and successors) should be the head of state of Scotland.
 - b. that the monarch should have a Scottish coronation to symbolise her or his rôle as Queen or King of Scots, including the obligations to uphold Scottish religious life and traditions, and in particular

122 Text available at: <http://amd1893.blogspot.co.uk/2012/05/resolutionon-scottish-independence.html>

123 Text available at:

http://www.freechurch.org/2011uploaddirectory/2013_PRINCIPAL_ACTS_OF_ASSEMBLY.pdf

her or his rôle with regard to the Church of Scotland.

c. that the lawfulness of the Articles Declaratory should be acknowledged in any constitutional settlement.

d. that in any constitutional settlement the relationship between church and state should be affirmed by recognising that the rôle of the Church of Scotland in civic life should be maintained, in particular the provision of prison chaplains, the conduct of marriages, and the appointment of Church Representatives on Local Authority Education Committees.

e. Scotland should become a member of the Council of Europe and should accede to the European Convention on Human Rights, which includes the right to religious freedom.

f. that the plurality of views and beliefs about religious matters should be addressed appropriately in any new constitutional settlement.”¹²⁴

6. OBSERVATIONS

In the light of the information we have presented in the preceding sections we now make some observations, firstly on the Union and then on Independence.

6.1. Observations on the Union

We believe that the following observations on the Union are valid:

(1) *The Union between England and Scotland was made possible by the Protestant Reformation.* The Reformation of the sixteenth century was the most significant period in the separate histories of the neighbouring countries of Scotland and England. The two nations were enemies for centuries but once they had both broken with Rome and embraced the reformed faith, albeit to different degrees, they were able to make peace and eventually to unite.

(2) *The Union was preceded by conflicts involving the monarchy and the church.* The period between the Reformation and the Revolution in Scotland was characterised by a bitter and protracted struggle between on the one hand, the Romanising Stuarts and their Episcopalian supporters who wanted an absolute monarchy with a subservient church ruled by bishops, and on the other, Presbyterians who in faithfulness to biblical principle refused to submit to state domination of the church.

(3) *The Union was achieved despite wide-ranging opposition.* There was vigorous opposition to the proposed union in Scotland – among the political class, on the part of the people and to a lesser extent within the church. However because of their contradictory standpoints and irreconcilable differences the various groupings opposing the Union tended to cancel one another out and so the way was left open for the Treaty of Union to obtain approval by Parliament. With hindsight we can see the divine providence in this and the other steps which led to the Union and how the Lord was at work to bring the nations of Scotland and England together for the strengthening of His cause. Ultimately a situation was brought about where union seemed not merely a possibility but almost a necessity.

(4) *The Union was not universally welcomed by the church.* There was strong resistance to the Union within the Church of Scotland although it was by no means overwhelming. While there was a desire to secure the Revolution Settlement, the Protestant religion and greater economic prosperity there was at the same time a fear that the Presbyterian character of the Scottish church and state would be under threat from a union with Episcopalian England. In particular there was a concern that the Church of Scotland would once again come under the control of the Crown. The Scottish Parliament passed the Act of Security to ensure that the Church would not be affected by the forthcoming Union.

(5) *The Union confirmed the position of the monarchy and the church in the new Kingdom of Great Britain.*

¹²⁴ The text of the proposed deliverance, which it is presumed became the finding, is available at:
http://www.churchofscotland.org.uk/_data/assets/pdf_file/0016/13813/22_INDEPENDENCE_2013.pdf

Having the Act of Security at its foundation the Union in effect ratified the Revolution Settlement in Scotland. By the terms of the Treaty of Union the British throne was permanently and unalterably settled in favour of a Protestant monarch and the existing church establishments were both safeguarded indefinitely – the Presbyterian establishment in Scotland and the Episcopalian establishment in England.

