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## Popular or parliamentary sovereignty?

### National opinion and the Declaration of Arbroath on the eve of union

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#### Abstract

Hoping to stop the ratification of a treaty of incorporating union with England, late in 1706 parish minister Robert Wylie quoted the Declaration of Arbroath in a draft manifesto for an armed uprising. Rather than seeing Wylie's manifesto as part of a perceived tradition of popular sovereignty rooted in the Declaration of Arbroath, this paper asks what his quotation reveals about this early modern moment. It confirms a growing awareness of the Declaration of Arbroath in Scottish political culture and its usefulness as patriotic rhetoric for Whigs and Jacobites alike, aided by the publication of English translations from 1689. It shows how Wylie used the Declaration to suggest that the pro-treaty majority in the Scottish Parliament was a traitorous faction out of step with the mind of a nation bound by its covenant oaths and how this attack on the legitimacy of the Estates went against more than a century of Presbyterian efforts to bolster the authority of the Parliament as a counter to Stewart power. Wylie's document thus confirms the rising relevance of public opinion in this era and its construction in terms of conscience and covenants; and underlines a key struggle in the making of the Union between extra-parliamentary opinion, highlighted in petitions and weaponised through calls for recesses and special assemblies, and the stature of the Scottish Parliament as the embodiment of the political nation.

Late in 1706, a minister in the Church of Scotland sat down to write a declaration for an uprising to stop the formation of the United Kingdom of Great Britain. In July, Robert Wylie had published a pamphlet arguing that Queen Anne's treaty of incorporating union required not just parliamentary ratification but the direct consent of the nation's freeholders.<sup>1</sup> When the Scottish Parliament began to consider the treaty in October, speakers in the oppositional Country party made similar arguments, calling for a recess to consult constituents and pointing to dozens of petitions against the treaty from shires, burghs and parishes as evidence of negative opinion at large. Nevertheless, the queen's Court party managed to gather a parliamentary majority for the treaty, aided by secret payments of salary arrears, concessions on taxation and an act securing the post-Revolution

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<sup>1</sup> [Robert Wylie], *A Letter Concerning the Union with Sir George Mackenzie's Observations and Sir John Nisbet's Opinion upon the Same Subject* ([Edinburgh], 1706).

Church of Scotland in perpetuity.<sup>2</sup> To halt voting on the treaty, Wylie envisioned an armed descent on the Parliament in Edinburgh by the ‘free people’ of Scotland.<sup>3</sup>

Wylie drafted a declaration stating the purpose and aims of the march, closing with a quotation from the 1320 Declaration of Arbroath as a call to arms to defend Scottish sovereignty:

concluding with the words & resolution of our valiant ancestors relating to their noble champion, deliverer and protector K[ing] Robert Bruce. So long as an hundred Scotsmen remain alive, we will never be subjected any manner of way to the dominion of England. It is not for glory, riches and honours we fight; but for liberty, which no good man loseth but with his life.<sup>4</sup>

A 2015 study showed how Wylie’s document supported a campaign to replace the treaty of incorporation with an act settling the Hanoverian succession and a body of recent work has demonstrated why his and other plans for armed action against the treaty failed.<sup>5</sup> The 700<sup>th</sup> anniversary of the Declaration of Arbroath provides an opportunity to look more closely at the significance of Wylie’s rhetorical sampling of this medieval text. It has been suggested that anti-incorporation pamphleteers tended not to take advantage of the patriotic rhetoric of the Declaration of Arbroath in the union debates, despite the printing of an English translation from 1689, and few tried to ‘equate Scots nationhood with the Scots people at large’.<sup>6</sup> Wylie’s text therefore provides a notable example of contemporary engagement with the Wars of Independence and the invocation of a socially inclusive Scottish nation. This article will assess Wylie’s text alongside speeches, petitions and pamphlets, placing these in the context of early eighteenth-century Scottish political thought to reveal contemporary ideas about national opinion, contractual monarchy and popular sovereignty.

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<sup>2</sup> Daniel Szechi (ed.), *Scotland’s Ruine’: Lockhart of Carnwath’s Memoirs of the Union* (Aberdeen, 1995), 252-60; Christopher Whatley, *The Scots and the Union* (Edinburgh, 2006), ch. 8; Karin Bowie, *Scottish Public Opinion and the Anglo Scottish Union* (Woodbridge, 2007), ch. 6; Karin Bowie, ‘Publicity, parties and patronage: parliamentary management and the ratification of Anglo-Scottish union’, *Scottish Historical Review* 87: supplement (2008), 78-93.

<sup>3</sup> Karin Bowie, ‘Popular resistance and the ratification of the Anglo-Scottish treaty of union’, *Scottish Archives* 14 (2008), 15-17.

<sup>4</sup> National Library of Scotland, Wodrow Quarto 73, f.285v, transcribed in Bowie, ‘A 1706 manifesto for an armed rising against incorporating union’, *Scottish Historical Review* 94,2:239 (Oct. 2015), 262-267, quote at 267.

<sup>5</sup> Bowie, ‘A 1706 manifesto’; Bowie, ‘Popular resistance’; Jeffrey Stephen, *Scottish Presbyterians and the Act of Union 1707* (Edinburgh, 2007), ch. 5; Neil Davidson, ‘The Scottish pre-industrial urban crowd and the riots against the Treaty of Union, 1705-1707’ in *A History of Riots*, ed. Keith Flett (Cambridge, 2015), 100-16.

<sup>6</sup> Clare Jackson, ‘Conceptions of nationhood in the Anglo-Scottish Union Debates of 1707’, *Scottish Historical Review* 87:supplement (2008), 74.

