FROM MEDIEVAL TO MODERN UNION: THE DEVELOPMENT OF THE BRITISH STATE BETWEEN THE UNION OF THE CROWNS IN 1603 AND THE ACTS OF PARLIAMENT IN 1707

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THESIS ABSTRACT

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Empirical studies in the sub-field of European state-building within political science have centered on material or institutional explanations for the development of the modern state. These cross-case analyses ignore key distinctions amongst cases, such as the importance of ideational factors in the modernizing process. This case study of the development of the British state looks at how changes in the conceptualization of the state and the nature of constitutionalism evolved over the course of the 17th century through the political writings of several influential theorists. This evolutionary process highlights distinctions in British constitutionalism between the personalist Union of the Crowns and the constitutionalist parliamentary Acts of Union. This study concludes with a discussion of the Scottish independence movement and the possible effects of the 2014 referendum on the British state.

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CHAPTER I

INTRODUCTION

In the winter of 1707, a new state emerged in Europe unlike anything previously seen. Through two legislative acts the Kingdoms of England and Scotland, joined by an accident of heredity for over one hundred years, ceased to exist as independent states. What emerged from two previously sovereign states was a separate and new sovereign state, the Kingdom of Great Britain. This new state was not something predetermined; two serious efforts at union in the preceding century were met with hostility in both kingdoms. This new state was also not completely unexpected; in addition to proximity, the two countries had shared a king upon the elevation of James VI to the English throne in 1603. After a century in which constitutional crises, political machinations, and religious divisions showed the limitations of the old constitutional order, a new ideological paradigm took hold. A newly-minted British state founded upon the republican and classical liberal principles of limited government and legislative supremacy replaced the remnants of absolutism and the divine right of kings.

Between the ascension of James Stuart to the English throne and the Acts of Union stands more than one hundred years of political and philosophical contestation over the nature of the relationship between England and Scotland. As the monarch of two separate sovereign states, James Stuart's position as King of England and King of Scotland did not give him the title of King of England and Scotland. Historians have remarked on the constitutional oddity of this situation, noting that, "there was no single

crown, no common laws of inheritance, and the king's political capacities differed in each kingdom" (Brown, 1994, 59). James Stuart sought to remedy this situation through the amalgamation of the two countries under one kingdom, but his several attempts at formal union were non-starters. English leaders demanded Scotland be subsumed in a manner similar to Wales in the 16th century; the problem for Scottish political elites was in finding a way to articulate a viable vision of Britain that would be something more than England writ large (Mason, 1994, 8). As the decades under Stuart rule progressed there little movement towards union. The upcoming Civil War would halt serious discussions on union, only to be picked up once again after the declaration of the Commonwealth of England by the Rump Parliament in 1649. During the Commonwealth years, Protectorate forces formally annexed Scotland in 1653, but life under the New Model Army was more subjugation than union (Stevenson, 1987, 177). The political situation upon the restoration of the Stuart monarchy in 1660 and the Glorious Revolution of 1688 made a cooperative political solution to the union problem impossible and it would not be until 1707 that Scotland and England would be formally united as a newly constituted state through legislative acts in both national parliaments.

This union of two previously separate states was not itself novel. European politics had seen its share of dynastic unions and confederations. Under the joint crown of Castile and Aragon, Christopher Columbus sailed for the New World. In the modern Netherlands, the United Provinces were bounded together under an aristocratic confederal system; this system's decline only furthered by the invasion of French revolutionary forces at the end of the century.

Indeed, what is striking about the creation of Great Britain is not the emergence of a new state, but the political and intellectual processes that guided its unification. Existing explanations that account for the advent of the British state are materialist in nature. Scottish historians point to the dire economic situation in Scotland, but tend to ignore that Scotland had chosen not to unite with England under equally poor economic circumstances in the past. English historians look at the Acts of Union as a means to finally securing England's northern flank against French intrigue, yet France had taken an interest in Scottish affairs well before the Acts of Union as well. Neither of these explanations adequately discusses why this constitutional question was solved by uniting into an ostensibly new state.

I believe that the difference lies in changes in the perception of the state and the development of constitutionalism in England and Scotland during the 17th century. What is responsible for the shift from a medieval, Absolutist union of two states under one king to a single state with limited government unified by acts of parliaments? My hypothesis is that during the 17th century an ideological shift occurred in future Britain that altered perceptions of not only what made government legitimate, but called for a new political order founded on limited, representative government. This essay will look at the historical narrative of the roughly hundred years between medieval and modern union, as well as map the significant ideational changes that occured in the future British state. These ideational changes will be mapped through an analysis of two separate sets of relevant documents. First, this essay will map changes in the conceptualization of the state in official English/Scottish/British documents from the early 17th century to the

beginning of the 18th century. Within this analysis of state documents, I will argue that there are two significant changes in the conceptualization of the state in future Britain. First, the concept of the state shifts from corporal Absolutist metaphors towards a state founded upon consent and bounded by clear constitutional limits of both king and Parliament. Second, the king moves from being the legitimate agent within what would become the British political system to an executive that derives its political legitimacy from the representative institution of Parliament.

The second relevant documents are the political writings of English republican and liberal thinkers that provided the theoretical justifications for rejecting an absolutist political order. This essay will analyze the arguments made by James Harrington and John Milton in the time surrounding the English Civil War, as well as the arguments made by John Locke in the 1680s on the eve of the Glorious Revolution. What develops from these political theories is a cogent refutation of the absolutist principles that characterized Stuart rule and replaces absolutist principles with a limited, representative government founded upon classical republican ideals and liberal notions of consent of the population to its government. These ideals become an explicit part of what would become the British constitutional order, one that asserts the limits to the prerogative of the Crown and by the nature of the ascension of William and Anne to the throne itself. Within this context, this essay has two goals: (1) to add a new dimension to traditional historical explanations for the Union of the Crowns and (2) to suggest that ideational explanations can supplement the general theories of state building, specifically those that rely upon

structural or institutional factors that exist within political science state-building literature.

Literature Review

The emergence of the European state is one of several areas in the study of politics in which a vast array of literature can inform upon the circumstances surrounding the emergence of the British state. Most of the literature offers generalizable theories that seek to identity commonalities amongst disparate states. While nearly all of these theories are informed by case studies that include the English state, many of the studies either look at epochs of history before or after the Union of the Crowns or ignore ideational explanations entirely. A short survey of relevant works in political science will suggest that the circumstances surrounding the establishment of the British state have not been adequately addressed by current literature and that ideational explanations can illuminate existing social science research in this area of study.

Charles Tilly's *The Formation of National States in Europe* (1975) reflects an attempt to identify the "crucial problems and events in the emergence of the alternative forms of Western states" (12). These alternate forms speak to political changes undertaken during state-making through the interaction of two partially independent processes, popular mobilization, and state-making itself. Tilly identifies six factors that are crucial to the state-making process: the existence of extractible resources; whether or not the emerging state is relatively protected from external threats in specific moments in the state building process; a continuous supply of political entrepreneurs; success or failure in war; homogeneity among the subject population; and the presence or absence of

a strong coalition between the landed elite and the central power (Tilly, 1975, 40). Although several of these factors have room for ideational changes, especially the existence of political entrepreneurs, the analysis is primarily material in nature.

This style of analysis continues in Tilly's (1990) *Capital, Coercion, and the European States: AD 990-1990*. Tilly builds off his previous research and refines his argument further, suggesting that his previous research was limited by its focus on a single causal mechanism. Although the argument is refined, Tilly asks a very similar question, namely, "what accounts for the great variation over time and space in the kinds of states that have prevailed in Europe since AD 990, and why did European states eventually converge on different variants of the national state" (Tilly, 1990, 5). In an argument described as, "unconventional, unproven, and riven with gaps," he suggests that individual variations within the national state paradigm can be accounted for through an analysis of "continuously-varying combinations of concentrated capital, concentrated coercion, preparation for war, and position within the international system" (Tilly, 1990, 14).

In contrast to Tilly's ambitious attempts to chart the growth of dozens of states over the course of a millennium, Perry Anderson's *Lineages of the Absolutist State* (1974) provides a Marxist historical analysis of the emergence of absolutism in Western and Eastern Europe. Anderson seeks to uncover both the general historical parameters as well as the specific particulars of the varied absolutist states that emerged during the Early Modern period. Anderson suggests that the emergence and structure of absolutist states was "fundamentally determined by the feudal regroupment against the peasantry"

at the end of the feudal period (Anderson, 1974, 22). With specific regard to England, Anderson suggests that English absolutism was relatively brief and ineffective due to the strength of the nobility and the existence of Parliament. Most important was the ability of Parliament to secure the negative limitation of royal legislative authority, especially in matters of taxation (Anderson, 1974, 115). This proved especially important under the reign of James Stuart, although Anderson does not credit ineffective rule as the end of English absolutism, but instead suggests that absolutism was "cut off by a bourgeois revolution" (Anderson, 1974, 142). Anderson offers little theoretically to the discussion at hand, but does provide a class-based analysis of shifting political movements in England into the very beginning of the 17th century.

Sociologist Gianfranco Poggi offers a perspective that diverges significantly from the materialism of Tilly's and Anderson's analyses. In *The Development of the Modern State: A Sociological Introduction* (1978), Poggi examines the development of the defining structural features of the modern state by focusing on the evolution of internal institutional arrangements (Poggi, 1978, xi). This analysis is dependent on Poggi's definition of the modern state, which he sees as, "a complex set of institutional arrangements for rule operation through the continuous and regulated activities of individuals acting as occupants of offices" (Poggi, 1978, 1). The analysis maintains a level of abstraction by focusing on less-readily identifiable political phenomena than the materialist examinations of Tilly or Anderson. Poggi is therefore less concerned about the effects of international competition; he is also less interested in making sweeping hypotheses that carry across time and space. Poggi develops his analysis of the modern

state further in *The State: Its Nature, Development, and Prospects* (1990). Here, he continues his argument that the modern state is created through gradual professionalization. This professionalization can be traced in many ways, including the, "nature of the state as an organization, that is as a set of positions that shape and constrain the conduct of inhabitants, to the point of rendering relatively insignificant their individual identities" (Poggi, 1990, 33). The nascent modern state is further consolidated through a, "conscious effort to standardize it by means of laws - from broad constitutional principles and conventions" (Poggi, 1990, 54).

