



This paper amongst others was a side line produced in order to spread information on Scotland's constitutional situation and the need for incisive action to a wider range of readers than those activists found within the CSP and other home rule organisations. A lot of this was unknown to the Scottish population at large, so popularised information of this kind played a role in influencing public opinion in the direction of "we can do it."

SCOTLAND'S PARLIAMENT THE RIGHT OF RECALL BY THE PEOPLE

In 1707 the Scottish Parliament met for its last session before the Scottish and English Acts of Union took effect. On 1 May 1707 the formation of the United Kingdom of Great Britain was celebrated with a ceremony in St. Paul's Cathedral in London. In Scotland, no celebrations were possible because of the unbridled fury of the population.

It is important to be clear as what exactly was done then - by virtue of what constitutional authority on the part of the Scottish leaders is more or less academic at this stage. There exists a widespread myth – peddled by even the most learned historians – that something called the "Union of the Crowns" took place in the year 1603, and something called the "Union of the Parliaments" in 1707. There is not one word of truth in either of these assertions.

What happened in 1603 was a purely **personal union** - the crowns of two independent states were held simultaneously by one man, without affecting the sovereign independence of either. The union of these crowns into one single monarchy took place only under the terms of the **1707 Treaty of Union** and the two enabling **Acts of Union** by the Scottish and English parliaments. Anyone who asserts the contrary should take the trouble to read Article 1 of any of these three measures.

No union of the national parliaments of Scotland and England has ever taken place. What happened was laid down in Article 3 of the Treaty and the Acts, namely, that the affairs of the Union were to be decided by one and the same parliament. The two national parliaments were not united by this agreement. What happened was that a **completely new** Union Parliament was set up at Westminster under the terms of Article 3 - which, unlike Article 1, is a **non-entrenched provision** that can be altered at any time.

Neither the Scottish nor the English parliament was abolished by the union agreement. There is not one word in the relevant legislation to this effect. They simply

stopped meeting and went into abeyance when the new joint legislature to administer the affairs of the United Kingdom was set up.

There are therefore no obstacles from this source to the implementation of the will of the Scottish people - a will which has been expressed with more than adequate clarity for generations. **The Scottish Parliament could be recalled to deal with exclusively Scottish affairs** - as distinct from those of the Union - **without one word of alteration to the union agreement.** And if the sovereign Scottish people decide that their Parliament is to have further-reaching autonomy involving alterations to the union agreement, then, under international law governing the self-determination of peoples, they are bound to have their way, and no authority at home or abroad has the power to refuse them.

On 1 March 1979 **Scotland's supreme constitutional authority** decided by a clear and adequate majority that the Scottish legislature is to be recalled, albeit - initially at least - in a less than satisfactory form. By 1 June 1979, however, it was clear that the Westminster Parliament was going to indulge in the **political bluff** of "repealing" the 1978 Scotland Act, thereby purporting to overturn an express decision by its constitutional superior and denying Scotland even that least possible modicum of democratic self-government.

The Scotland-UN Committee

On June 1st 1979 a group of like-minded Scots petitioned the **United Nations** "to help us to claim our right of self-determination". The Scotland-UN Committee was founded. The petition was accepted by the United Nations as a competent plea.

In a letter dated 5 May 1980, the United Nations Office at Geneva acknowledged receipt of the Plea, intimating that the submission had been "sent to the authorities of the country concerned and a summary of it confidentially submitted to the Sub-Commission on Human Rights and to the Sub-Commission on Prevention of Discrimination and Protection of Minorities".

In October 1980 we received notification from the United Nations Office at Geneva drawing our attention to Resolution 1503 (XLVIII) paragraph 8 "which does not authorise us to give you further information on the handling of your submission".

Paragraph 8 of Resolution 1503 (XLVIII) reads: "The Economic and Social Council decides that all actions envisaged in the implementation of the present resolution by the Sub-Commission on the Prevention of Discrimination and Protection of Minorities or the Commission on Human Rights shall remain confidential until such time as the Commission may decide to make recommendations to the Economic and Social Council."