It also will warn against any simple identification of this episode with a purported Scottish tradition of popular sovereignty rooted in the Declaration of Arbroath. By indicating that the Scottish political community would remove Robert I if he failed to protect the realm from English conquest, the 1320 letter suggested that monarchs could be held accountable by the community of the realm. Ben Jackson's 2020 study of modern nationalist political thought has shown how writers in the 1940s and 1950s drew on this element of the letter to argue that Scotland possessed a unique constitutional tradition of popular sovereignty, in contrast to an English tradition of parliamentary sovereignty. This became a persuasive interpretation of Scottish history with an enduring presence in modern party-political discourse.<sup>7</sup> In proposing resistance by the 'free people' of Scotland, Wylie's document could be read as a new datapoint in a tradition of popular sovereignty, but this would obscure the meaning and significance of his text in the complex cross-currents of Scottish political thought and practice on the eve of Union.

In pointing to the 1320 letter to the pope and the wider context of the Wars of Independence, Wylie clearly expected his audience to recognise and find meaning in the quoted words. This celebration of past resistance to English domination allowed him, like other anti-incorporationists, to characterise the proposed union as a virtual conquest. The reference to one hundred true Scotsmen lent patriotic legitimacy to those opposing the treaty in the Scottish Parliament.<sup>8</sup> Wylie characterised the parliamentary majority as a factional group that was betraying the 'mind of the nation', a form of public opinion that had become recognised in Scottish political culture by this time.<sup>9</sup> This apparent mismatch between parliamentary and extra-parliamentary desires justified the people in taking up arms to demand that the queen authorise new elections for a more representative assembly. Of course, Wylie's use of the Declaration of Arbroath did not extend to its deposition clause, because his commitment to the Revolution of 1688-90 meant he could not threaten Queen Anne, who held the British Crowns by that Revolution alone. Moreover,

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<sup>7</sup> Ben Jackson, *The Case for Scottish Independence: A History of Nationalist Political Thought in Modern Scotland* (Cambridge, 2020), 29-31. See also Colin Kidd, 'Sovereignty and the Scottish constitution before 2004', *Juridical Review* (2004), 225-6.

<sup>8</sup> The opposition mustered under 100 votes for Article 1 uniting the kingdoms (166 to 83). P.W.J. Riley, *The Union of England and Scotland* (Manchester, 1978), 328. Armed action against the Parliament would have been considered treason by an act of 1584 forbidding any attempt to 'impugn the dignity and authority of the said three estates or to seek or procure the innovation or diminution of the power and authority of the same three estates'. *RPS* 1584/5/9, 22 May 1584.

<sup>9</sup> Karin Bowie, *Public Opinion in Early Modern Scotland, c.1560-1707* (Cambridge, 2020), ch. 6.

although Wylie's 'free people' encompassed more than a narrowly feudal political nation, he applied an ideological filter to include only those bound by the nation's covenants to defend the Scottish kingdom. Wylie's manifesto for action by a covenanted people drew on seventeenth-century thinking about contractual monarchy and the right of resistance but clashed with concurrent attempts to secure the freedom and authority of the Scottish Parliament as a counter to monarchical prerogative. These incompatibilities meant that the main purpose of his deployment of the Declaration of Arbroath was to provide an emotive rhetorical flourish, invoking past martial glories to inspire an insurrection.

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Though Wylie seems to have expected his audience to appreciate his quotation from the Declaration of Arbroath, this familiarity would have been of recent origin. Surviving in a file copy and manuscript Latin chronicles, the letter did not feature in political histories and tracts composed in the sixteenth and early seventeenth century by John Mair, George Buchanan and Thomas Craig.<sup>10</sup> More broadly, however, these chronicles and histories supported an awareness of Robert I and the Wars of Independence, as did *The Actes and Life of the Most Victorious Conqueror, Robert Bruce, King of Scotland*, a much-reprinted version of John Barbour's fourteenth-century vernacular verse history.<sup>11</sup> This epic poem underlined the defence of Scottish sovereignty in battle, though after the 1603 Union of Crowns a new preface celebrated the conversion of 'all these bloodie broyles into a peaceable Calme'.<sup>12</sup> Historians agree that the first printed notice of the 1320 letter was provided by Archbishop John Spottiswoode (d. 1639) in a history of the Church of Scotland published in 1655.<sup>13</sup> As a Royalist, the archbishop seems to have had no desire to highlight the constitutionalist implications of this text.<sup>14</sup> Another Scottish Royalist, Sir George Mackenzie of Rosehaugh, printed the first complete Latin text in 1680, making the text more

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<sup>10</sup> Roger Mason, 'The Declaration of Arbroath in print, 1689-1705', *The Innes Review* 72:7 (2021), 159-61.

<sup>11</sup> The English Short Title Catalogue records a first imprint by Robert Lekprevik in 1571 followed by reprints in 1616, 1620, 1648 and 1670 in Edinburgh and 1672 in Glasgow.

<sup>12</sup> Anon., *The Actes and Life of the Most Victorious Conqueror Robert Bruce, King of Scotland* (Edinburgh, 1616), preface.

<sup>13</sup> Mason, 'The Declaration of Arbroath in print', 161, 176; Edward J. Cowan, *The Declaration of Arbroath 'For Freedom Alone'* (Edinburgh, 2020), 99.

<sup>14</sup> By contrast, Benjamin Hazard has shown that Irish Franciscans in Rome took great interest in the deposition clause at the time of the Covenanting Revolution and Irish Confederation, underlining it in a manuscript copy apparently taken from papal records. However, there is no suggestion that this copy circulated in Scotland. Benjamin Hazard, 'A manuscript copy of the Declaration of Arbroath from the Roman archives of Fr Luke Wadding (1588-1657)', *Scottish Historical Review* 90, 2:230 (Oct. 2011), 305.