(6) *The Union was imperfect but it brought significant benefits to the Scottish church and nation.* The Union between Scotland and England, based as it was on the Revolution Settlement which tended to overlook the Second Reformation, was not perfect in its construction – something hardly surprising given two such diverse countries. There have also been failures in the way in which the Union has operated. Yet despite these shortcomings the Union, with its key provisions of a Protestant throne and Protestant church establishments, has been foundational to the values and freedoms which have characterised the British nation since 1707 and has functioned in both Scotland and England as a strong bulwark against the constant menace of Popery. Sadly we tend to be less aware of the dangers posed by Rome’s involvement in our national life than our godly forefathers were.

6.2. Observations on Independence

We believe that the following observations on the proposals for Scottish independence are justified:

(1) *Support for independence has increased as the influence of Protestantism has declined.* A common commitment to the Protestant reformed religion was vital to the cementing of the Union between Scotland and England and remains central to its whole rationale. While it is difficult to pinpoint the beginning of the loosening of Britain’s attachment to Christianity in her national life the process was underway in the nineteenth century and has certainly gathered pace since the Second World War; it was in 1945 that the SNP won its first seat at Westminster.

(2) *The proposals for independence do not envisage Christianity having a major rôle in our national life.* Given the vital contribution which the Christian religion has made to the shaping of Scotland as a nation it is remarkable that in the proposals for independence there is an almost complete lack of reference to Christianity, let alone any emphasis on the Protestant reformed religion. Those who are leading the moves for independence would appear to have a largely secular mindset and little or no regard for the Christian heritage of our country: the consequence is that the things which are truly valuable for us in Scotland are put in danger by independence as it is now proposed.

One is struck by the misguided sense of values evident in the proposals for independence. While *Scotland’s Future* gives no firm guarantees on the place which Christianity will enjoy in the institutions of a future independent Scotland, on no less than three occasions we are assured that people will still have access to BBC broadcasting services, “including *EastEnders*, *Dr Who*, and *Strictly Come Dancing*” (pp. 20, 319, 529)! This lack of due proportion tells us something in itself: matters relating to the cause of Christ do not weigh very heavily on the minds of those who govern us today, nor sadly on the minds of our people.

In the absence of any positive statements on the rôle envisaged for the Christian faith in Scotland post-independence we are bound to ask if there is any other information to guide us as to how the present Scottish Government views Scotland’s religious identity? One thing we know is that on 16 August 2010 the Scottish Government put out a news release in connection with the 450th anniversary of the Scottish Reformation in which Fergus Ewing, then the Minister with responsibility for ‘faith communities’, said:

“The First Minister is delighted to be hosting a reception at Edinburgh Castle. This will recognise and celebrate the contribution the Kirk has made to Scottish life, the legacy of the Reformation of universal education leading to the Enlightenment and to celebrate the modern, diverse, multi-faith, multicultural Scotland to which we all aspire.”

The news release also referred to a conference to be held in Edinburgh on 3 November 2010 organised by

the ‘Joint Commission on Doctrine’, a body involving the Church of Scotland and the Roman Catholic Church. The title of the conference was ‘The Scottish Reformation 1560: Marking the Legacy, Imagining the Future’ and it was opened by Alex Salmond and jointly convened by a former Moderator of the General Assembly of the Church of Scotland and the Roman Catholic Archbishop of Glasgow. It was addressed by, among others, Rev Dr Alison Peden from the Scottish Episcopal Church and the Very Rev Dr Sheilagh Kesting, who was Moderator of the Church of Scotland Assembly in 2007. The conference was followed by an ecumenical service at St Giles’ Cathedral.