More recently, Thomas Ertman in *Birth of the Leviathan* (1999) seeks to uncover a theory that "can account in a more satisfactory way for the distribution of political regimes and state infrastructures found across the continent on the eve of the French and Industrial Revolutions" (19). Ertman proposes three factors that account for political and institutional divergence in 18th-century Europe: the organization of local government in the centuries immediately following state formation; the timing of intense geopolitical competition; and the independent influence of strong representative assemblies on administrative and financial institutions (Ertman, 1999, 6). Ertman seeks to move away from what he criticizes as a "false dichotomy" of absolutist or parliamentary states and instead offers a two-by-two table that measures whether or not the executive maintained independent legislative authority and whether governmental institutions operated under bureaucratic or patrimonial guidelines. Ertman acknowledges that national representative institutions have an independent effect on his analysis, which includes Britain, but maintains that it was in fact the proto-modern bureaucracy that kept England from

becoming a patrimonial state as early as the 15th century (Ertman, 1997, 30). Ertman offers a new perspective and makes strong analytical claims, but neglects to discuss the emergence of the new British state and suggests that the institutions of the British state were internally consistent across its jurisdiction (Ertman, 1997, 187). This proves problematic, as historical research has shown that only certain aspects of the British legal system were unified in 1706-07 (Ferguson, 1977, 237). Property and inheritance law would only become standardized over the course of the following century. Additionally, Ertman identifies the importance of Parliament as an institution, but chooses to limit discussion to its legislative power within the British system and therefore ignores the role of ideology in cementing Parliament's role within the British political system.

Thus, the existing relevant state-building literature is dominated by structural and institutional explanations that vary across states and eras. These works include the English or the British state in their analyses, but none adequately addresses changes in the conception of the state undertaken in what would become Britain during the 17th century, nor do they provide room for ideational explanations in their analysis. A project that looks at the significance of ideology in the development of what would become the British state has the ability to add a complementary form and level of analysis to these existing theories. Cognizant of the limitations of his own approach, Poggi writes that, "a limitation of my approach is that it does not consider the developments in political theory and ideology that accompanied the formation of the modern state" (Poggi, 1970, xii). Poggi also notes that his generalizable theory is an imperfect one, stating that, "the 'English case', particularly after feudalism, does not fit easily into the argument, even in

the highly abstract terms in which I place it" (Poggi, 1970, 17). In short, this analysis seeks to augment the general theories offered by Poggi among others and assert that ideology plays an important role in the exceptional circumstances surrounding the British state building experience.

Organization

The exceptional British experience deserves a thorough investigation. The remainder of this essay is divided into four parts. The first part looks at the circumstances surrounding James Stuart's ascension to the English throne and the pervasive use of absolutist ideology to legitimize the English and Scottish states in the early 17th century. The second section looks at the breakdown of the English absolutist state in the time-period surrounding the English Civil War, paying special attention to the writings of English Republican thinkers James Harrington and John Milton. What emerges from these decades is not only an experiment in republican governance, but also the first clear articulation of the principles of constitutionalism and limited executive authority in English political thought. The third section builds off the English Republicans by discussing the liberal constitutional project that John Locke articulated in the 1680s in order to provide further theoretical justifications for the removal of the Stuart monarchy. This section will also explore how the rhetoric used in the two most important sets of documents relating to British constitutionalism, the Parliamentary documents proclaiming William and Anne King and Queen in 1688 and the Acts of Union in 1706 and 1707 reflects the constitutionalism of republican and liberal thinkers. These changes contrast greatly with the assumptions regarding the purpose and legitimacy of the state

espoused by James Stuart a century before. The final section concludes by discussing the vitality of modern Scottish nationalism, the imminent independence referendum, and how they fit into the narrative of a unified Britain founded upon representative, limited government and the implications this movement has on how best to conceptualize the founding of the British state.

CHAPTER II

EARLY UNION AND ABSOLUTISM

The death of Elizabeth I in early 1603 had created the opportunity for a constitutional crisis. The House of Tudor, winners of the War of the Roses, creators of the Anglican Church, and defenders of England against Spanish aggression, had reached its end with the passing of the Virgin Queen. Before her death, Elizabeth looked to the north for the heir to her throne and implicitly chose her cousin, James VI, King of Scotland. Although James Stuart became James I of England in the spring of 1603, his dual-kingship did not mean the unification of these two kingdoms. Commentators contemporary and modern have both asserted as such. Ferguson succinctly describes the political reality of James' ascension in that, "The ascension of James VI of Scotland as James I of England, by virtue of his descent from Henry VII, did not in any organic sense unite the two crowns far less the two realms … "(Ferguson, 1977, 97). James would try on several occasions to provide for a more formal unification of the two realms; these were non-starters. The Union of the Crowns did not lead to the emergence of Great Britain in any immediate sense. Instead, the Union of the Crowns created the space for a intellectual battle over the nature of the English, Scottish, and eventually British political systems and constitutional orders. This battle would begin over diverging interpretations of the English constitution, specifically regarding the rights of the king and parliamentary rejections of absolutism.

The ascension of James Stuart to the throne of England did not introduce the concept of absolutism into the English political system. Absolutism interacts with the

theory of Divine Right of Kings, a doctrine that declared that sovereigns derive their right to rule by virtue of their birth alone. Combined, these doctrines suggest that because the sovereign was responsible to God alone and not the governed, active resistance to a King was against both secular and religious law. The development of this brand of absolutism is reflective of centuries of contestation between the Catholic Church and secular authorities across Europe, as well as pinpoint focus on specific chapters within the New Testament. Perhaps the passage most easily appropriated by church and secular authorities to defend divinely appointed kings is I Romans xiii, which states "Let every person be subject to the governing authorities; for there is no authority except from God, and those authorities that exist have been instituted by God". Although Henry VIII had renounced the authority of the Catholic Church and created the Church of England, many Catholic-inspired teachings remained, especially those that suited the Crown's objectives. One of these was the centrality of the Crown within the English political system in the period leading up to the 17th century. The Tudor Dynasty, of which Elizabeth I was the last heir, moved England away from a feudal system and towards a relatively united and centralized State under a powerful sovereign. In fact, some historians have argued that the absolutist tendencies of James Stuart prove remarkably similar to those of Elizabeth I. The key difference between the two monarchs, at least in terms of absolutism, is that, "She [Elizabeth] would never have actually … called public or parliamentary attention so baldly to her "absolutist" notions of her office" (Bucholz & Key, 2004, 209). Perhaps James Stuart was less adept at playing politics than Elizabeth, but the absolutist principles

he espoused were one of many interpretations of the proper form of government in both kingdoms prior to his ascension to the English throne.

Church, State, and Absolutism

Absolutist doctrines of obedience and kingly authority appear in both religious and political writings. The close relationship between the Church and the Crown in England created a strong political and social alliance that reinforced a hierarchal society that was still heavily influenced by feudal social values. That these values were articulated from the throne and pulpit suggests that not only was absolutism the dominant political ideology in England upon the ascension of James Stuart, but that his claims to rule through absolutism and divine right were well founded upon practice and theory. The following textual analysis of religious, philosophical, and governmental documents suggests that absolutism was the dominant political ideology in both England and Scotland upon the ascent of James Stuart to the English throne. This section will explore a homily from an Anglican parish priest written in 1570, the political writings of James Stuart prior to his succession to the English throne, and a speech given by James Stuart in 1610 to both houses of the English Parliament as King of England. Through an examination of the various aspects of absolutism, this section will illuminate the theories of government that later thinkers during and after the Civil War period will counter with their own theories of English constitutionalism. The medieval belief in the importance of obedience to absolute, divinely appointed authority will ultimately be challenged by republican and liberal thinkers in an attempt to change the roles of specific institutions of

government and their constitutional underpinnings in what would become the British state.

An illustrative example of how religious teachings mirrored absolutist political doctrine can be found in David Wootten's *Divine Right and Democracy: An Anthology of Political Writing in Stuart England* (1986). Wootten reproduces an unattributed Anglican parish sermon entitled, "An Homily against Disobedience and Wylful Rebellion" from 1570. This homily is illustrative of several important considerations necessary for understanding the dominance of absolutist thought in 16th and early 17th century England, as well as its eventual discrediting through the course of 17th century English and Scottish intellectual development. Readily apparent in this work are the twin absolutist themes of subject obedience and legitimate authority resting in a divinely appointed monarch. Although this homily was written in support of Elizabeth I and written nearly three decades before James' political writings, the evidence used in this homily to support absolutist principles would be agreeable to James' own positions a few decades later.

Considering the religious nature of this text, it is unsurprising that the primary justifications given for obeying the monarchy are based on scriptural teachings and contemporary Christian values. The "Homily against Disobedience" frames loyalty to the monarch through the interconnected value of obedience to earthly and godly authority. Religious authority both defends and underpins this argument, highlighting the significance of the alliance between the Anglican Church and the English Monarchy and a thoroughly medieval conception of the responsibilities of ruler and subject. This homily begins by discussing the importance of living a virtuous life and suggests that one of

many Christian values holds primacy over others in all aspects of life. Through a discussion of how society is organized and arranged, the homily asserts that, "it is evident that obedience is the principal virtue of all virtues, and indeed the very root of all virtues and the cause of all felicity" ("Homily", 1986, 94). Obedience leads to a well-ordered household and by extension, a well-ordered society.

The appropriation of the nuclear family as a proxy for political society is an analytical tool that goes back to Classical Athens. The distinction between the metaphors of the Greeks and this Christian interpretation rests in the religious justifications underpinning this argument. The homily provides further elucidation of this transferability of the principle of obedience by arguing that,

> He [God] not only ordained that in families and households the wife should be obedient unto her husband, the children unto their parents, the servants unto their masters, but also … he by his Holy Word did constitute and ordain in cities and countries general and special governors and rulers, unto whom the residue of his people should be obedient ("Homily", 1986, 95).

The claims made in the homily regarding the proper order of the family are easily transferable to the public sphere. It will be shown later in this section that James Stuart utilizes the child-parent metaphor to help legitimize and give context to his assertions of absolute rule as King of Scotland in the 1590s. Obedience is described thus as virtuous and acting in accord with God's plan for humankind. The second half of this absolutist theory of government focuses on the centrality of a divinely sanctioned and enlightened monarch that rules through providence regardless of the political outcome.