available to educated readers. Roger Mason has demonstrated that Mackenzie worked from the original file copy and, very probably, an imperfect transcription of this copy by the Episcopalian clergyman Gilbert Burnet, who included the Latin text of the 1320 letter in a 1681 history of the English Reformation.<sup>15</sup> Mackenzie's interest lay in the document's assertion of national sovereignty, having opposed proposals for closer Anglo-Scottish union made in 1669-70.<sup>16</sup> The 1320 letter became more relevant to Whigs in 1689 when Mackenzie's Latin text was reprinted for the first time with an English translation to support the overthrow of James VII and II. This edition provided a populist edge by identifying the community of the realm with the commons of Scotland, giving the people at large a role in the removal of a king who did not fulfil the obligations of his office.<sup>17</sup> This tract was printed again in 1700, 1703 and 1706 in response to proposals for closer union, making the letter available in English during a period of intense Anglo-Scottish conflict.<sup>18</sup> In 1699, the Latin lines on 100 Scotsmen were quoted with an English paraphrase in a tract protesting the transportation of Scots to English plantations as indentured servants. The tract was censored, but a surviving partial imprint shows how the author used these lines to protest the undermining of Scotland's 'Liberty and Independency' by the English since the 'Shamm-Union' of 1603.<sup>19</sup>

The printing of a more accurate transcription and translation in 1705 was stimulated by fresh concern for Scottish sovereignty.<sup>20</sup> James Anderson, writer to the signet, was awarded the thanks of the Scottish Parliament and promised a reward of £4,800 (£400 sterling) in August 1705 for his book, *An Historical Essay, Shewing that the Crown and*

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<sup>15</sup> Mason, 'The Declaration of Arbroath in print', 162-5.

<sup>16</sup> Clare Jackson, 'The Anglo-Scottish union negotiations of 1670' in Tony Claydon and Thomas N. Corns, *Religion, Culture and National Community in the 1670s* (Cardiff, 2011), 48-57.

<sup>17</sup> Mason, 'The Declaration of Arbroath in print', 165-167; *A Letter from the Nobility, Barons & Commons of Scotland, in the Year 1320, yet Extant under All the Seals of the Nobility, Directed to Pope John* (Edinburgh, 1689); Cowan, *The Declaration of Arbroath*, 101-2, 104.

<sup>18</sup> Mason, 'The Declaration of Arbroath in print', 169-70. Mason has speculated intriguingly that the 1689 translation may have been made by Sir James Stewart of Goodtrees, author of the 1669 *Jus Populi Vindicatum* (see below) and Lord Advocate of Scotland after the Revolution (p. 167, n.33).

<sup>19</sup> Anon. ('A sincere well-wisher to the honour and interest of his country'), *An Essay against the Transportation and Selling of Men to the Plantations of Foreigners; with a Special Regard to the Manufactories, and other Domestick Improvements of the Kingdom of Scotland* ([Edinburgh], 1699), 20-22; Cowan, *The Declaration of Arbroath*, 103-4.

<sup>20</sup> William Ferguson, 'Imperial Crowns: A Neglected Facet of the Background to the Treaty of Union of 1707', *Scottish Historical Review* 53: 155, 1 (Apr. 1974), 22-44.

*Kingdom of Scotland, is Imperial and Independent*.<sup>21</sup> This was written in response to William Atwood's 1704 re-assertion of historical English claims of suzerainty, *The Superiority and Direct Dominion of the Imperial Crown of England over the Crown and Kingdom of Scotland*. Anderson included a copy of the 1320 letter in a body of documentary evidence designed to 'let the World know what Injury is done to our Ancient and Independent Crown, by notorious and repeated Forgeries'.<sup>22</sup> Anderson's translation of the 'Letter from the Nobility and Community of Scotland to the Pope' provided these lines, later copied by Wylie:

For so long as an hundred Scots-men remain alive, we will never be subjected any manner of way to the Dominion of England. It is not for Glory, Riches and Honour we fight; but only for Liberty, which no good man loseth but with his Life.<sup>23</sup>

Aided by multiple printed versions of the 1320 letter, tropes from the Wars of Independence resonated in the Union debates. At a time when Scotland was divided between supporters of the Revolution monarchy and the deposed Stuart line, martial memories of Scotland's pre-Reformation struggles for sovereignty provided a shared language of patriotism for Whig and Jacobite opponents of incorporation in speeches, pamphlets and addresses. After the 1704 Act of Security demanded concessions from England before the Scottish Parliament would accept Sophia of Hanover as the designated successor to Anne, James Hodges pointed to the 'bold and hardy Temper' of past and present Scots in a 1705 tract warning the English not to attempt a conquest.<sup>24</sup> The political poetry of the Aberdeenshire laird William Forbes of Disblair also responded to Anglo-Scottish tensions in 1704 and 1705 by calling for a new Bannockburn and urging action by the ancient noble families that had defended Scottish independence under Robert I.<sup>25</sup> Christopher Whatley has noted that in speeches in November 1706, James Hamilton, Duke of Hamilton invoked the defence of Scottish sovereignty by Robert Bruce, while John Murray, Duke of Atholl promised that the treaty of incorporation would not be accepted

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<sup>21</sup> *Records of the Parliaments of Scotland to 1707*, gen. ed. Keith Brown, [www.rps.ac.uk](http://www.rps.ac.uk), M1705/6/18, 10 Aug. 1705; Cowan, *The Declaration of Arbroath*, 104-6; Mason, 'The Declaration of Arbroath in print', 171-3.

<sup>22</sup> James Anderson, *An Historical Essay, Shewing that the Crown and Kingdom of Scotland, Is Imperial and Independent* (Edinburgh, 1705), 4.

<sup>23</sup> Anderson, *An Historical Essay*, appendix 13.

<sup>24</sup> [James Hodges], *War betwixt the Two British Kingdoms Consider'd* (London, 1705), 10.