This is as about as far from the ideals of the Scottish Reformation as one could get. St Giles Cathedral is forever associated with John Knox who ministered there from 1560 to 1572. On 19 July 1560, following the death of Mary of Guise and the signing of the Treaty of Edinburgh, Knox led a thanksgiving service at St Giles with the Scottish Parliament present, expressing the nation’s gratitude to God for the events which had led to the replacement of Popery by Protestantism in Scotland. It is mainly to Knox, as a man under God, that we owe that great fact. We should be very grateful to the Lord for this merciful deliverance but sadly Alex Salmond seems oblivious to it. In his Cardinal Winning Education Lecture he went so far as to state: “It is no exaggeration to say that the nation of Scotland owes its identity and its survival to the recognition and support of the *Catholic Church*.”¹²⁵ [emphasis ours]

(3) *The proposals for independence threaten Scotland’s existing constitutional position.* The process of producing the proposed new constitution for an independent Scotland is described in *Scotland’s Future* as “an important part of defining the sort of nation we wish Scotland to be” (p. 337). The wording suggests that those behind the document are not content with the sort of nation Scotland currently *is*. We fear that it is Scotland’s historic Protestant Christian identity that they are unhappy with and are determined to change. The proposal for a new constitution opens up the real possibility of our present Christian constitution being replaced by a substantially secular one – a prospect we can only regard with alarm.

While there is the promise of a public consultation on a new constitution we believe that it will be the politicians (and whoever is asked to join them in the constitutional convention) who will really decide what goes into the constitution and not the people. Beginning effectively with a blank sheet of paper – or at best an outline prepared by the present Scottish Government – they will fill it in according to their own wishes; we doubt whether any consultation held with the public will be any more open or genuinely respectful of popular opinion than the one which was held so recently on same-sex ‘marriage’.

(4) *The proposals for independence misunderstand the meaning of popular sovereignty.* Much is made in the proposals for independence of “the sovereignty of the people” (Q.529-31, 566-80). This was formerly understood to mean that the people could choose *who* governed them – a cornerstone of any democracy. Now it appears to mean that the people can choose *how* they are governed – in the sense that they can choose whether they wish to be governed according to the law of God or by some other code. Hence the profound moral and social changes over recent decades – changes which seem set to continue if only a majority of the people can still be cajoled into backing them or at least persuaded not to oppose the politicians and others who seem determined to bring them in.

This is a very different version of the concept of popular sovereignty to that held in Scotland at the time of the Reformation and subsequently, based on biblical teaching. In 1579 George Buchanan published *The Rule of Law Among the Scots*,¹²⁶ maintaining that kings are put into office by their subjects and that they are under both human and divine law, such that the people have the right to call wicked rulers to account. James VI had Buchanan’s book burned but the author’s ideas were later developed by Covenanters such as

125 Text found at: <http://www.scotland.gov.uk/News/Speeches/Speeches/First-Minister/cardwinlecture>

126 Buchanan, George, *De Jure Regni apud Scotos* or, *A Dialogue concerning the due Priviledge of Government in the Kingdom of Scotland betwixt George Buchanan and Thomas Maitland* (London: Richard Baldwin, 1689), 70 pp.

Samuel Rutherford and Richard Cameron. Popular sovereignty means that the people authorise the government and not the other way round; while the parliament is legally sovereign the electorate are politically sovereign. Yet rightly understood *both parliament and people are under the sovereignty of God and accountable to Him.*

It seems that the type of “sovereignty of the people” advocated by the Scottish Government does have its limits however. *Scotland’s Future* states: “The Scottish Government does not wish Scotland to leave the EU and does not support the Prime Minister’s plans to hold an in-out referendum on EU membership.” (p. 461) This is obviously a referendum too far – as we suspect is the case with a number of other subjects where popular feeling may not be quite in tune with the beliefs of the political class. It looks as though in the end the sovereignty of the people must give way to the sovereignty of the politicians.