And so **Scotland's Claim of Right to Self Determination** remains to this day at the United Nations. By invitation, members of the Scotland-UN Committee attended the

International Non-Governmental Conference on Indigenous Peoples and the Land at the Palais des Nations, Geneva, on 15-18 September 1981. Since that time, the Scotland-UN Committee have made many further representations to the United Nations, the Council of Europe, the European Community, and in more recent years to the Conference on Security and Cooperation in Europe, among many others. These others have included every national government in the world as well as many leading influential persons.

Stating and restating Scotland's Claim of Right to Self-Determination.

We intend to continue with this policy at every opportunity that presents itself at international level. The powerful potential diplomatic support we will enjoy when the right moment comes has been made clear to us time and again.

It is, however, patently obvious that the United Nations, the European Community, the CSCE and the Council of Europe and all the other international authorities and national governments cannot be of any direct assistance to Scotland until the people of Scotland themselves resolve the political situation in a decisive, clear-cut and unambiguous manner. This is the point at which the Scots must take their future into their own hands.

The recall of Scotland's Parliament.

National stocktaking of the Scottish political situation in the light of recorded Scottish history is a revelation of a people infamously and disastrously misled, cheated, misrepresented and denied their right to self-determination. This began with the Treaty of Union of 1707, when only a microscopic proportion of the population had a say in deciding the matter over the heads of the vast majority and against the patently obvious resistance of the people of Scotland. Recent times have been no better in terms of the best interests and expressed wishes of the people of Scotland being usurped by and for the benefit of alien interests.

For example, during **the last 100 years** there have been well over 30 motions, amendments, bills, one Act and one referendum on the subject of Scottish home rule put before the Westminster Parliament. Of these genuine attempts to recall Scotland's Parliament at least 8 were carried, then refused implementation. Others were defeated by the inbuilt English majority in that place. Some were deliberately filibustered (talked out). The successful result of the 1979 referendum was simply ignored and the Scotland Act was spuriously "repealed".

What, therefore, is the problem? Why has Scotland been denied the right of parliamentary democracy? Why has Scotland failed where many smaller nations have succeeded? Simply put, our elected representatives have been making the right sounds in the wrong place. "When the trumpet sounds an uncertain note, who will prepare for battle?" **The**

proper place to make decisions on the subject of Scottish home rule is in Scotland, where the people are the legitimate and ultimate resting place of political sovereignty.

Sovereignty

Firstly, **sovereignty resides with the people of Scotland.** Whilst this is accepted and acknowledged by an "elite" handful of Scots, it is not widely understood by the vast majority of voters in Scotland. If this be true, then, by implication, the power and responsibility inherent in popular sovereignty are likewise not understood by the mass of Scottish voters. Otherwise Scotland would have recalled its Parliament a long time ago and we would be a self-governing democracy today.

Sovereignty is supreme and unrestricted legitimate authority independent of any outside influence. The people of Scotland alone hold the inalienable right to recall their Parliament. In Scotland the people are the supreme constitutional authority over Monarch and Parliament. **The single and ultimate source of all parliamentary and governmental power is the people, represented by a qualified and registered electorate.**

The Scottish elected representatives - irrespective of their own views - are therefore bound by the supremacy of the expressed will of the majority of voters in Scotland. That sovereign will takes precedence over any other concept, form or notion of outside authority or influence, including the subordinate authorities Government, Parliament, Judiciary or Head of State.

The people's elected representatives must therefore act in accordance with this first principle of Scottish constitutional law. The will of the people comes first before any other consideration, quite certainly in matters pertaining to the constitutional structure. It is a matter of elementary logic that any action or purported legislation that breaches this fundamental principle is unconstitutional and therefore illegitimate. Proof, if proof were needed, is legion. **The legitimacy of Scotland's right to decide its own constitutional position is unchallengeable.**

Scots Law is unique for reasons other than the fact that it exists without a legislature. In 1953 the then Lord President of the Court of Session, Scotland's Chief Judge, Lord Cooper, pronouncing in the case of McCormick versus Lord Advocate, held that "**The unlimited sovereignty of Parliament is a distinctively English principle which has no counterpart in Scottish Constitutional Law.**"

It has taken a long time to understand that oil and water do not mix. So we can say with certainty that the English doctrine of parliamentary sovereignty and Scottish popular sovereignty cannot be "united". **In Scotland, sovereignty rests with the people of Scotland, and nowhere else.** It cannot be altered, "repealed" or otherwise redefined.