<sup>25</sup> [William Forbes of Disblair], *True Scots Genius Reviving* ([Edinburgh], 1704) and *A Pill for Pork-Eaters* ([Edinburgh], 1705); William Donaldson, 'The poetry of William Forbes of Disblair (1661-1740)', *Studies in Scottish Literature* 45:2 (2019), 123-30.

while 100 Scots remained alive.<sup>26</sup> Similarly, John Hamilton, Lord Belhaven demanded ‘Should not the Memory of our Noble Predecessors Valour & Constancie, rouse up our Drouping spirits?’.<sup>27</sup> None of the 80 addresses sent to the Scottish Parliament against incorporating union echoed the Declaration of Arbroath as closely as Wylie or Atholl, but about half of the petitions shared a text asking Parliament to protect the sovereignty of Scotland ‘so valiantly maintained by our heroick ancestors’.<sup>28</sup> An address from over 1000 citizens in the strongly presbyterian burgh of Ayr called on parliamentarians to ‘witnes your selves worthy patriots of this nation, the successors of your valient ancestors who mantained to there Immortall honor the rights and priviledges of this nation.’<sup>29</sup> Another, from the Stirlingshire parish of Cadder signed by known Jacobites, asked the Scottish Parliament to preserve ‘All the Honour Our Forfathers For these tuo thousand years bygone Have been heaping up’.<sup>30</sup>

In quoting the Declaration of Arbroath in his manifesto, Wylie invoked national pride in the historic defence of Scotland’s ancient sovereignty from English conquest. For Wylie and many others, an acceptable Anglo-Scottish union would maintain a sovereign Scottish kingdom and parliament in a composite monarchy, with limitations on the monarch to preserve Scottish autonomy. In their minds, incorporating union would be a humiliating defeat, with a damaging loss of identity, rights and privileges. In an influential 1703 tract arguing for a federal union in response to Queen Anne’s 1702 negotiations for a closer union, James Hodges defined incorporating union as the absorption of one kingdom into another, becoming a ‘Part, Province or District’ wholly subject to the laws of the incorporating kingdom with no capacity to preserve distinct rights or interests.<sup>31</sup> Wylie’s July 1706 tract echoed this with an image of the Scottish Parliament being ‘swallowed up’ and only ‘a few Members allowed to Sit in an English Parliament’.<sup>32</sup> For Walter Stewart of Pardovan, burgh commissioner for Linlithgow, the proposed treaty would ‘embody the

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<sup>26</sup> Christopher Whatley, *The Scots and the Union* (Edinburgh, 2006), 297

<sup>27</sup> John Hamilton, Lord Belhaven, *The Lord Beilhaven’s Speech in Parliament Saturday the Second of November* (Edinburgh, 1706), 6; Ralph McLean, ‘Literary symbols’: Language and style in the 1707 Union debates’, *Scottish Affairs* 27:1 (2018), 22-24.

<sup>28</sup> Karin Bowie, *Addresses against Incorporating Union, 1706-1707* (Woodbridge, 2018), 19.

<sup>29</sup> Bowie, *Addresses*, 123.

<sup>30</sup> Bowie, *Addresses*, 191-92. It could be argued that the prevalent idea of the ancient kingdom shows a further link to the Declaration of Arbroath through the origin myth provided in the 1320 letter, though this national history was not unique to the 1320 text.

<sup>31</sup> [James Hodges], *The Rights and interests of the Two British Monarchies* (Edinburgh, 1703), 2-3.

<sup>32</sup> [Wylie], *A Letter Concerning the Union*, 5.



Sovereignty of Scotland, into the Gulph of England's Sovereignty'. Describing this as the mixing of a pint of wine into a barrel of water, he advocated instead an 'entire union' like that of the United Provinces, 'by which every Province preserves Its Independancy'.<sup>33</sup> In an address, the parish of Cambuslang described the treaty as 'an intire enslaving of our church and Nation', turning Scotland into 'a poor, contemptible, antiquated colonie, not worthy of a name'.<sup>34</sup> Wylie's use of the term 'free people' in his manifesto thus underlined the freedom of the Scottish kingdom and its subjects. Incorporating union, he argued, would enslave the Scots to the English as 'Bondmen and Bondwomen'.<sup>35</sup>

Although Wylie drew on the 1320 letter to assert Scottish autonomy, he did not use the deposition clause to suggest that Queen Anne could be removed by the community of the realm if she betrayed the sovereignty of the kingdom. Though this idea had been highlighted in 1689 to justify the removal of James VII and II, Wylie did not wish to undermine the monarchical line established in the Revolution. While proposing rebellious action against the Estates, he took care to express 'stedfast loyalty' and promised 'always to adhere' to Anne as 'our undoubted soveraign rightfully Inheriting our crown'.<sup>36</sup> Similar expressions can be seen in addresses sent to the Parliament from areas of presbyterian hegemony. The burgh of Rutherglen included a promise to 'heartily concurre' with parliamentarians 'in the defence of her Majesties person and Government'.<sup>37</sup> After advancing robust arguments against the queen's treaty, the parish of St. Ninian insisted 'that we may not be mistaken, We declare ourselves to be zealous for her present Majesty (whom God long preserve) as the nurseing mother of our Church and Kingdome'.<sup>38</sup>

Queen Anne's precarity meant that Wylie's challenge to her treaty of union had to be aimed at the Scottish Parliament. Lynn Kilgallon's paper in this volume confirms that by the fifteenth century the Scottish Parliament was recognised as the embodiment of Scotland's propertied political nation, providing a stable institutional framework for the expression of consent by the community of the realm. To undermine the ratification of the treaty, Wylie sought to discredit the parliamentary majority by pointing to 'a faction in Scotland

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<sup>33</sup> Bowie, *Addresses*, 307, 309.

<sup>34</sup> Bowie, *Addresses*, 194.

<sup>35</sup> Bowie, 'A 1706 manifesto', 265.

<sup>36</sup> Bowie, 'A 1706 manifesto', 266.

<sup>37</sup> Bowie, *Addresses*, 163.