7. CONCLUSIONS

Our task has been to examine Scottish independence – not in the abstract but as it is proposed by the current Scottish Government. It is doubtless the case that some Christians – and perhaps some Presbyterians especially – would prefer independence to the Union if there was a likelihood that the change in political status would lead to a situation at least as favourable to the cause of Christ as the current one and ideally more so. However we do not believe that this is at all a realistic scenario with the present proposals. For that reason it is of no relevance to point out, as some do, that there was opposition within the church to the Union of 1707. The grounds taken by godly men then do not necessarily apply today when the choice is not between the Union and independence as it was three centuries ago but between the Union and independence at it is being offered now. The question which should really be asked is, Would those same individuals prefer the modern version of independence over the existing Union if they were alive today?

We have four main conclusions from our examination of the Scottish Government’s proposals for Scottish independence.

(1) *We believe that independence as proposed will diminish the place of Christianity in our country.* The constitutional arrangements which would be likely to result from the proposals for independence are unlikely to be an improvement on the existing ones in terms of the place afforded to Christianity – in fact quite the opposite. We have no confidence that a constitution produced in the way set out in *Scotland’s Future* will give any particular recognition to the rôle which the Christian faith has played in Scotland or grant any special privileges to the Protestant reformed religion. A written constitutional document is of no advantage in itself: it is the *content* of the constitution which is all-important.

As things stand now Christians can say that their beliefs and behaviour are consistent with what Scotland officially stands for – while our government, parliament and courts are increasingly acting in ways that are at odds with that position. With the proposal for a new constitution, that could all too easily change; for if a secular constitution emerges from the constitutional convention then the current situation would be reversed: *Christians* would become the ones who are out of step with what the country represents.

(2) *We believe that independence as proposed presents a grave threat to our Protestant throne and Presbyterian establishment.* *Scotland’s Future* acknowledges that the Treaty of Union “preserved various Scottish institutions, notably our legal system” and that “separate legislation guaranteed the position of the Church of Scotland.” It states that Scotland played a full part in “British developments” such as the industrial revolution and Empire but that “our nationhood was preserved by the Scottish institutions protected by the Treaty of Union.” (p. 584) The question then is, Will these same institutions – among them things which are especially valuable to us as Christians – be adequately protected in an independent Scotland? In particular, What of the Protestant throne and the Presbyterian establishment?

From the proposals contained in *Scotland’s Future* we have the distinct impression that the only sort of

monarchy which will be welcome in an independent Scotland is one which has a purely ceremonial function – and even that may not be tolerated ultimately. Yet the monarchy is not meant to be a mere ornament or decoration upon our national life: it must stand for something definite. According to the present law of the land it does – although we admit that it is becoming increasingly difficult to discern what that thing is in practice. Officially we have a constitutional monarchy embodying the authority of the state and representing the religious identity and commitment of the nation: thus as a rule those who would be parliamentarians, judges, magistrates or police officers or serve in the armed forces in Britain and even those who wish to become British citizens are required by law to pledge their allegiance to the monarch.

In 1887 the Protestant historian Dr James Wylie said that if the Act of Settlement were to go “we should speedily see a vassal of the pope on the throne of Britain.”¹²⁷ We have seen that those who are leading the drive for independence are also involved in the campaign for the repeal of the Act of Settlement which requires that the monarch be a Protestant. In 2009 the late Rev. Hugh Cartwright said: “Roman Catholic prelates, the First Minister of Scotland who seeks to woo Roman Catholic voters and to break up the Union, those who wish to thoroughly secularise the national institutions and secure the disestablishment of religion and especially of churches professing the Reformed Faith, those opposed in principle to the monarchy and those caught up in the destructive multi-faith craze, ensure that the debate is ongoing and call for the repeal of this requirement.”¹²⁸ We believe that only those who are determined to ignore the teaching of the Bible and the lessons of our national history, especially prior to the Union, could support a political move which might lead to the repeal of the Act of Settlement.

Under the Act of Settlement there is an indissoluble link between the monarch and the Protestant faith. In 1952 our present Queen took the ‘Accession Oath’ required by the Act of Security, pledging to uphold Presbyterian doctrine, worship, government and discipline in Scotland. In 1953 she took the Coronation Oath which, although not as robust as it formerly was, is still clear enough in its meaning. She answered the following questions in the affirmative:

Will you to the utmost of your power maintain the Laws of God and the true profession of the Gospel?