The distinction between obedience and monarchical legitimacy is somewhat fuzzy. An assumption regarding God's intentions is an important component of both

principles. There exists an almost definitional connection between obedience and legitimacy as well. As such, it is hardly surprising that this homily likewise sees these two concepts as interdependent. This absolutist logic suggests that subjects are expected to accept their station in life and accept the decisions of the monarch as ordained by God. This context is described within the homily, such that, "kings and princes, as well the evil as the good, do reign by God's ordinance, and that subjects are bound to obey them; that God does give princes wisdom, great power and authority" ("Homily",1986, 95). This assertion not only binds subjects to their rulers, but also binds subjects to their rulers regardless of outcome. Failure and success are both ordained by God. This point is reinforced later in the homily when it is asserted that, "all kings, queens, and other governors are specially appointed by the ordinance of God" ("Homily", 1986, 97). This unyielding willingness to accept both the form and the justifications for a sitting government stands in stark contrast to the arguments made by republicans and liberals throughout the 17th century. We see later that these thinkers question the historical foundations upon which absolutist thinkers claimed traditional English government rested.

James Stuart: King, Philosopher

The second relevant work that describes the traditional political order of what was to become Great Britain comes from Scotland. Prior to his ascension to the English throne, James Stuart was well known in England, and not solely due to his kinship with Elizabeth and his station as King of Scotland. James fancied himself a philosopher,

offering a defense of absolutist rule that shares many similarities with the 1570 homily's themes of obedience and divine appointment, as well as the presence of a series of corporal and patrimonial metaphors that compare king and country to head and body or father and children. *The Trew Law of Free Monarchies* was one of several scholarly works written by James before his ascension to the English throne. Scholars suggest that James envisioned himself as an enlightened monarch and sought to impress through his intellect (Smith, 2003, 238). However, the practical political purpose to James' writings is not immediately apparent. The political position of the monarchy in Scotland was stronger than the corresponding monarchy in England. This is typified most clearly in taxation policies. The English Constitution ensured that Parliamentary consent was necessary in order to levy new taxes, which contrasted in greatly with the Scottish Parliament, which had a near dearth of political authority in financial matters (Anderson, 1974, 140). As such, it is perhaps better to consider *The Trew Law of Free Monarchies* as a clear statement of how James Stuart understood his rights and responsibilities as king. Furthermore, this work foreshadows James' ruling philosophy upon ascension to the English Crown.

Although *The Trew Law of Free Monarchies* is by no means a seminal work in Anglo-European political thought, James' traditional defense of absolute monarchy is representative of the general principles of this ideological movement and offers a clear account of James' political predilections. These theories describe James' ruling philosophy in Scotland and therefore frame his approach to ruling in England as well.

James frames the right to kingly rule in a manner consistent with the previous Anglican homily: obedience and divine sanction.

James utilizes two different types of metaphors to describe how he envisions the role of the king related to his country. James first uses a patrimonial metaphor, comparing a king and his subjects to a father and his children. The second metaphor is corporeal; the king is the head of the country's body. Between these two metaphors, James suggests that the natural order of political society mirrors the order of the family or the nature of the human body, such that,

> The king towards his people is rightly compared to a father of children, and to a head of a body composed of divers members … from the head, being the seat of judgement, proceeds the care and foresight of guiding, and preventing all evil that may come to the body or any part thereof (Stuart, 1986a, 99).

In addition to suggesting that the institution of monarchy affirms a natural order that is given by God, this perspective makes a value claim on who in society is able to make good political decisions. The comparison of the king to the head suggests that James believes that the common people are incapable of ruling.

The centrality of divine blessing in James' political theory continues as he moves from discussing the relationship between king and country to discussing the responsibilities and rights of the king. James asserts that a king cannot be overthrown by his people under any circumstances as,

> And if it be not lawful to a private man to revenge his private injury upon his private adversary (since God has only given the sword to the magistrate) how much less is it lawful to the people, or any part of them, to take upon them the use of the sword, when it belongs not, against the public magistrate whom to only it belongs (Stuart, 1986a, 101).

The relationship between the king and the public is thus framed as the same relationship that exists between private actors. Private actors do not have the legal right to take violent action against one another because that is the provision of the state; as such, the people likewise do not have the right to take up arms against the king. Although some medieval thinkers had articulated justifications for the removal of the magistrate under certain specific conditions, James suggests that such arguments are temporally and spiritually misguided. James also holds that,

> For if a prince cannot justly bring back again to himself the privileges once bestowed to him or his predecessors upon any state or rank of his subjects, how much less may the subjects reave out of the prince's hand that superiority which he and his predecessors have so long brooked over time? (Stuart, 1986a, 102).

This passage suggests that James has an appreciation for constitutional principles. Indeed, James' very argument for why the people cannot rise against the monarch relies on a notion of a relatively static and historically bounded constitution. Rights are protected in both directions. James suggests that the proper constitutional order is one in which the monarchy does not overstep its constitutionally delineated bounds and the people likewise accept the jurisdiction of the monarchy over their daily lives. This understanding of English and Scottish constitutionalism would continue to carry reasonable amounts of support well into the 18th century.

Interestingly, *The Trew Law of Free Monarchies* appears alongside contract-based arguments that appear in the tail end of the 16th century in Scotland and England which ultimately become the dominant ideology within British constitutionalism by the beginning of the 18th century. James is skeptical of claims to a binding consent between

monarch and subjects. Instead of a contractual agreement based upon consent, James suggests that a relationship that is consistent with his conception of political society as a large nuclear family. James writes,

> As to this contract alleged made at the coronation of a king, although I deny any such contract to be made then, … yet I confess that a king at his coronation, or at the entry to his kingdom, willingly promises to his people to discharge honourably and truly the office given him by God over them (Stuart, 1986a, 103).

Magistrates have a responsibility to their subjects, but it is a filial responsibility ordained by God and not a contractual responsibility created by men. This rigid and axiomatic understanding of his divine right to rule raised eyebrows in England and upon his ascension to the throne, many parliamentarians wondered how exactly this Scottish king would approach his new kingdom.

James Stuart's ascension to the English throne raised concern among many in the English political elite. James' philosophical writings and governmental precedent in Scotland suggested that the relatively privileged position of the English Parliament might be jeopardized by attempts to mold the English political system into something closer to the Scottish model. Although England had an absolutist system, it was qualitatively different from both Scotland and the continent in terms of its relative strength. In addition to the English Crown's relative inability to raise revenues without legislative consent, the English nobility maintained itself as more of a political threat to the monarchy than their French or Scottish counterparts did. Future attempts by the Stuart monarchs to enact a form of Scottish absolutism in England were met with significant hostility – two separate revolutions. This has led some commentators to conclude that, "the strongest mediaeval

monarchy in the West eventually produced the weakest and shortest Absolutism" (Anderson, 1974, 113). James' ascension led to some interesting constitutional questions. Although, as Ferguson suggests, "in law, and in constitutional theory, the Union of the Crowns was strictly limited to the two kingdoms sharing one monarch and one dynasty", that did not preclude James from attempting to shift the English constitutional order further in the favor of the monarch (Ferguson, 1977, 343). One such example of James' attempts to reinforce absolutism while navigating English political realities is a speech given to both Houses of Parliament in 1610. This speech, entitled, "A Speech to the Lords and Commons of the Parliament at White Hall", takes up many of the arguments that James articulated in *The Trew Law of Free Monarchies*. Within this speech, James reinforces his belief in superiority of monarchical government, continues the use of corporeal metaphors, and further argues that kings are divinely appointed and guided. However, this speech also offers what is interpreted as concessions to English political realities by suggesting that there are some bounds by which a king's actions are rightfully constrained.

James' speech to Parliament occurred nearly seven years into his reign. Early attempts at a formal union of England and Scotland had met strong criticism from both sides of the Anglo-Scottish Border. Commenters have questioned James' understanding of the constitutional differences between Scotland and England. Using the corporeal metaphor favored by James Stuart, Pocock (1994) has argued that James was unaware that, "… he was coming to rule a kingdom in which head and body were so tightly bound in one by ties of law, counsel and religion that the body had its own voice and could

accuse the head of breaking away from it" (300). Whether or not James Stuart was aware of the differences between his kingdoms, he continues to assert the power and authority of the king in this speech, drawing several connections to his political writings in *The Trew Law of Free Monarchies*. These connections appear in the continuation of the corporeal metaphor, as well as a claim of authority resting on the extension of divine power.

As mentioned previously, the political realities of England were different from those of Scotland, most notably in the relative strength of the English Parliament. James clearly envisioned Parliament as no more than an advisory body, declaring that, "the head has the power of direction all the members of the body to that use which the judgement in the head thinks most convenient" (Stuart, 1986b, 108). Within the context of a speech on the Parliament floor, this statement suggests that James is committed to the position that the king is the chief actor within the English political system. James reinforces this point in another section of his speech, when he declares that, "Kings are justly called gods for that they exercise a manner or resemblance of divine power over earth … The state of monarchy is the supremest thing upon earth" (Stuart, 1986b, 107). James' use of divine right terminology stands in apropos of his circumstances as dual monarch of separate states. If James took his claims of divine right seriously, then the complete unification of the two kingdoms was essentially a requirement of his governing ideology.

The second half of James' speech moves from justifications for governing into practical matters of governance. Commentators disagree on whether James offers a more conciliatory position that is cognizant of the institutional limitations of the English

system, but James does seem to suggest that there is a small degree of accountability to Parliament inherent in the kingship.[1] This accountability does not come in the practice of formal checks on the king, but instead on the responsibility of the king to inform his subjects of the reasons behind his actions.

James viewed the institution of monarchy as the result of a gradual process that moved humanity from a state of disorder to a state of order. This historical perspective, buttressed with the assumption that kings are divinely appointed, leads to a specific understanding of the proper organization of government. James suggests that political society is the handiwork of kings, arguing that, "kingdoms began to be settled in civility and policy, then did kings set down their minds by laws, which are properly made by the king only …" (Stuart, 1986b, 108). This political system has the king as legislator and executive, with no formal institutional role for Parliament. Although James does not envision a formal role for Parliament, he does seem to suggest that a king should not rule in total isolation or opaqueness. Instead, James acknowledges that ruling on behalf of others requires a level of accountability, in that, "But I shall ever be willing to make the reason appear of all my doings, and rule my actions according to my laws" (Stuart, 1986b, 109). What is significant is that this level of accountability is not in relation to Parliament. Instead, James argues that the king is accountable to himself and his laws. Roger Mason (1998) neatly summarizes the political philosophy of James Stuart when he states that, "James simply took it as axiomatic … that monarchical government was of

[1] Some scholars have suggested that James recognized the political realities of England and therefore muted his claims of absolutism over the course of his rule. A separate observation is that James maintained his belief in absolutism publically and held onto these doctrines over the course of his reign. See: Wootten (1986), Mason (1998) for the former interpretation.

divine institution and, crucially, that kings were accountable to God and God alone for the administration of their office" (221). This conceptualization of the state proved palatable in 17th century France, but would be met with at first suspicion and then outright hostility as attempts to enforce this doctrine through the reign of James' son Charles I were met with heavy Parliamentary backlash.