<sup>38</sup> Bowie, *Addresses*, 213.

corrupted with arbitrary principles and pensions and English influence' who had managed to take control of the Estates, 'having so far prevailed as in despite of all Law, Reason, honour and conscience to draw many others into the same Infatuation and conspiracy with themselves'.<sup>39</sup> This faction was voting for the treaty articles 'against the known mind of the nation their constituents' and 'notwithstanding of the many earnest & weighty Adresses & Remonstrances made to the contrary'.<sup>40</sup> Wylie's closing reference to 100 Scotsmen remaining alive therefore made a virtue of the minority voting against the treaty, identifying them as true Scotsmen battling internal enemies who would betray Scotland to the English.<sup>41</sup>

This situation required 'we the free people of Scotland' to act, being obliged 'to appear for the relief of our betrayed and sinking country and to use our utmost Endeavours ... for putting a stop to the proceedings of these Betrayers'.<sup>42</sup> The people had tried 'all means of Remeid to prevent our Ruine by supplication, Argument & protestation', including proposals for a settlement of the Hanoverian succession to replace the treaty, but had failed 'to obtain so much as a short recess & delay at the hands of a resolved Faction sworn to destroy us & our country'.<sup>43</sup> The only remaining path was to 'betake ourselves to Armes', asking other true and honest countrymen, especially in the armed forces, to join them.<sup>44</sup> Backed by this show of force, they would petition Anne to reject the treaty and accept an act for the Hanoverian succession with limitations instead, craving that 'the foresaid incorporating union may be no further proceeded into, and that what is done therein may be declared to be, as it is in it self, void and null, being not only without the consent but contrary to the publicly expressed mind of the nation'.<sup>45</sup> To settle the succession, misguided members would be expelled, so that 'the nation which disowns & testifies against their perfidy may elect faithful men as their representatives'.<sup>46</sup>

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<sup>39</sup> Bowie, 'A 1706 manifesto', 262.

<sup>40</sup> *Ibid.*, 263, 265.

<sup>41</sup> This echoed the rhetorical strategy of dissenting Presbyterians in the late 1670s, who portrayed themselves as a suffering remnant of the true Church of Scotland. Bowie, *Scottish Public Opinion*, 178.

<sup>42</sup> *Ibid.*, 262-3.

<sup>43</sup> *Ibid.*, 265. On the attempt to settle the Hanoverian succession with limitations instead of ratifying the treaty, including a request for a parliamentary recess to consult constituents, see 238-40, 250-1.

<sup>44</sup> *Ibid.*, 265-6.

<sup>45</sup> *Ibid.*, 266.

<sup>46</sup> *Ibid.*, 267.

This proposal for a petition and new elections appeared in other last-ditch efforts to stop the treaty. In early December 1706, a text for a national petition to Queen Anne was written for the Duke of Atholl and letters were circulated calling supporters to Edinburgh to sign it. The petition warned Anne that she had been 'prevailed upon by misrepresentations' to support the treaty and that the 'almost universal aversion to this treaty' would separate rather than unite the two kingdoms. It presented 'the most earnest prayers of your loving subjects' asking the queen to call 'a new Parliament'.<sup>47</sup> After a proclamation banned subjects from travelling to Edinburgh to sign the petition, Atholl made a formal protestation in the Parliament on 7 January 1707 pointing to a 'general dislike and aversion' to the treaty as shown in petitions and demanding that the queen be 'fully informed of the inclinations of her people, that, if her majesty think fit, she may call a new parliament to have the immediate sentiments of the nation.'<sup>48</sup> On the same day, the Duke of Hamilton was meant to deliver a protestation calling for the election of a Convention of Estates 'instructed with a more immediate sense of the nation', though he abandoned this under pressure from the Court party.<sup>49</sup>

The threat of armed action suggested by Wylie's document can be seen early in the parliamentary session. A report written by John Erskine, Earl of Mar to London on 3 November 1706 advised that 'our opposers stick not to say that the Parliament will be rais'd by force'.<sup>50</sup> A letter by a clergyman in December proposed that 'a manifesto be drauen up and spread throu the nation' calling the people to rise in defence of their church and kingdom.<sup>51</sup> Jacobites and Whigs both expected that presbyterians from the southwest would form the vanguard of any action. This would have echoed successful presbyterian marches to Edinburgh in 1649 and 1689, though the routing by royal forces of a 1666 attempt shows why Wylie called on Scottish army officers and soldiers to join them. However, action was impeded by multiple factors including double agents, proclamations

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<sup>47</sup> Szechi (ed.), *Scotland's Ruine*, 185-6.

<sup>48</sup> *RPS* 1706/10/212, 7 Jan. 1707.

<sup>49</sup> Szechi (ed.), *Scotland's Ruine*, 190.

<sup>50</sup> *Report on the Manuscripts of the Earl of Mar and Kellie*, ed. Henry Paton (London, 1904), 310.

<sup>51</sup> National Library of Scotland, Wodrow quarto 40, item 8, 'Newsletters', 2 December 1706.

restricting musters and travel to Edinburgh, and the news that troops had been sent to Ulster and the north of England in case of need.<sup>52</sup>

Though never deployed, Wylie's manifesto reveals the evolution of the community of the realm in Scottish political thought by 1706. After the 1560 Reformation, opinion at large became more prominent in Scottish political discourse, allowing Wylie in 1706 to place 'the mind of the nation' at the centre of his declaration and demand that parliamentary votes should mirror extra-parliamentary opinion. Wylie's political nation was more socially inclusive than in 1320, with signatures of thousands of ordinary people on anti-incorporation petitions invoked as evidence of national opinion. But it was also more ideologically constrained, with 'sacred Bonds' defining patriotic Scots by their covenanted commitments.<sup>53</sup> In a similar way, the 1689 English print of the Declaration of Arbroath had identified the community of the realm with the people, who subsequently were said in the 1689 Claim of Right to prefer presbyterian church government.<sup>54</sup> When Wylie stated that 'We as true Scotsmen and christians under the sense of the bonds of nature and our solemn oaths to the most high God do only [as] a least [last] and unsatisfactory remedy betake ourselves to Arms', he defined true Scotsmen as covenanted presbyterians.<sup>55</sup> The people were 'bound by the sacred engagement of most solemn covenants to maintain the truth & purity of religion and the presbyterian government of the church as well as to preserve the rights & privileges of the parliament and the liberties of the kingdom.'<sup>56</sup>