Will you to the utmost of your power maintain in the United Kingdom the Protestant Reformed Religion established by law?

In a section dealing with Devolution the report of the Public Questions, Religion & Morals Committee to the 1978 General Assembly stated: “The Church should be vigilant, not only in connexion with the moral standards of the nation but also in safeguarding its own rights lest they be eroded in the course of events. In this respect it may be noted that suggestions have been made south of the Border, in connexion with movements towards church unity, to the effect that the 1701 Act of Settlement, which requires every English sovereign must be in communication with the Church of England, be regarded as a dead letter. The Act of Union in 1707 accepted this provision for the succession, but the Act of Security 1706, passed by the Scottish Parliament to secure the ‘Protestant religion and Presbyterian Church government’ was also inserted in the Treaty of Union as a fundamental condition thereof. What would happen if the 1701 Act of Settlement were abrogated or ignored and the throne occupied by a monarch professing the Roman Catholic faith? How would the Treaty of Union be affected? This is perhaps a matter for Free Church ministers and office-bearers to ponder because at ordination they are asked if they approve of the ‘general principles embodied in the Claim, Declaration and Protest, adopted by the General Assembly of the Church of Scotland in 1842’, and in that document the constitutional arrangements of 1707 and the provisions for the security of presbyterianism are dealt with in some detail.”¹²⁹

127 Wylie, James A., *The Papacy: its Position, Policy and Prospects* (New York: Hunt & Eaton, n.d.), p.30

128 Cartwright, Hugh M., *The Act of Settlement and its Relevance for Today*. Substance of an address given to the Inverness Branch of the Scottish Reformation Society, 19 January 2009. Text available at: <http://www.reformation-scotland.org.uk/articles/act-of-settlement-relevance-for-today/>

129 Report of Public Questions, Religion & Morals Committee. In: *The Principal Acts of the General Assembly of the Free Church of Scotland Convened at Edinburgh May 1978* (Edinburgh: Free Church of Scotland, 1978)

In its 1988 report the PQRM Committee made this comment in a section dealing with the ecumenical Anglican–Roman Catholic International Commission (ARCIC): “The Free Church must serve notice that the cordial relations which have long existed between it and the Monarchy will cease the day the Crown becomes Catholic.”¹³⁰ Under the Union, with the Act of Settlement and Act of Security at its heart, a Protestant monarchy and a Presbyterian establishment are guaranteed in Scotland. While the Union remains these things remain and anything inconsistent with them has no legal validity and cannot impose any obligation upon any British subject. The proposals for independence have a much less certain sound to them. We fear that if and when the Treaty of Union is dissolved and everything is made subject to “the will of the people” (or rather the will of their elected representatives) then literally everything will be up for grabs – including the Protestant monarchy and the Presbyterian establishment.

(3) *We believe that independence as proposed endangers our religious and civil liberties.* In the United Kingdom we are strictly not citizens of the state but subjects of the Crown. We enjoy “the liberties of the subject.” Religious and civil liberties based on the Bible are the real ‘rights’ which underpin a truly free society: they are founded upon the moral law of God which sets out our duties to God and men and they are vital if a proper relationship is to be maintained between the state and the individual and between different individuals. Our historic liberties are being challenged by various lobby groups which oppose our biblical principles and in the name of ‘equality’ insist upon their own supposed ‘rights’. Sadly governments both north and south of the border appear increasingly willing to set aside Christian values and to treat all beliefs and lifestyles as if they were of equal worth.