Conclusion

James' absolutist views were both consistent with the political realities of contemporary Scotland and, to a lesser degree, England as well. The Tudor state, especially under Elizabeth I, had centralized political power to an extent that nearly matched James' kingdom to the north. The key distinction between the constitutional orders of these two states was the ability for political opponents to construct compelling alternatives rooted in the history of the realm. In the next section, the rise of the English Republicans will highlight the ability of English intellectuals to offer a compelling alternative to Stuart conceptions of the state of which no clear analogue appears in Scotland.[2] Although the ultimately failed experiment of the Commonwealth suggests that the early English Republicans were better theorists than governors, the principles espoused by theorists such as John Milton or James Harrington would prove significant

[2] Roger Mason suggests that Scotland did have viable philosophic alternatives to absolutist doctrine as early as the end of the 16th century. In *Scots and Britons: Scottish Political Thought and the Union of 1603* he writes, "The emergence of divine right theories of kingship in response to the 'populist' politics of John Knox and George Buchanan polarized Scottish political debate in a manner which was not just unprecedented but which was to resonate profoundly through the constitutional conflicts of the seventeenth century" (Mason, 1994, 6). Discussions of Knox or Buchanan require a thorough discussion of the religious politics of 16th and 17th century Scotland, which, due to that subject's tangential relation to the scope of this work and the deep complications within this theology, will remain outside the discussion in this essay.

in the development of constitutionalism in future Britain. Republican preoccupation with the powers of the kingship and their assertions that the end of government was the interest of the common people would play an influential role in the constitutional debates of the late 17th and early 18th centuries and help inform later arguments for constitutionalism in Britain, such as those espoused by John Locke.

CHAPTER III

REPUBLICAN DISCOURSE AND LIMITED GOVERNMENT

The several articulations of absolutist principles found in the preceding section highlight the twin themes of obedience and divine right to rule that the Stuarts and their royalist allies would continue to utilize through the constitutional progression of the 17th century. absolutist principles underpinned the justifications given for the Union of the Crowns and supplemented James Stuart's attempts to unify his two kingdoms. These descriptions of British constitutionalism were but one of many competing viewpoints during this time. Starting in the period preceding the English Civil War and continuing into the 1680s, the development of constitutional counter-principles to this absolutist understanding of the state by republican and Whig (liberal) thinkers challenged these viewpoints and presented a strong constitutional alternative. This alternative, which stressed the importance of the rule of law, the limitation of executive prerogative, and claimed that the end of government was the betterment of the people, stands in stark contrast to the constitutional order described by James. By the end of the 17th century, this limited government constitutionalism would not only be the predominant philosophical position of British political theorists, but would be the founding principles of the Acts of Union and the creation of Great Britain. The following two sections of this essay discuss these developments chronologically. This section will look at English republican articulations of this alternative constitutionalism, while the following section will detail the liberal constitutional perspective and discuss how these constitutional

principles underline the formation of the British states in relevant constitutional documents.

Inspired by Niccolò Machiavelli's work in the preceding century and dismayed by the political situation in early 17th century England, English republicanism originally emerges as a direct opponent of the Stuart dynasty's desires to limit legislative authority and reclaim the superiority of the kingship in the English constitutional arrangement. Republicanism becomes the ideological justification for the Cromwellian Republic and continues to be a critical intellectual force after the Stuart Restoration through the reign of William III beginning in 1688. The chief concern of English republicanism was the prevention of tyrannical rule by the executive and this overarching concern took on a variety of forms. English republicanism was a catholic ideology, as historian Caroline Robbins highlights when describing English republicans as "those who said that the people should rule and that the monarch himself should be under the law; those who served or supported any state not headed by a king; [or] those who preferred elective to hereditary monarchy" (Robbins, 1969, 42). Although this definition suggests that English republicanism was a relatively incoherent movement theoretically, thinkers such as John Milton and James Harrington articulated political alternatives to absolutist rule that offered a different understanding of English constitutionality.

England suffered through several religious controversies during the 17th century. Early English republicans weighed in on the religious debates that strained relations between the different Protestant groups that supported Parliament in the English Civil War. What further complicates efforts to identify the general political aims of the English

republican movement is the pervasive concern with religious affairs shown by each republican writer. The religious concerns in question, and the objects of righteous vitriol, are dependent upon the religious and political circumstances leading up to the English Civil War and the Interregnum. Early republicans, such as Harrington and Milton, write before and during the Interregnum and share contradictory relationships with the Cromwellian Regime and the religious debates of the middle part of the 17th century. Although what follows shows that it is difficult to describe the English republicans as a coherent intellectual movement, what emerges from the literature is a push for strong limitations on the power and role of the monarchy, belief that government is founded by free individuals for the protection of liberty, and a pervasive concern for solving the religious conflicts that plagued England going back into the middle 16th century.

John Milton and the Religiosity of Rebellion

Known more for his poetry than for his politics, John Milton was nevertheless an influential public intellectual and member of the Cromwell government during the Interregnum. A deeply pious and radically republican thinker, Milton provided some of the earliest and most complete justifications for the parliamentary rebellion against Charles I and for the establishment of a republic in his stead. Milton's most significant work, *The Tenure of Kings and Magistrates*, was published immediately after the execution of Charles I. In it, Milton defends the right of the people to overthrow – and eliminate – their executive when his rule lapses into tyranny. Writing to ameliorate the tension between the monarchists and the parliamentarians in the aftermath of the

execution, as well as to censure Presbyterian Parliamentarians who had voted for Charles I's execution but later publically condemned it, Milton not only defends the right of the people to remove their sovereign under instances of tyranny, but goes so far as to suggest that the right to remove political leaders exists under all political societies.

Milton starts from the premise that men are born naturally free and that they enter into civil society in order to, "bind each other from mutual injurys and joyntly to defend themselves against any that gave disturbance or opposition to such agreement" (Milton, 1991, 8). Organized society requires government; this government exists by the discretion of the people, to the ends that they themselves define. Kings and magistrates are not the people's betters, but their deputies, as "why among free Persons, one man by civil right should beare autority and jurisidiction over another, no other end or reason can be imaginable" (Milton, 1991, 9). This radical understanding of the power dynamics that underline political society diverge greatly from the paternal ideology of absolutism. Monarchy is not a natural human institution, but exists instead for a specific end: the betterment of society through the implementation of well-regulated laws. As such, "the power of Kings and Magistrates is nothing else, but what is only derivative, transferr'd and committed to them in trust from the People, to the Common good of them all" (Milton, 1991, 10). It is through the framing of the king-subject relationship in terms that run counter to the claims made by monarchists, including the Stuarts, that Milton provides a series of logical, historical, theological justifications for deposing a monarch.

Milton moves from defining the relationship between monarch and subjects to determining under what circumstances the people may depose their king. Milton ends up

on the very radical end of the English republican spectrum by arguing that the choice to depose a king can be undertaken at any time. Milton asserts that since the king holds his authority for the good of the people, “the people as oft as they shall judge it for the best, either choose him or reject him, retaine him or depose him though no Tyrant, merely by the liberty and right of free born Men, to be govern’d as seems to them best” (Milton, 1991, 13). Milton’s citizens are radically free individuals, burdened not by a contract with their monarch-deputy, but only by their duties to one another. Perhaps sensing the radical nature of his argument, Milton in turn argues that although the people have the reserved right of deposing the king at any time, the actions of Charles I rose to the level of tyranny. Milton defines tyranny as when one in power rules, “regarding neither Law nor the common good, reigns onely for himself and his faction” (Milton, 1991, 16). Milton’s harshest criticisms of Charles I were that the king’s actions ran counter to the rule of law and spirit of the English constitution. This argument would prove to be useful in later instances where English political thinkers would use historical precedent as evidence of the tyrannical overreach of James II.

Conscious of his Presbyterian audience and the religious disagreements that punctuated the Interregnum, Milton looks to early and contemporary Christian history, as well as to the Bible, for instances where monarchs accepted the principle that they rule not by the providence of God, but by the consent of the subjects. Milton quotes Livy’s quotation attributed to Theodosius, an early Christian king of Rome, who declares that, “a Prince is bound to the Laws; that on the authority of Law the authority of a Prince depends, and to the Laws ought submit” (Milton, 1991, 13). Failure by the king to follow

the laws, or alternatively, the decision of the king to rule outside the bounds of laws, is evidence according to Milton of a clear justification for the removal of the king. This point contrasts greatly with James Stuart's arguments in *The Trew Law of Free Monarchies* that a king can only be judged by God for his actions. Instead, Milton describes a monarchy in which the king may be the sovereign authority in daily politics, but this authority is only at the leisure of the people.

Milton's argument is an important one in understanding the developing constitutionality of future Britain for two reasons. Firstly, Milton's articulation of popular sovereignty (and through extension representation in Parliament) offers a viable theoretical alternative for the dismemberment of the absolutist state. Parliamentarians would use arguments rooted in conceptions of popular sovereignty during the Interregnum period and, moving forward, Whiggish liberals such as John Locke would use similar arguments in the latter half of the seventeenth century. Secondly, Milton's argument highlights the significance of religion in political debates during this modernizing period.

James Harrington's Commonwealth of Laws

Often confused with his first cousin, Sir James Harrington, James Harrington was an English republican theorist whose greatest work, *The Commonwealth of Oceana,* was written during the Interregnum, and was originally met with opprobrium by the Cromwell regime, due to its critical stance towards the constitutionality of executive prerogative. In *The Commonwealth of Oceana,* Harrington describes a utopian republic founded upon a

mix of classical and English republican principles. Oceana serves as an analog for England as Harrington uses stand-ins for important countries, political actors, and peoples in a manner that has little subtlety. A Neo-Romanist, among these principles is the Machiavellian notions that property underlines a strong commonwealth and that the army of a republic constituted of citizens soldiers. Commentators have highlighted the importance of the Machiavellian influence on Harrington's political thought by suggesting that this relationship is essential to understanding Harrington's arguments and underlying objectives. Pocock (1987) writes that, "Harrington, we must keep in mind, was a Machiavellian, and the starting-point of his thought was Machiavelli's perception that in a republic the soldiers must be citizens and the citizens soldiers (129). Although the Machiavellian influence is undeniable, it takes less precedence in this analysis, which instead focuses on Harrington's thoughts on political society more generally. Harrington's idealized historical narrative furthers contemporary republican claims of an ancient constitution that placed sovereignty outside the hands of the monarchy and echoes Milton's claims of the foundation of the commonwealth residing in the common interest of its people.