There is no uncertainty about the sound principle of "**we, the people**". More than six and a half centuries ago, in 1320, when "the people" sent the Declaration of Arbroath to the Pope, the then international authority, in the name of "**the whole community of the realm of Scotland**" - the politically enfranchised community equivalent to the modern electorate - they confirmed the sovereignty of the Community of Scotland over the institutions of state, and unequivocally asserted the independence of the Scottish Nation, as the following extract makes clear:

"But if this Prince (Robert I, King of Scots)...shall consent that we or our Kingdom be subjected to the king or people of England, we will immediately exert ourselves to expel him as our enemy, and as the subverter both of his own and our rights, and we will make another king who will defend our liberties. For so long as one hundred of us remain alive we will never consent to subject ourselves to the dominion of the English. We fight not for glory, or riches, or honours, but for freedom alone, which no honest man will relinquish, except with his life."

This most inspiring declaration and its constitutional principles have been reinforced over the centuries by Scottish constitutional writers and is in complete accord with modern concepts of modern democracy. It will be noted that the writers refer to "our kingdom" and not "the king's kingdom". The Declaration also makes it clear that **the Head of State and Executive is subject to the will of the people**, and may be deposed for defying it.

Thus Scotland's right to self-determination, reinforced unequivocally by international law, is unassailable. There is much more legitimacy to Scotland's right to recall Scotland's Parliament than there is to send representatives to another place. **The first duty of the Scottish elected representatives is to sit in Scotland's Parliament, and in no other, if their constitutional superiors so decide** - as they have already done in a manner which leaves no room for any other interpretation.

In 1707 the last sitting of Scotland's Parliament was exactly that - merely the last one, not the final one. It awaits the next sitting, and has waited for far too long. Scotland's Parliament was never abolished; there is not one word to that effect in the relevant legislation. **Scotland's Parliament merely stands adjourned**. It stands adjourned in waiting for a generation of elected representatives who will understand the legitimacy of Scotland's constitutional sovereignty.

The recall of the Scottish Parliament if the Scottish people so decide - as they have done - is constitutionally correct and its legitimacy unchallengeable in any court in any land. **Nor is it anywhere laid down, or necessary, that this recall has to be organised by or sanctioned from London.**

Indeed, under the terms of the Union Treaty of 1707, **Scotland's law lords retain the right to overturn any Act of the Union Parliament that is perceived to be not in the best interests of the people of Scotland**. The fact that Scotland's law lords have never exercised this right on behalf of the people of Scotland changes nothing. The right exists.

Everywhere we look in Scottish constitutional and legal records we see at the very heart of these matters the recognition and assertion, the supremacy of the will of the people. Scottish sovereignty needs no arbiter: it exists as a permanent beacon of hope and assertiveness handed down to us by our very far sighted forbears. We owe it to them and to ourselves to insist that our Scottish elected representatives recall Scotland's Parliament. Political will and courage based on unchallengeable legitimate constitutional conviction are the only ingredients in the recipe for action. **Constitutional change is not required - constitutional action is.**

What we need is action of the kind exemplified in the life and times of one of Scotland's most famed intellectual legal minds: James Wilson of Fife 1742-1798, lawyer and political philosopher. He studied at St. Andrews, Glasgow and Edinburgh Universities. Emigration to America followed, where he ultimately practised law and acquired a reputation as the best lawyer in Philadelphia. He was a member of America's first Continental Congress.