In our section on the constitution of an independent Scotland we listed the provisions which the present Scottish Government intends to propose for consideration by the planned constitutional convention. At the head of the list is “equality of opportunity and entitlement to live free of discrimination and prejudice.” In modern Britain this ‘entitlement’ is being extended in a way which is inhibiting our customary freedom of speech, for Christians now find themselves penalised for expressing biblical viewpoints on subjects such as homosexuality. It is bad enough for laws to be passed curtailing criticism of immoral conduct but if a ‘non-discrimination’ principle of the sort suggested were to be embedded in the constitution of an independent Scotland it would take things a significant and worrying step further.

(4) *We believe that independence as proposed cannot be morally justified.* The question has been raised as to whether it is legally possible for the provisions of the Treaty of Union to be set aside and for the Treaty itself to be dissolved. The Acts of Union state explicitly: “the two Kingdoms of England and Scotland shall...*for ever after* be united into one Kingdom by the name of Great Britain.” [emphasis ours] The Act of Settlement which is incorporated in the Acts of Union specifies that the monarch cannot be a Roman Catholic and states that if this provision is ever broken, “the People of these Realms shall be and are thereby absolved of their Allegiance.” Thus any moves to revoke the Treaty or to alter its terms might be open to legal challenge, notwithstanding a vote in favour of independence at the referendum.

In the address already referred to Hugh Cartwright stated how David Walker, former Regius Professor of Law at Glasgow University, had put forward the position: “that the Treaty of Union is a Treaty in International Law and that except where it makes provision for changes in specific articles in the light of changed circumstances its articles are permanent and Parliament does not have legal power to amend or repeal them. The articles relating to the Protestantism of the Throne are framed in a way which makes clear that they are intended to be perpetual. The independent bodies consenting to the Treaty have ceased to exist and these articles are fundamental to the existence of the resultant united entity.”¹³¹

130 Report of Public Questions, Religion & Morals Committee. In: *The Principal Acts of the General Assembly of the Free Church of Scotland Convened at Edinburgh May 1988* (Edinburgh: Free Church of Scotland, 1988)

131 Cartwright, Hugh M., *The Act of Settlement and its Relevance for Today*. Substance of an address given to the Inverness Branch of the Scottish Reformation Society, 19 January 2009. Text available at: <http://www.reformation-scotland.org.uk/articles/act-of-settlement-relevance-for-today/>

Of even greater importance for us however is the question as to whether ending the Treaty of Union would be *morally* justified. We believe that it is sinful to break a treaty or covenant which has been entered into justly according to Scripture, lawfully according to civil statute, freely by the parties concerned and for the good of Christ's cause. To break such an engagement can only incur guilt before God and temporal punishment – *unless it is exchanged for a better (meaning a more scriptural) one*. We are bound to ask therefore, Would not ending the present Union in order to achieve independence as proposed amount to the sin of “trucebreaking” (2 Tim. 3:3)?

The Treaty of Union is a civil covenant, agreed between man and man, but it is nonetheless binding for that. We regard these words of Paul as relevant: “Though it be but a man's covenant, yet if it be confirmed, no man disannulleth, or addeth thereto.” (Gal. 3:15) In a sermon preached in 1645 before the Lord Mayor of London and members of the city council on a day when the Solemn League & Covenant was renewed Edmund Calamy said: “Now for a man to break promise and Covenant with his brother, is a land-destroying, and soul-devouring abomination.”¹³² He gave the example of King Saul who broke the covenant that Joshua made with the Gibeonites: God sent a three-year famine during David's reign as a punishment – though by then it was four hundred years since the covenant was agreed (2 Sam. 21:1).

The referendum on Scottish independence is being held in the year of the seven hundredth anniversary of the Battle of Bannockburn, one of the crucial conflicts in the Wars of Independence between Scotland and England. No doubt the date and the event it commemorates will be of significance to some when they come to cast their vote. But 2014 is also the year which sees the five hundredth anniversary of the birth of John Knox, Scotland's most famous and influential son. The growth of Protestant Christianity springing from the Reformation in which Knox played such a vital part made the Union possible and was fundamental in forming the British identity. The incalculable blessings which have accrued to Scotland from that same Protestant Christianity made secure by the Union make it most desirable that the Union be maintained and certainly not exchanged for the sort of independence which is presently proposed.