Harrington's alternative history of England suggests a country that is naturally suited to commonwealth. Harrington's utopian Oceana, which encompasses the entirety of the British Isles, is inhabited by virtuous republican citizens that have long sought to distance themselves from the tyranny of the royal court. In line with Harrington's broader historical project, which elevates the republican ideal of a citizen militia and analyzes the

history of landed relations across Europe, Harrington describes both the gentry and the commoners as prototypical republicans.

> The people of Oceana, in proportion to their property, have been always true, and the genius of this nation hath ever had some resemblance with that of ancient Italy … For in the way of parliaments, which was the government of this realm, men of country lives have been still entrusted with the greatest affairs and the people have constantly had an aversion from the ways of the court (Harrington, 1992, 4-5).

This idealized account of the people of Oceana suggests that they live as a people ripe with liberty. Fortuitously for the people of Oceana, Harrington grants that they live in a location suited for the republican way of life. Oceana, "being islands, seemeth to have been designed by God for commonwealth." (Harrington, 1992, 7). Harrington thus describes the British historical experience as a free people disposed to republican teachings that live in a land blessed by divine providence as an ideal location for a true commonwealth. A people naturally possessed with the spirit of liberty, protected from the continent by the fortunes of geography, Harrington's Oceana is ideally suited for a republic. From this historical narrative, Harrington is able to claim that an ancient English constitution exists that rejects the tyrannical claims of a powerful monarchy and instead invests the people and their representatives through Parliament as the true sovereign political body.

Harrington outlines some basic constitutional principles in *The Commonwealth* that are missing from Milton's theoretical discourse on the ability of the people to depose a sitting king. This distinction derives from the differences in aims between these two thinkers. As opposed to the defense of regicide offered by Milton, Harrington needs to

provide justifications for political rule in his idealized commonwealth. Beginning with a definition of government that is both simple and explicit, Harrington suggests that government exists for the benefit of the common people. This benefit is described as, "government is an art whereby a civil society of man is instituted and preserved upon the foundation of common right or interest" (Harrington, 1992, 8). This conception of government, which is consistent with both the classical republican tradition and the liberal constitutionalism espoused by John Locke in the following decades, offers a clear statement that government is bound to the people that are within that constituted society. This conception of common interest runs against Harrington's perceptions of English government under previous regimes. Harrington characterizes Stuart rule as rule for the benefit of the Court at the expense of the people at large. This selfish rule is runs contrary to the intentions of the commonwealth and against the religious justifications that the Stuart monarchy had used to justify its position within the English state. This position is succinctly articulated with *The Commonwealth* by the notion that, "the wisdom of the few may be the light of mankind, but the interest of the few is not the profit of mankind, nor of a commonwealth" (Harrington, 1992, 24). From this position, Harrington sets to work on describing a constitutional project that balances the interests of the many and the strength of the commonwealth. Before describing the constitutional principles of Oceana, Harrington calls on rational and God-fearing men to join him in the pursuit of the common good,

> wherefore if we have anything of piety or of prudence, let us raise ourselves out of the mire of private interest unto the contemplation of virtue, and put an hand unto the removal of this evil from under the sun: this evil against which no

> government th\aat is not secured can be good; this evil from which the government that is secure must be protect (Harrington, 1992, 19).

Within this discussion of constitutional design, Harrington argues that the best way to secure the government from the evils of self-interest is to ensure the supremacy of laws within the commonwealth and the division of powers within its government.

As one of the main justifications that republicans employed for the removal of Charles I was the capricious nature of his rule, Harrington's idealized commonwealth sought to ensure that government acted within and respected the laws. Harrington saw the rule of law as an essential component of a commonwealth based on common interest. The necessity of good laws that were respected by and constrained political actors is articulated by Harrington when he suggests that the very, "liberty of a commonwealth consisteth in the empire of her laws, the absence whereof would betray her unto the lusts of tyrants" (Harrington, 1992, 20). Harrington's reflection on the importance of respected laws was not lost on his contemporary audience. Harrington will later show that strong laws eliminate the power of political actors to go beyond their established duties. Although Harrington argues for the importance of laws, he does not assume that a lengthy legal code is necessary for the protection of liberty. Instead, Harrington articulates his preferences for numerically fewer laws that deal with only the issues necessary to protect the common interest of the people. This position is articulated by Harrington when he states that, "you will be told that where the laws be few, they leave much unto arbitrary power, but where they be many, they leave more …" (Harrington, 1992, 41). Of these relatively few laws, one of the most significant is proper regulation of the agricultural sector. Betraying his interests in both the Roman Republic and the history

of feudalism in Europe, Harrington argues that agrarian laws are the preeminent responsibility of government and that any commonwealth that is without clear agrarian laws are unlikely to prosper (Harrington, 1992, 13).

Drawing from examples from the classical republican past, as well as the Kingdom of Israel as described in the Old Testament, Harrington provides a template for constitutional governance that separates the legislative and executive functions of the government into distinct political actors and offers an avenue of representation for both the landed elite and the common people. In contrast with some of his contemporaries, Harrington does not assume that a commonwealth must have equality of wealth. Following the arguments made by Machiavelli in *The Discourses*, Harrington instead suggests that institutionalizing class distinctions within the legislative powers of government is the best for the security of the commonwealth. Harrington states, "But let a commonwealth be equal or unequal, it must consist, as hath been shown by reason and all experience, of the three general orders, that is to say, of the senate debating and proposing, of the people resolving, and of the magistracy executing … " (Harrington, 1992, 38). This division of powers, which neatly mirrors the Roman Republic, allows for a balancing of interests within government. This system, in its ideal form, balances interests so that political outcomes serve the common interest of the commonwealth.

Harrington further specifies the role of each constituted branch of government, paying specific attention to the responsibilities of the legislative branch and the role of the executive. Although the legislative council is divided into two different constituencies, Harrington sees this council serving one common purpose: the

representation of the communal interest. This council, “is to consist of such a representative as may be equal, and so constituted as can never contract any other interest than that of the whole people” (Harrington, 1992, 24). With the people’s interest properly represented, the executive powers of the government must be properly defined. Harrington’s articulation of the necessity of clear and strong laws betrays the importance placed in his analysis on the executive. Harrington describes the role of the executive such that, “as the head of the magistrate is the executive power of the law, so the head of the magistrate is answerable unto the people that his execution be according unto the law …” (Harrington, 1992, 25). Although Harrington places significant importance upon the role of the executive within the constitutional system, the powers of the executive are muted by the distinct limitations of acting as executer of the laws passed by the council in the interest of the people. This constitutional executive has only instrumental prerogative, which differs greatly from the powers claimed by the early Stuart monarchs. Interestingly, these strong limits on the executive placed Harrington outside the favor of the Cromwell regime during the Interregnum, as the Lord Protector gradually ruled more by decree than overt constitutionalism (Pocock, 1992, xvii). In addition to outlining the roles of each branch of constitutional government, Harrington outlines further the connection between the commonwealth and the common interest through his description of the intrinsic aspects of the commonwealth. Harrington describes a commonwealth as, “nothing else but the national conscience. And if the conviction of a man’s private conscience produce his private religion, the conviction of the national conscience must produce a national religion” (Harrington, 1992, 39). Although Harrington means this

literally, in that he believes that religious uniformity would solve many of the partisan conflicts that have ravaged the British Isles, including the English Civil War itself, Harrington is also channeling Machiavelli's arguments for the institution of a civil religion and its benefits to the commonwealth.[3]

Conclusion

Harrington's constitutional theory as described in *The Commonwealth of Oceana* serves as a clear articulation of constitutional principles that reject the constitutional understandings of the Stuart monarchs and embraces an increased role for Parliament within the English constitutional order. Milton offers religious and secular justifications for the removal of a sitting monarch and articulates the position of many of his contemporaries when he asserts that the English constitution states that the monarch is not the leader of the state, but instead is a deputy of the people. What emerges before and during the Interregnum is a coherent rejection of absolutism within the English philosophical tradition that offers both secular and religious objections to the medieval arguments made by the Stuarts and other allies of the old regime. The constitutional arguments made by Milton and Harrington overlap in three distinct and significant conceptual areas. These republican thinkers suggest that the rule of law is an integral part of the state and necessary to ensure the prevention of tyranny. A second and interrelated commonality is a preoccupation with limiting the prerogative of the executive. Both of these measures are necessary components of a constitutional order that adequately

[3] See Machiavelli's *Discourses*, chapter 12.

prevents tyranny. If a tyrant is one that acts beyond the bounds of law or beyond the bounds of one's proper authority, then strong laws and limitations on executive autonomy are essential measures to help prevent tyranny. The third theoretically significant feature of the arguments made by these republican thinkers is a conception of the state as one that exists for the benefit of the people at large. Harrington describes this benefit as 'interest'. We will see in the next section that John Locke sees government as an institution to protect property. We will also see that Locke will offer similar correctives for the English constitutional order and that these republican and liberal positions are reflected in the foundational constitutional documents of Great Britain.

CHAPTER IV

WHIG LIBERALISM AND THE EMERGENCE OF THE CONSTITUTIONAL STATE

A contemporary of later English republicans, John Locke's *Second Treatise of Government* shares similarities to the English republican project, but maintains several stark distinctions. Locke's text suggests that he is more in a dialogue with Thomas Hobbes than with the English republicans, as he differentiates his theory of government from Hobbes' Absolutist contractual theory in several significant ways. Key to the present context, Locke develops the theory behind a political system that features a mixed-government, limited by individual rights and founded on the principle of preventing tyranny, and articulates an understanding of the English constitution that allows for the removal of a monarch under certain conditions. These characteristics serve the dual purpose of furthering the republican project that called for limited government and providing the intellectual justification for the removal of a sitting king. Parliament would articulate several of these Lockean principles during the Glorious Revolution. Although written before the Glorious Revolution, the Whig position best articulated by Locke's work is what that underpins how legitimate government was formalized in the period after the Glorious Revolution and leading up to the Acts of Union.

John Locke and the Whig Approach to Constitutionalism

Locke sees the creation of civil and political society to be a rather straightforward process. He defines civil society as "those who are united into one body, and have a common established law and judicature to appeal to" (Locke, 1993, 138).