This referenced a series of oaths ordered to be sworn by all congregants in Scottish parishes, including the 1581 King's Confession, the 1590 General Band, the 1638 National Covenant, the 1643 Solemn League and Covenant and the 1648 Solemn Acknowledgement.<sup>57</sup> These oaths assumed the existence of a sovereign Scottish kingdom and parliament and demanded the defence of the Scottish Reformed Church in its presbyterian form, providing a framework against which the queen's proposals for closer union were considered and found lacking. In particular, the Solemn League envisioned a

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<sup>52</sup> Bowie, 'Popular resistance', 16-24; John C. R. Childs, 'Marlborough's wars and the Act of Union, 1702-1714' in Edward M. Spiers, Jeremy Crang and Matthew Strickland (eds), *A Military History of Scotland* (Edinburgh, 2012), 342-3.

<sup>53</sup> Bowie, 'A 1706 manifesto', 263.

<sup>54</sup> On this claim for popular preferences in church government, see Bowie, *Public Opinion*, ch. 5.

<sup>55</sup> Bowie, 'A 1706 manifesto', 265.

<sup>56</sup> Bowie, 'A 1706 manifesto', 264.

<sup>57</sup> Bowie, *Public Opinion*, 95-120.

composite monarchy with separate but compatible presbyterian churches in Scotland, England and Ireland, whereas the proposed union affirmed an Episcopalian establishment in England and Ireland and included Anglican bishops in the British House of Lords.<sup>58</sup>

The continuing significance of these historical covenants can be seen a petition from the Commission of the General Assembly noting that ‘the whole Rights and very Being of a Scots parliament are to be extinguished Contrary to our national covenant’. Similarly, the sitting of ‘26 prelates’ in the British parliament was ‘contrary to the word of God and the solemn covenants of this nation’. The terms of the 1581 and 1638 oaths were cited alongside the requirement of the Solemn League to ‘preserve the Rights and priviledges of the parliament, and the liberties of the kingdom.’ The Commission noted that although England had abandoned the Solemn League, it remained ‘a covenant sworn to the most high God and containing our initial antecedent national duties’.<sup>59</sup> Covenanted obligations led many presbyterian opponents of the treaty to support efforts to settle the Hanoverian succession with conditions as an immediate alternative, allowing Scotland to remain a sovereign kingdom with its own national church and parliament in the British composite monarchy. The failure of these efforts in early November seems to have turned the minds of Wylie and others towards more direct action to stop the treaty.<sup>60</sup>

In emphasising the opinions of Scotland’s covenanted people, Wylie’s document reflected recent concepts and practices of contractual monarchy. According to presbyterian thinkers, the swearing of the covenants by Charles II at his 1651 Scottish coronation had created a reciprocal compact between the king and his subjects. In 1669, James Stewart of Goodtrees argued in *Jus Populi Vindicatum* that the people could rise up in arms when the king broke his covenanted compact. By locating the ‘true sense of the nation’ among covenanted commoners, Stewart of Goodtrees provided a precedent for Wylie’s manifesto.<sup>61</sup> These ideas were echoed by presbyterian hardliners in a 1679 ‘New Covenant’, put into action in the 1679 Bothwell Brig rebellion and reiterated in a 1680 declaration made at Sanquhar. In 1689, the removal of James VII and II was justified on the king’s failure

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<sup>58</sup> Colin Kidd, *Union and Unionisms: Political Thought in Scotland, 1500-2000* (Cambridge, 2008), 61-63, 75-77.

<sup>59</sup> Bowie, *Addresses*, 54-55.

<sup>60</sup> Bowie, ‘A 1706 manifesto’, 250-53.

<sup>61</sup> Bowie, *Public Opinion*, 176. See also Neil MacIntyre, ‘Representation and resistance in Restoration Scotland: the political thought of James Stewart of Goodtrees (1635-1713)’, *Parliaments, Estates and Representation* 38:2 (2018), 161-74. In 1706, Lord Advocate Stewart of Goodtrees privately opposed the union by advising the duke of Hamilton and reportedly penning Hamilton’s undelivered 7 January protestation.

to swear the coronation oath and his disregard for standing law, by which he changed the kingdom 'from a legal limited monarchy, to an arbitrary despotic power'.<sup>62</sup> The 1689 Claim of Right was presented with the coronation oath to William and Mary to impose binding conditions on their monarchy.<sup>63</sup> The reprinting of the Declaration of Arbroath in 1689 supported a Revolution secured in part by anti-Catholic rioting, attacks on Episcopalian ministers and a march by supporters to Edinburgh, but Wylie had to take care in how he applied ideas of contractual monarchy and popular resistance in 1706.<sup>64</sup>

While contractual theories held that the monarch was bound by standing law and constitutional limitations, Wylie proposed that the people could hold members of Parliament accountable to law. This represented a significant shift in focus after decades of presbyterian theorising and action designed to counter monarchical prerogative. Wylie invoked a 1584 law making it treason to diminish the authority of the Estates to assert that 'all those who have concurred to the Abolishing of Parliaments, by approving the 3d Article of the Treaty, having thereby falsified their Trust, incurred the pains of Treason by law, and voted themselves out of doors, may be expelled'.<sup>65</sup>

Wylie and others also attempted to impose limits on Parliament by demanding that commissioners for the shires and royal burghs should be accountable to their constituents on the question of union. In a general sense, a 'commissioner' undertook to act for someone else, usually with a written agreement or instructions specifying how far they could take independent decisions. In principle, shire and burgh commissioners to the Scottish Parliament acted as full representatives, not limited delegates, but this did not stop constituents from trying to influence their behaviour through instructions and advice. Shire commissioners were elected by qualifying tenants-in-chief of the crown (small barons) at Michaelmas head courts convened by a sheriff. All freeholders were expected to attend head courts for jury service and those who qualified took part in elections. Successful candidates were given a written commission signed by at least six electors.<sup>66</sup> In the shires, it was not common for written instructions to be provided in addition to commissions, though

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<sup>62</sup> RPS 1689/3/108, 11 April 1689.