Bibliography

In addition to the references cited extensive use was made of various articles at: <http://en.wikipedia.org>

We live in increasingly difficult times for Christians in our nation – something compounded by the spiritual blindness which is apparent in both church and state whether north or south of the border. We can give no better illustration of this blindness than the Prime Minister's ‘Easter’ message given at a reception for “prominent Christians” in 10 Downing Street on 9th April. In his address David Cameron said that he was “proud to be a Christian myself and to have my children at a church school.” He spoke of a pilgrimage he had made this year “to the place where our Saviour was both crucified and born” and declared that “Jesus invented the Big Society 2000 years ago.” He even said that what we need is more ‘evangelism’ – meaning “more belief that we can get out there and actually change people's lives and make a difference and improve both the spiritual, physical and moral state of our country.” Yet this is the same Prime Minister that made the introduction of same-sex marriage his personal crusade – despite the fact that such unions are completely contrary to Christian moral teaching! We pray that in these dark days God will grant us grace that we may shine as lights and that we may be “stedfast, unmoveable, always abounding in the work of the Lord, forasmuch as ye know that your labour is not in vain in the Lord” (1 Cor. 15:58).

DAVID M. BLUNT, *Convener*
WILLIAM B. SCOTT, *Vice-convener*

¹³² Calamy, Edmund, *The Great Danger of Covenant-refusing, and Covenant-breaking*. Text found at: http://www.truecovenanter.com/covenants/calamy_sermon_danger_of_covenant_refusing_and_breaking.html

PROPOSED DELIVERANCE

1. The General Assembly receive and adopt the Report of the Public Questions, Religion & Morals Committee and thank the Committee, especially the Convener, Vice-convener and Clerk;
2. The General Assembly commend the work of the Committee to our people. They encourage congregations and individuals to inform the Committee of local matters of particular spiritual and moral concern that might be helped by being more widely known and by being addressed by the Committee;
3. The General Assembly abhor the recent actions of the UK and Scottish Parliaments in legalising same-sex marriage. They warn the governments and politicians responsible and those churchmen who are intent on pursuing a similar course that such blatant defiance of the revealed will of God, if not repented of, can only have serious consequences for themselves and for the nation. They continue to pray that our merciful God will one day overturn this godless and socially-harmful legislation;
4. The General Assembly reaffirm their belief that suicide, whether assisted or unassisted, is a breach of the sixth commandment and an affront to our sovereign Creator. They urge the members of the Scottish Parliament to take note of the recent solemn providence in connection with the Assisted Suicide Bill and call upon them to abandon this misguided legislation;
5. The General Assembly declare their conviction, based on the Bible, that the responsibility for raising children belongs to their parents and not to the state. They offer their prayerful support to Christian parents who are seeking to bring up their children in the Lord's way in the midst of an ungodly culture and encourage them to be watchful for any unwarranted intrusion by the state in their God-given duty;
6. The General Assembly express their sadness at the recent visit of Her Majesty the Queen to Pope Francis and their concern over the willingness of the monarchy and government to be on friendly terms with the Papacy. They pray that the Lord will bless the Committee's efforts as they prepare a document on Britain's political relations with the Vatican and hope that it may be used by the Lord to persuade our rulers not to have anything to do with the Man of Sin;
7. The General Assembly welcome the Committee's examination of the Scottish Government's proposals for Scottish independence and commend this work to our people and the Christian public in general. They instruct the Publications Committee to place the text on the Church website and also to make it available in a suitable printed form for wider circulation;
8. The General Assembly commend to the prayers of the Church our nation's present religious and moral state. In particular they call upon the congregations of our Church to observe a day of humiliation and prayer on Saturday 6th December or the closest convenient date and encourage other Christians throughout our country to do likewise.