Entering civil society is a voluntary action at its outset, requiring the explicit consent of the individuals from whom civil society emerges. If the group consensus is to join together then, "everyman, by consenting with other to make one body politic under one government, puts himself under an obligation to everyone of that society, to submit to the determination of the majority" (Locke, 1993, 184). Locke declares, "the great and chief end therefore, of men's uniting into commonwealths, and putting themselves under government, is the preservation of their property" (Locke, 1993, 178). Moving from the foundations upon which government rests, Locke then turns to determining the proper form of government and under what situations the people may remove that government.

Locke begins his analysis of the best form of government by offering the standard regime typology of monarchy, oligarchy/aristocracy, and democracy, as well as the mixture of one or more of these forms. A strong critic of absolutism, Locke counters the claims made by Hobbes in *Leviathan* in support of absolute monarchy. Locke provides two critiques to Hobbes' argument. First Locke directly contradicts Hobbes and argues that for the sovereign to be outside the bounds of the laws is to be outside the bounds of civil society (Locke, 1993, 163). Secondly, he suggests that one powerful person has the ability to do more harm than a multitude of equally powerful individuals. This second argument supposes that an individual is more at risk from one individual with the power of 100,000 men than one is from 100,000 individuals acting under their own power (Locke, 1993, 161). These two critiques of absolutism highlight Locke's belief in the importance of limited and mixed government with clearly distinguished responsibilities.

By dividing government into three separate functions, legislative, executive, and federative,[4] Locke explores the limits of each branch of government.

In exploring the relationship between the legislative and the executive branches of government, Locke sets clear limits on the functions of and the relationship between these two branches. Although the executive appears to be the stronger of the two branches by virtue of always being in office, Locke suggests that the executive is in fact subservient to the legislative branch. The power of the legislative branch is found in its "right to direct how the force of the commonwealth shall be employed" (Locke, 1993, 188). The legislative, although the dominant branch of government, is still restricted by the limits imposed by the original contract. The legislative therefore cannot have more power over its citizens than what an individual would have over oneself in the state of nature; the legislative must likewise act within the limits of properly promulgated laws (Locke, 1993, 183-184). Limited mixed-constitutional government gives the executive the responsibility to call the legislative into session and the right to use executive prerogative in specific circumstances. Importantly, Locke frames these actions not as powers, but as duties. The executive has a fiduciary duty to call the legislative into session at the proper time and must use the prerogative for the "trust and ends of government" (Locke, 1993; 194,201-202). Empirically surveying the role and customs of the English political system, Locke determines that the English king, as executive, is in fact not the supreme power, but instead simply the supreme executer of the laws promulgated by Parliament (Locke, 1993, 192).

[4] Federative powers are those that are concerned with matters outside of the commonwealth, including trade and diplomacy (See §146 for a more detailed explanation).

Similar to Milton, John Locke articulates the right of subjects to remove magistrates from office through force. Historically, theorists who had accounted for a right of rebellion against the government had placed "inferior magistrates" as the actors responsible for leading the insurrection[5]. What differentiates Locke from Milton is that he places the right of rebellion in the hands of the citizenry as a whole.

Instrumental in Locke's conceptualization of rebellion are the twin concepts of tyranny and allegiance. Tyranny is understood by Locke to mean the exercise of power beyond legal rights (Locke, 1993, 216). Tyranny is not particular to the form of commonwealth, but is instead dependent upon the actions of the institutions of the commonwealth. Institutions that rule by the bounds of law and customs maintain the allegiance of the people. Locke offers an example of proper institutional rule that seems odd at first glance. Quoting a speech given by James Stuart to Parliament in 1603, Locke retells James' conception of proper institutional rule of the executive,

> I will ever prefer the weal of the public good, and of the whole commonwealth, in making of good laws and constitutions to any particular and private ends of mine. Thinking ever the wealth and weal of the commonwealth, to be my greatest weal, and worldly felicity; a point wherein a lawful king doth directly differ from a tyrant. … whereas the proud and ambitious tyrant doth think, his kingdom and people are only ordained for satisfaction of his desires and unreasonable appetites: the righteous and just king doth by the contrary acknowledge himself to be ordained for the procuring of the wealth and property of his people (Locke, 1993, 216-217).

What is significant from this example is that Locke's conception of tyranny is not specifically tied to a particular form of constitutional rule. Instead, tyranny is understood

[5] See Thomas Aquinas, *Summa Theologica* for one pertinent example.

by Locke to be the proper use of constitutionally-derived political rights. James Stuart's absolutist tendencies (which are notably omitted from this particular quotation) are nonetheless not inherently tyrannous provided they exist within a proper constitutional framework. Locke reaffirms this point regarding the nature of tyranny by stating that, "And whosoever in authority exceeds the power given him by the law, and makes use of the force he has under his command, to compass that upon the subject, which the law allows not, ceases in that to be a magistrate, and acting without authority, may be opposed" (Locke, 1993, 218). As we will seed, this understanding of tyranny would provide a theoretical justification for the removal of a sitting monarch that appears in both of the Scottish and English Parliamentary Acts that remove James II from the throne.

Tied together within Locke's conception of tyranny exists the right of subjects to rebel against their magistrates. Aware that the license to rebel creates confusion regarding the limits and recourse of this action, Locke clearly specifies the necessary conditions for rebellion to be justified and offers a defense of the right of rebellion that goes to the core of his philosophy regarding the purpose of government. Locke distinguishes the dissolution of government from the dissolution of society. Within this framework, the form of government or individual actors may change without fundamentally altering society. Within a limited-constitutional system such as how Locke perceived England (and by extension, Scotland), the first necessary condition for the dissolution of government is a violation of the constitution of the legislative. The vitality of the legislative branch is essential, in that, "The constitution of the legislative is the first and

foremost act of society, whereby provision is made for the continuation of their union, under the direction of persons, and bonds of laws made by persons authorized thereunto, by the consent and appointment of the people" (Locke, 1993, 223). The legislative provides continuity of the original social contract and is the only branch of government directly accountable to the people. The disruption of the legislative disrupts the very nature of constitutional government and creates an opening for tyranny.

Notably, however, the disruption of the legislative can be caused by the actions of the executive within his hypothetical, but in actuality, English political system. These disruptions are: the institution of arbitrary laws by the executive; hindering the sitting of a duly elected Parliament; using the executive prerogative in a manner inconsistent with the constitution; and delivering the state to a foreign power (Locke, 1993, 224-225). All four of these actions rise to the level of tyranny, as each is an instance of the executive overstepping its bounds within the constitutional system[6]. Locke's objection to the overreach of an executive within the English political system reemerges more strongly, as he argues that the responsibility for these disruptions lie with the executive as, "he alone is in a condition to make great advances toward such changes, under pretense of lawful authority, and has it in his hands to terrify and suppress opposers" (Locke, 1993, 225). Furthermore, Locke presciently identifies another action that can be taken by the executive to dissolve the government that mirrors contemporary English history: the abdication of the throne (Locke, 1993, 225). As we will see, it was the declaration of the

[6] Richard Ashcraft (1986) delves into the historical record and identifies the series of abuses that Locke was likely referring to as actions that rise to the level of tyranny in *Revolutionary politics & Locke's two treatises of government*.

abdication of the throne by James II served as the justification needed by the English Parliament to call on William and Mary to take the Crown.

The right of rebellion exists when the people withdraw their allegiance from the sitting government. Explicitly discussing the justifications for the removal of Charles I in the 1640s, Locke argues that the king had lost the allegiance of the English people through capricious rule. As "allegiance, being nothing but an obedience according to law, which when he violates, he has not right to obedience" and thus the people rightly exercised their right of rebellion (Locke, 1993, 192). Locke does not envision the right to rebellion as a mechanism through which drastic changes modify the constitutional order. Looking specifically at England, Locke finds that subjects tend to be comfortable with their old constitutions and thus seek to change the actors before the institutions (Locke, 1993, 228).

The right of rebellion articulated by Locke does not exist after a single instance of tyrannical rule, but instead required a pattern of misrule.

> But if a long train of abuses, prevarications, and artifices, all tending the same way, make the design visible to the people, and they cannot but feel, what they lie under, and see, whither they are going; 'tis not to be wondered, that they should then rouse themselves, and endeavor to put the rule into such hands, which may secure to them the ends for which government was first erected (Locke, 1993, 229).

Noting the recent historical example of a time when the English people unseated a tyrannical monarch, Locke not only offers a *post hoc* justification for the removal of Charles I, but also articulates a framework for the removal of the Stuart Dynasty after the Restoration of 1660. It is likewise instructive to consider how Locke's conception of

government aligns with the asserted right of rebellion. As mentioned earlier, Locke argues that government exists for the protection of property and liberty, and by extension, the betterment of man. Perhaps it is not surprising then that Locke argues that the government is responsible when it does not hold up its end of the contract:

> The end of government is the end of mankind, and which is best for mankind that the people should always be exposed to the boundless will of tyranny, or that the rulers should be sometimes liable to be oppressed, when they grow exorbitant in the use of their power, and employ it for the destruction, and not the preservation of the prerogatives of their people? (Locke, 1993, 231).

Locke's justification for the removal of a tyrant corresponds well with the actions taken by both the English and Scottish Parliaments in the time surrounding the Glorious Revolution. The abdication of James II left both kingdoms with a vacated crown. The actions of several English Parliamentarians suggest that Locke's theory on the right of rebellion was put into practice. Although the monarchy was gradually losing its dominant position within the political order of what would become Great Britain the only viable option was replacing the king, not replacing the office of the king. The decision to look across the English Channel to William and Mary of Orange is an example of the continued development of Parliamentary superiority within the British constitutional order. This development also offers clear examples of how articulations of the limited nature of executive power formally entered these political systems.

The medieval nature of the personalist union of the crowns required simultaneous but separate constitutional processes in each national Parliament. Historians have contended that the constitutional implications of William and Mary accepting the English Parliament's invitation is at least the implicit acceptance of an end of absolutist rule

(Ferguson, 1977, 166). This position suggests that William and Mary's acceptance of the Parliamentary position that the order of succession could be circumvented and their acquiescence to the restrictions on the Crown enumerated in the Bill of Rights and Claim of Right strengthens the authority of Parliament at the expense of the monarchy at the outset of William and Mary's reign. Additionally, Scotland's constitution prevented William and Mary from taking the throne without significant constitutional reforms. This reform process sparked serious discussions regarding parliamentary union between the two realms, but economic disagreements prevented any formal progress (Ferguson, 1968, 5). Between these simultaneous processes, a new constitutional order emerges, one that unites England and Scotland in ways that personal union never could. Ultimately, each Parliament, in conjunction with William and Mary, passed an act that formalized the new constitutional paradigm through an indictment of James II and a clear statement of contractual monarchy. This formulation of contractual monarchy shares distinct similarities with both republican and Whig principles that set clear limits on the royal prerogative and articulate fundamental assumptions about the role of consent in legitimate government. Furthermore, the limits placed on the monarchy through these acts serve as the foundation upon which the British state would be built less than two decades later.