<sup>63</sup> Bowie, "A legal limited monarchy", 145-48.

<sup>64</sup> Alasdair Raffe, *Scotland in Revolution, 1685-1690* (Edinburgh, 2018), ch. 5.

<sup>65</sup> See note 7. Bowie, 'A 1706 manifesto', 267.

<sup>66</sup> Alan Macdonald, 'Scottish shire elections: preliminary findings in sheriff court books', *Parliamentary History* 34:3 (2015), 281, 283.

there is evidence of attempts to do so on contentious issues.<sup>67</sup> Speeches at shire elections allowed some communication of views, no doubt alongside private conversations.<sup>68</sup> In the royal burghs at this time, commissioners normally were selected by the town council. Alan Macdonald has shown that councils issued 'full and free' written commissions allowing their representatives to act in the best interests of the burgh and realm without recourse to consultation, though they often added written instructions on pertinent issues and the Convention of Royal Burghs could influence how burghs voted in Parliament.<sup>69</sup> By contrast, in the General Assembly of the Church of Scotland, papers were sent out for consultation and presbyteries routinely issued written instructions to their delegates.<sup>70</sup> The General Assembly's 1697 Barrier Act made consultation and consent compulsory on constitutional measures.<sup>71</sup> In the neighbouring United Provinces, delegates to the States General also acted under instructions.<sup>72</sup> In England, as in Scotland, parliamentary members were free to vote as they judged best but the provision of instructions and addresses to members of the House of Commons became more common after the Exclusion Crisis (1679-81). By the early eighteenth century, the printing of instructions, addresses and petitions from English constituencies had become a highly contentious political device designed to put pressure on members.<sup>73</sup>

With these exemplars, it is not surprising that, from an early stage, opponents of the treaty tried to argue for limitations on burgh and shire commissioners. They also followed precedents offered by prominent lawyers in response to 1669-70 union proposals. In his July tract, Wylie contended that parliamentary commissioners did not have the capacity to alienate the political rights of their constituents without consulting 'the whole Nation'.<sup>74</sup> This derived from views published by Sir George Mackenzie of Rosehaugh and his fellow jurist Sir John Nisbet of Dirleton, which Wylie reprinted for his readers. Avoiding an

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<sup>67</sup> Julian Goodare, 'Parliament and politics' in Brown and Macdonald (eds), *Parliament in Context*, 263-4.

<sup>68</sup> John Spottiswoode, 'Speech of John Spottiswood, Esq. to the freeholders of Berwickshire', *The Spottiswood Miscellany*, ed. James Maidment, 2 vols. (Edinburgh, 1844-45), i: 233-40.

<sup>69</sup> Alan Macdonald, 'Parliament and the burghs' in K. Brown and A. Macdonald (eds), *Parliament in Context, 1235-1707* (Edinburgh, 2010), 110-11.

<sup>70</sup> Bowie, *Scottish Public Opinion*, 116.

<sup>71</sup> *Acts of the General Assembly of the Church of Scotland, 1638-1842* (Edinburgh, 1843), 260-1.

<sup>72</sup> Henk van Nierop, 'Popular participation in politics in the Dutch Republic' in *Resistance, Representation and Community*, ed. P. Blicke (Oxford, 1997), 274.

<sup>73</sup> Mark Knights, *Politics and Opinion in Crisis, 1678-81* (Cambridge, 1994), 291-303 and *Representation and Misrepresentation in Later Stuart Britain* (Oxford, 2005), 132-33, 195-202.

<sup>74</sup> [Robert Wylie], *A Letter Concerning the Union* ([Edinburgh], 1706), 7.

ascending model of government, Mackenzie of Rosehaugh argued that rights of parliamentary representation held by royal charter could not be alienated by commissioners without consulting the owners of these rights; moreover, every member in Parliament would have to agree unanimously to give up these rights. Lord Advocate Sir John Nisbet of Dirleton stated that commissions were given '*cum Libera potestate*' [with free power], but this did not extend to the altering of constitutional fundamentals unless commissioners were given 'special Authority'.<sup>75</sup> Similarly, a 1706 pamphlet attributed to Andrew Fletcher of Saltoun argued that 'Members of Parliament are but Administrators' who could not vote for a union without being 'fully instructed, and empowered by their Constituents'.<sup>76</sup> Calls were made for a recess for local consultation, while a few constituencies (including a group of freeholders from Dumfriesshire and the burgh councils of Lauder, Dunfermline and Dumbarton) printed anti-treaty instructions to their commissioners and petitioners aimed to convey local opinions to Parliament.<sup>77</sup> In a new pamphlet, James Hodges argued for a special assembly of 'the Whole Freeborn Subjects of Scotland', while the Duke of Hamilton's undelivered January protestation had meant to call for a Convention of Estates 'cloathed with a more than ordinary power'.<sup>78</sup>

None of these attempts to limit Parliament succeeded in the face of contemporary practices of parliamentary autonomy. Moreover, as indicated by the 1689 Claim of Right and its concept of a 'legal limited monarchy', the authority of the Scottish Parliament and its laws had become an important rhetorical counter-weight to the exercise of royal prerogative powers, especially after Scotland's monarchs departed for London in 1603. The 1688-90 Revolution established greater freedom of debate in the Scottish Parliament by abolishing the Lords of the Articles, a committee increasingly from the reign of James VI to control the parliamentary agenda.<sup>79</sup> Nevertheless, William's slighting of parliamentary addresses and acts, including the 1695 act establishing the Company of Scotland, spurred

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<sup>75</sup> [Wylie], *A Letter Concerning the Union*, 9-19. See also Bowie, *Scottish Public Opinion*, 94 and Jackson, 'Conceptions of nationhood', 73-4.