He then revised his *Considerations on the Nature and Extent of the Legislative Authority of the British Parliament* for members of the Congress. The work, which concluded that there was "no power of parliament over us", exhibited intellectual power equal to that of John Adams and Thomas Jefferson. James Wilson became a co-signatory of the American Declaration of Independence. Together with a number of other prominent Scots, he was a member of the Constitutional Convention in Philadelphia during 1786/1787 that drew up the Constitution of the United States. President Washington appointed him Associate Justice to the First US Supreme Court.

Thus the principle of "We the People" (Scottish Sovereignty) was taken over from Scottish constitutional law and enshrined in American constitutional law for all time. America's **Declaration of Independence** might have been framed with Scotland's present condition in mind:

"When in the course of human events it becomes necessary for one People to dissolve the political bonds which have connected them with one another and to assume the separate and equal station to which the laws of nature and of nature's God entitles them, a decent respect to the opinions of mankind requires that they declare the causes which impel them to the separation. We hold these truths to be self evident, that all men are created equal; that they are endowed by their creator with certain unalienable rights; that among these are life, liberty and the pursuit of happiness; that to ensure these rights governments are set up among men; that it is the right of people to alter or abolish their government. Such has been the patient sufferance of this country; and such is now the necessity that constrains it to alter its former system of government. The history of the present Great Britain is a history of repeated injuries, all having, in direct object, the establishment of absolute control over this State. We therefore solemnly publish and declare that this country is and ought to be a free and independent state."

Conclusion

America required revolution to establish its right to self-determination. Scotland merely requires its elected representatives to recall its adjourned Parliament. Although Scotland's political parties are politically divided, there is no sound reason why these same parties should not be united by a common purpose. Unified under Scottish constitutional law by the common purpose of recalling Scotland's Parliament, Scotland's representatives could achieve a common cause at any time they so choose.

If such fail, then the people have the right to call upon others to recall the said Parliament. This may require the creation of Scotland's first **National Congress**. The purpose of such a Congress would be **to restore constitutional law and order** to Scotland with the recall of the national Parliament, and specifically to set up the electoral mechanism by which a Scottish general election may be held.

The only policy common to all parties contesting that election would be the recall of Scotland's democratic parliamentary legislature. This would be done **without outside interference**, as guaranteed by international law, thus avoiding the ignominy of the 1979 referendum, which was won by a majority of those voting only to be "repealed" in another place. In terms of every precedent and principle in Scottish, English, British, European and international constitutional law that "repeal", so-called, was illegitimate, invalid, null and void without limit of time.

The United Nations, European Community and Council of Europe all have Charters with similar and often identical wording. These make it clear that peoples who think of themselves as such, who live within distinctive geographical boundaries with their own political, cultural, social and economic distinctions, have the **guaranteed right to self-determination**. Scotland qualifies on every count.

The one and only justification we require for assuming the power of self-government is that we are the Scots – and Scotland is our land. The UN, EC and Council of Europe, etc., are not going to rewrite their Charters just to exclude Scotland. Indeed, all the evidence points to a "what's kept you?" response.

Scotland's right to self-determination is upheld by Scottish constitutional law and supported by international law. Scotland needs permission from no organisation in any land anywhere to recall Scotland's Parliament, holding parliamentary elections so to do. Nor is there any need for another referendum, for the will of the people has been expressed with more than adequate clarity for decades, even centuries.

A good deal of the ground has been prepared already, and ideas tested. All honour to those who have undertaken these tasks, and their work has not been in vain. What we need now is the concrete step of a National Congress to organise and fund the recall of our Parliament; **to put the will of the people into effect, if necessary without further reference to Westminster.**

The National Congress might also form the nucleus of a second chamber to scrutinise and assist with the detail of legislation without powers of confrontation. A system of proportional representation would be essential to reflect the will of the sovereign people as accurately as possible. **We believe that such a National Congress, building on the work of those have gone before, would be the most constructive democratic way forward to the recall of Scotland's national Parliament which presently stands adjourned ad interim.**

For and on behalf of the Scotland-UN Committee

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