The Glorious Revolution and Limited Monarchy

The specific circumstances surrounding the passing of the Scottish Claim of Right and the English Bill of Rights highlights the constitutional difficulties associated with

having one king for two separate kingdoms. The call by the English Parliament on William and Mary to take the English throne was met with skepticism in Scotland. This skepticism, along with the simple logistics of William and Mary's arrival in England, led to English constitutional concerns being handled prior to Scottish constitutional concerns. The product of relatively short deliberation, the English Bill of Rights set forth the justifications for the removal of James II from the English throne and formalized specific measures of limited constitutional government within the English political system.

The English Bill of Rights identifies a series of religious and secular offenses committed by James II during his reign. Of these offenses, several are nearly identical to the offenses given by Locke as a justification for the removal of an executive. These offenses include:

> Assumeing and Exerciseing a Power of Dispensing with and Suspending of Lawes and the Execution of Lawes without Consent of Parlyament. … Violating the Freedome of Election of Members to serve in Parlyament. … [and] That the pretended Power of Suspending of Laws or the Execution of Laws by Regall Authority without Consent of Parlyment is illegall. … All which are utterly and directly contrary to the known Lawes and Statutes and Freedome of this Realme ("Bill of Rights", 1689).

The numeration of these offenses and their articulation in terms of violations of preexisting laws and statues signifies not only claims of tyrannical rule in the abstract, but as executive actions that undermine previously existing English constitutional principles. These asserted injustices, claimed over a period of several years of rule, suggest that these actions rise to the Lockean calculus of a "long train of abuses". Significantly, although the Bill of Rights harshly declares several actions taken by James II as unconstitutional, the Bill of Rights does not treat the former king as an individual

actor. Instead, the Bill of Rights frames these violations as the handiwork of royal advisors: “Whereas the late King James the Second, by the Assistance of diverse evill Councellors Judges and Ministers imployed by him did endeavour to subvert and extirpate the Protestant Religion and the Laws and Liberties of this Kingdome” (“Bill of Rights”, 1689). This framing of James II’s offenses as tyrannical likewise engages with the republican foci of instituting limitations on executive prerogative and the centrality of the rule of law as fundamental English constitutional principles.

The English Bill of Rights thus serves as not only an indictment against a former king, but as a contract between the William and Mary and the English Parliament. In the later portion of the Act, Parliament grants the title of King and Queen to William and Mary upon their acceptance of the English constitution. The newly enthroned king and queen not only “accept[ed] the Crowne and Royall Dignitie of the Kingdoms of England France and Ireland and the Dominions thereunto belonging according to the Resolution and Desire of the said Lords and Commons contained in the said Declaration”, but accepted the limits to royal power articulated in the act itself (“Bill of Rights”, 1689). The significance of this is two-fold: The English Bill of Rights formally articulates limits to the prerogative of the royal power within the English constitution and asserts the right of Parliament to dictate the constitutional relationship between the legislative and the executive.

The circumstances surrounding William and Mary’s acceptance of the Scottish Claim of Right did little to suggest that in the eyes of their new rulers Scotland was anything more than a separate inconvenience for her new monarchs. William and Mary

agreed to terms of the Claim of Right while in London on 11 May 1689. William and Mary's reluctance to leave the English capital led the Scots to send a delegation requesting an audience with their presumptive king and queen (Brown, 1994, 67). This humiliation aside, the Scottish delegation was able to wrest similar constitutional restrictions on their new monarchs. These restrictions on the role of the executive in the Scottish political system likewise signal an emphatic break with previous conceptions of constitutionality.

Many of the constitutional restrictions placed on the Scottish monarchy through the Claim of Right mirror contemporary developments in the English political system. Although England and Scotland remained separate kingdoms legally, their common complaints against the Stuarts highlight the effects that a shared monarchy had on each political system. There is an additional element within the Claim of Right that has significant implications within this discussion of the emergence of British constitutionalism. The Claim of Right gives one additional justification for the removal of James II; legally, he had never assumed the Scottish throne. James II is characterized as having "acted as King without ever takeing the oath required by law wherby the King at his access to the government is obliged to swear … to rule the people according to the laudable laws" ("Claim of Right", 1689). James II reigned for just over three years, but during his reign he had never left England. His absence prevented him from taking the coronation oath at Scone Abbey and as such was not deemed a proper Scottish king. Scottish objections to the legality of their erstwhile king's rule offer an additional

example of the claims made by constitutionalists during this time of the existence of a contract between king and subjects.

The Bill of Rights and Claim of Right make several broad claims about the relationship between the monarch and the people and the limitations of executive power within what would become the British constitutional system. These claims find their basis in the theories proposed by republican and liberal thinkers over the course of the 17th century and show that the development of constitutionalism occurred simultaneously alongside the development of alternative conceptualizations of governance. The Bill of Rights and Claim of Right reaffirm the republican and liberal principles of limiting executive prerogative, the importance of the rule of law, and the right of the people (and by extension their representatives) to remove a monarch when executive actions rise to the level of tyranny. William and Mary's acceptance of these principles formalized their place within the British constitutional order and these two acts serve as foundational documents in the British constitutional tradition.

Less than two decades after William and Mary accepted Parliament's invitation to the English and Scottish thrones, these two realms would be finally united as a single state. Observers have traditionally understood the political situation surrounding the Acts of Union as a series of decisions motivated by the material concerns of both the English and Scottish states. Surely, the Scottish state was nearing bankruptcy in the aftermath of the Darien Scheme. The English state, although in better economic condition than its northern neighbor, was nonetheless suffering from a lack of free trade with Scotland, protracted war on the continent, and continued Scottish economic interest in the new

English colonies in North America. It is from this economic background that historians have tended to conclude that the Acts of Union, at least from the Scottish perspective, was, "a consequence of weakness and uncertainty, not of strength and confidence" (Ferguson, 1977, 197). This analysis rings hollow for two significant reasons. Firstly, the early 1700s, while economically dire, do not appear to be significantly more so than in the time immediately following the Stuart Restoration (Robertson, 1987, 219). Secondly, this analysis ignores the fundamental constitutional and ideational changes undertaken in both England and Scotland over the course of the previous century. Within this epoch, prevailing constitutional opinion in both countries moved from absolutism to limited constitutionalism. This process had been more forthcoming in England than in Scotland, which explains why many Scottish observers upon the eve of the Acts of Union suggested that fundamental rights of liberty and property were inadequately protected in Scotland and that only Parliamentary union could hasten further reforms (Robertson, 1987, 210). Scottish property and inheritance laws remained thoroughly feudal in nature and would continue to be less developed than corresponding English property laws until well into the 18th century. Although the Bill and Claim of Rights had each set firm constitutional limits on the right of the sovereign in each separate political system, what remained was a messy constitutional system in which one Crown ruled two kingdoms. By 1707, the century-long constitution question first asked by James Stuart was solved through the union of the Kingdoms of England and Scotland through two legislative acts that created a new parliament for Greater Britain.

The Acts of Union and the Formation of the British State

The legislative machinations surrounding the drafting and ratification of the Acts of Union are well documented elsewhere.[7] More central to this narrative are the articles that make up the constitutive Acts themselves. The most significant article, Article I, declares that, "the two kingdoms of Scotland and England shall upon the first day of May next ensuing the date hereof, and for ever after, be united into One kingdom by the Name of GREAT BRITAIN" ("Act of Union", 1707). This acceptance of this article, which occasioned such fervent debate in the Scottish Parliament that threats against MPs flew across the chamber floor, ushered in the modern union of England and Scotland (Ferguson, 1977, 235). Article I, although it had dissolved two separate kingdoms, did not provide for any formal governing structure for this new Great Britain. Articles II and III provide a framework of government for this newly constituted state. Article II formalizes the Hanoverian succession; Article III creates a new parliament for a new state. Although several of the remaining articles describe the effects of union on Anglo-Scottish trade, provide financial support to clear remaining Scottish debts from the Darien disaster, and clarify that political union did not equate to religious union, it is in these first three articles that the formal institutions for the new British state emerge. This constitutional order is not only limited by the principles articulated in the Bill of Rights

[7] Ferguson, (1968) is one of several good historical narratives on the topic, albeit from a Scot-centric perspective. It is both interesting and instructive to note that the English Act is nearly identical to the Scottish Act. Queen Anne and her advisors determined it more politically prudent to pass the bill in Scotland first, as there was greater dissent towards formal union. Upon the approval of the Scottish Parliament, a bill emerged in Commons that ratified the Scottish act. The lynchpin to the parliamentary success of the Acts of Union was approval of the first article, which called for the formal unification of the two realms as a newly united state.

and Claim of Right, but is significantly different institutionally from the political systems under the Union of the Crowns.

CHAPTER V

CONTEMPORARY SCOTTISH POLITICS AND THE ACTS OF UNION IN CONTEXT

This primarily goal of this essay is to highlight the institutional and ideological changes in what would become Great Britain over the course of the medieval union of England and Scotland. The English and Scottish constitutional orders at the Union of the Crowns were dominated by absolutist ideology and the political relationship between England and Scotland was remote and personalist in nature. Over the course of the 17th century, ideological innovations by republicans and liberals developed an alternative constitutional framework that sought to limit the power of the executive and ensure the rule of law. This framework would be adopted in the late 1680s and would become the constitutional basis for the newly unified Kingdom of Great Britain. This new constitutional foundation of limited government and unified political institutions was the first significant step towards the modern, democratic government seen in the United Kingdom today. Although the British constitutional order is itself a great innovation, its permanence has recently come under question. Since 1998, the Scottish Parliament has been reintroduced as part of the British policy of devolution. This policy grants constitutive parts of the United Kingdom (Wales, Northern Ireland, and Scotland) legislative authority over certain aspects of their domestic political affairs. Devolution has proved wildly popular and successful in Scotland and has led to calls for further political distancing from the UK Parliament and even outright independence. The conclusion of this essay looks at the issue of devolution and the role of nationalism in

Scotland in light of the upcoming referendum on Scottish independence scheduled for fall 2014.