<sup>76</sup> Andrew Fletcher of Saltoun, *State of the Controversy betwixt United and Separate Parliaments* (Edinburgh, 1982), 21.

<sup>77</sup> Bowie, *Scottish Public Opinion*, 117-8.

<sup>78</sup> [James Hodges], *The Rights and Interests of the Two British Monarchies Inquir'd into and Cleared, with a Special Respect to an United or Separate State: Treatise III* (London, 1706), 71. Lockhart suggested that Hamilton's argument was formulated by Lord Advocate Sir James Steuart of Goodtrees. Szechi (ed.), '*Scotland's Ruine*', 189-90.

<sup>79</sup> Alan MacDonald, 'Consultation and consent under James VI', *Historical Journal* 54:2 (June 2011), 287-306.



the pamphleteer George Ridpath to defend parliamentary authority in assertive terms.<sup>80</sup> By 1703, as Jacqueline Rose has shown, his *Historical Account of the Antient Rights and Powers of the Parliament of Scotland* sought to achieve the ‘collapsing of parliamentary counsel into legislative sovereignty’.<sup>81</sup> Also in 1703, Andrew Fletcher of Saltoun proposed limitations on the monarch by requiring parliamentary consent for actions normally exercised by royal prerogative.<sup>82</sup> This achieved the remarkable Act anent Peace and War by which the Scottish Estates would endorse any treaty of peace or declaration of war, allowing the kingdom to remain neutral in wars waged by England.<sup>83</sup>

These efforts proved to be a liability when Fletcher of Saltoun, Ridpath, Wylie and others found themselves forced to argue against parliamentary autonomy in 1706. The queen’s managers were able to bat away calls for a parliamentary recess by noting that the proclamation calling the 1706 Parliament had mentioned the union, and therefore members were fully authorised to consider it.<sup>84</sup> They only allowed local petitions to be read in parliament because they thought there would be riots if they didn’t.<sup>85</sup> The earl of Mar felt confident that the petitions would ‘signify nothing’, because ‘simple well-meaning people’ had been ‘deluded’ by the opposition’s arguments. For Mar, the petitioners were not ‘capable nor fitt judges’ of the union question. He contended that members of the Estates should consider whether the petitioners’ opinions were right or wrong, and if wrong, ‘it was their duety to bring them out of the mistake.’<sup>86</sup> Any decision on the treaty was to be taken by members acting as fully empowered representatives, not mere delegates. The earl of Cromarty supported this by arguing in response to Wylie’s tract that the Scottish people had devolved their power to Crown and Parliament and their only role was to obey what Queen Anne and her Estates determined would best serve the common good. In similar terms, he

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<sup>80</sup> John R. Young, *The Scottish Parliament and the politics of empire: Parliament and the Darien Project, 1695–1707*, *Parliaments, Estates & Representation*, 27:1 (2017), 175-190;

<sup>81</sup> Jacqueline Rose, ‘Councils, counsel and the seventeenth-century composite state’, *The Politics of Counsel in England and Scotland, 1286-1707*, ed. J. Rose (Oxford, 2016), 285-90.

<sup>82</sup> Andrew Fletcher of Saltoun, ‘Speeches by a member of the Parliament which began at Edinburgh the 6<sup>th</sup> of May, 1703’, *Political Works*, ed. John Robertson (Cambridge, 1997), 129-74. Fletcher’s programme built on limitations established by the Covenanter Parliament. John R. Young, ‘The Scottish parliament and the Covenanted heritage of constitutional reform’ in Allan I. Macinnes and Jane Ohlmeyer (eds), *The Stuart Kingdoms in the Seventeenth Century: Awkward Neighbours* (Dublin, 2002), 226-250.

<sup>83</sup> *RPS* 1703/5/193, 16 Sept. 1703.

<sup>84</sup> *Report on the Manuscripts of the Earl of Mar*, 273.

<sup>85</sup> Bowie, *Scottish Public Opinion*, 131-2.

<sup>86</sup> *Report on the Manuscripts of the Earl of Mar*, 310, 324.

suggested that Scotland's covenants obliged swearers to sustain the queen and her parliament in making any necessary law for the benefit of the nation.<sup>87</sup>

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Though it may be tempting to fit Wylie's manifesto into a perceived tradition of popular sovereignty in Scotland rooted in the 1320 Declaration of Arbroath, this would distort the contemporary complexities of the union debates. Wylie's document reveals a growing awareness of the Declaration of Arbroath in the late seventeenth century and its usefulness as patriotic rhetoric against English domination. Clearly, Wylie expected his audience to find inspiration in his closing lines, and petitions and speeches by Whigs and Jacobites similarly invoked the heroic defence of Scotland's ancient sovereignty. Wylie's reference to true Scotsmen suggested that the incorporationist majority in Parliament was a traitorous faction out of step with the 'mind of the nation'. However, in Wylie's mind, the opinions of the nation were defined by their covenant oaths. When he argued in a pamphlet for freeholder consent, this rested on feudal property rights rather than a concept of popular sovereignty. In attacking the legitimacy of the parliamentary majority and questioning the autonomy of commissioners, Wylie and others had to work against more than a century of presbyterian efforts to bolster the authority of the Scottish Parliament as a counter to monarchical power. Despite the communication of extra-parliamentary opinion through petitions and calls for special assemblies and conventions, the Court party was able to sustain the stature of the Scottish Parliament as the embodiment of the political nation. Attempts by Wylie and others to stimulate armed resistance were quashed, leaving Wylie's remarkable manifesto hidden from view for another three centuries.

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<sup>87</sup> Bowe, *Scottish Public Opinion*, 104; Kidd, 'Sovereignty', 234.