A History of Modern Scottish Nationalism

Considering the level of disagreement over the Acts of Union in Scotland in the immediate aftermath of the Scottish Parliament's vote, perhaps it is unsurprising that the role of Scotland within Great Britain (and subsequently the United Kingdom) would remain contested moving forward. Scottish concerns about the union throughout the 18th century until the present have revolved around a series of seemingly interconnected concerns. Various nationalist movements have attempted to frame the Acts of Union as the 'selling out' of Scottish identity, as a short term economic solution with long-term problems, or the tacit consent of 18th century Scottish politicians to finally accept the English narrative of Scotland as the 'lesser realm'. Generally speaking, recent scholarship has tended towards the modernist interpretation that Scottish nationalism of the 21st century is a territorial civic-based form of identity, whereby an individual resident in Scotland can claim to be Scottish (Leith and Soule, 2011, 4). This modernist interpretation of Scottish nationalism informs our understanding of recent political events in Scotland, beginning with the formation of the Scottish National Party (SNP) in the early 1930s and culminating (for now, at least) with the upcoming independence referendum in 2014.

More recently, movement towards an independent Scotland has become a tangible political reality. The rise of the SNP in Scottish and United Kingdom Parliamentary elections since the devolution movement in the United Kingdom has brought the subject

of Scottish independence to the political forefront in ways never seen before. Recent events in Scotland, including the scheduled independence referendum in September 2014, have given nationalist Scots their best opportunity to fix the wrongs done to them by the Scottish Parliament in the spring of 1707. This sentiment, which has had long-standing traction through Scotland, is summed up best by the Scottish bard Robert Burns, who writing decades after union, laments, "We are bought and sold for English gold. Such a parcel of rogues in a nation" (BBC, 2013a). By looking briefly at the history of the Scottish National Party and the devolution of powers to the Scottish Parliament, the trajectory of contemporary Scottish nationalism points towards this referendum process.

Although various civic and political movements had attempted to reclaim some form of political independence from the moment the Scottish Parliament voted itself out of existence in 1707, little in the way of tangible results appeared until well into the 20th century. The Scottish National Party emerged in 1934 as the amalgamation of several political movements, with the aim of contesting elections in an attempt to bring about greater autonomy for Scotland within the United Kingdom (Leith and Soule, 2011, 16). It would take more than a decade for the Scottish National Party to successfully contest and win a seat into Parliament; a bi-election in Motherwell in 1945 that had a remaining term of approximately three months. Although the Scottish National Party was successful, the Conservative/Liberal wartime party coalition had made the election a two-party contest between Labour and the Scottish National Party (Leith and Soule, 2011, 15-16). This electoral success was short-lived, as it would be another forty-two years until the next time the Scottish National Party send a member to Parliament. Between 1945 and 1987,

the Scottish National Party remained an advocate for greater Scottish autonomy, but was often outmaneuvered by the Unionist Party of Scotland, which had close ties to the Conservatives and who would maintain an oversized influence on Scottish affairs until the post-Thatcher years (Leith and Soule, 2011, 25-27).

By the end of the 20th century, the political winds had shifted in the favor of Scottish nationalists. The Conservatives were recovering from the battering taken during the immediate aftermath of the Thatcher years and Labour, which had historically been supportive of efforts towards regionalism, was on the ascendency across the United Kingdom. Among the large member states of the European Economic Community, the United Kingdom was the only country that retained a high degree of central dominance over regional affairs (Roberts, 2000, 251). This paradigm of centralized control changed in 1997 upon the introduction by the Labour Government of a two-part referendum on Scottish (and, separately, a one-part referendum on Welsh) devolution as declared in their party manifesto. This two-part referendum, of which an overwhelming majority passed both parts, called for the creation of a Scottish Parliament and the ability of that Parliament to raise a limited amount of taxes (Leith and Soule, 2011, 34). This referendum preceded the Scotland Act of 1998, which formally instituted devolution in Scotland. Scholarly explanations for the institution of devolution look at domestic political circumstances. In his study of autonomy movements in Western Europe, Greer (2007) suggests that Scottish civil society is primarily responsible for devolution's success, writing, "the institutions of Scottish civil society are the mechanisms that muster the political force" necessary for sustained political success (32). This analysis melds

well with the conception of Scottish nationalism as a modernist movement that seeks to unite territorial inhabitants into a shared sense of identity.

Devolution has proven to be the catalyst for the electoral fortunes of the Scottish National Party, at least within the electoral politics of Scotland itself. In the first Scottish Parliamentary elections of 1999, the SNP won the second largest share of votes and became the leader of the opposition for two consecutive terms. In 2007, the SNP won the single largest share of the seats to the Scottish Parliament and formed a minority government. In 2011, the SNP won a majority of the seats to the Scottish Parliament. An electoral first, with 65 of 129 seats in the Scottish Parliament has set the legislative agenda (Leith and Soule, 2011, 35). The SNP describes itself as two overlapping interests: it is a traditional center-left party in British politics and strongly supports further movement towards Scottish independence. In a comparative study of manifesto rhetoric of parties that contest Scottish Parliamentary elections, the SNP's manifesto is consistently the most nationalistic of Scottish electoral parties. It is thus unsurprising that the chief priority of the SNP government has been the upcoming independence referendum.

Scottish Independence and the 2014 Referendum

The recent trajectory of Scottish nationalism has culminated in the upcoming referendum on national independence scheduled for September 2014. This referendum, the product of a series of negotiations between the Scottish National Party and the United Kingdom government, will feature a single yes/no question: "Should Scotland be an

independent country?" (BBC, 2013a). Despite strong debate over determining the electorate for this election, the population of the United Kingdom at large will not vote upon the independence referendum. Instead, the electorate will be determined on the basis of residency. Any UK citizen living in Scotland who is qualified to vote in both local and national elections will be eligible to vote on the referendum (BBC, 2013c). The effects of this decision are that about 20% of the electorate voting on the Scottish referendum will not be Scottish. Additionally, nearly a million Scots living within the United Kingdom but outside the territorial boundaries of Scotland will not be eligible to vote. Determining the electorate was a chief concern for Scottish First Minister (and leader of the SNP) Alec Salmon, who had originally wanted the referendum to be 'Scots only', but agreed on the residency calculations after the voting age for the referendum was lowered from eighteen to sixteen. The electorate for the referendum is settled, but the outcome is anything but settled.

With the vote more than a year away, there seems to be more questions than answers surrounding the referendum. According to the latest edition of the Scottish Social Attitudes Survey (SSA), one of the chief determinates in how people plan to vote on the referendum is identity. The BBC has reported that, "46% of those who say they are Scottish and not British support independence, compared to just 4% of those who say they are British and not Scottish" (BBC, 2013b). Considering that current public support for the referendum more generally is around 30%, it appears that the ideational pull of nationalism has a significant hold on those who wish for Scottish independence. The same BBC article quotes the lead researcher on the SSA project, who states that,

“Scottish identity is a near ubiquitous attachment that unites rather than divides most people in Scotland … It is how British they feel that divides them” (BBC, 2013b). Perhaps this is ultimately unsurprising, considering the historical contestation of what place Scotland and ‘Scottishness’ had within the larger realm of Great Britain and later the United Kingdom. Scholars have suggested that although there has been a strong sense of ‘Scottishness’ amongst the people of Scotland at large, nationalist sentiments have only truly entered the political arena rather recently. Leith and Soule argue that although, “nationalist identity has long been a component of the Scottish people, and nationalism has long been a part of Scottish politics, [but] it is only within the last forty or so years that both have entered the ongoing political arena and only in the last decade that they have occupied centre stage on a regular basis” (Leith and Soule, 2011, 36). The SSA also found that the Scottish population is relatively split on whether or not independence makes good economic sense. About one in three likely voters believe that Scotland’s economic situation would improve if independent, nearly the same percentage believes that Scotland’s economic situation would deteriorate, and roughly one in four think it would make no tangible difference (BBC, 2013b).

Many concerns surrounding the referendum center on the constitutional process required for an independent Scotland, as well as pragmatic policy concerns over the division of UK resources. There is no constitutional precedent for the withdrawal of Scotland from the United Kingdom, nor is there clear agreement on a timetable. The latest from the sitting UK government is that the UK Parliament would accept a yes vote and work with the Scottish National Party on establishing an independent Scotland by

2016 (BBC, 2013a). Intimations from the Scottish National Party suggest that a yes vote should necessitate a quicker break from the United Kingdom. Further questions arise over the proper division of resources, such as the military, the National Health Service, or oil and gas deposits in the North Sea, as well as the division of UK debt responsibilities (BBC, 2013a). England's acceptance of Scottish debt upon unification suggests that an independent Scotland will be asked to foot part of the United Kingdom's debt bill as well. Further questions abound regarding an independent Scotland's relationship to the European Union. First Minister Salmon has stated that an independent Scotland would eventually wish to join the Euro Zone while maintaining a special relationship with the rump UK (BBC, 2013a). Not lost in these hypotheticals is the effect that the referendum, regardless of result, will have on the SNP. The referendum is the work of the Scottish National Party, which has staked its immediate political future on its outcome. The SNP has stated that they believe that this referendum is a "once-in-a-generation event" and have privately stated that a no vote will hamper the SNP's electoral chances moving forward (BBC, 2013b). Scholars interested in state-building, nationalism, electoral politics, and British history are likely to reflect on the outcome of the referendum for some time to come.

The Development of the British State in Context

With the near future in mind, how does one assess the development of the constitutional British state on the eve of its hypothetical dissolution? How does the upcoming independence referendum influence how we conceptualize the Acts of Union

specifically and British state-building more generally? It is tempting to say that the very fact that a referendum on Scottish independence is on the horizon is a sign that the British state has been on borrowed time since its inception. This sentiment is as shortsighted as it is simplistic. Irrespective the outcome of the referendum, the development of limited, constitutional government in all of the constitutive parts of Great Britain should be seen as a prime example of the growth of constitutionalism in Europe as it enters the Modern period. This study has shown that intellectual innovation away from absolutism and towards limited government occurred alongside political developments in both constitutive parts of Great Britain over the course of the 17th century. This discourse occurred in both sides of future Britain and led to the creation of a new state through the legislative process of a Queen in Parliament, as opposed to the Queen and Parliament. The differences between the power of the Crown in the early 18th century and today are significant, but the differences between the absolutist state of the late Tudors and early Stuarts and the constitutionalism under Anne are equally so.

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