Understanding the Union

Iain McLean

The Oxford Handbook of Scottish Politics
Edited by Michael Keating

Print Publication Date: Aug 2020 Subject: Political Science, U.K. Politics
Online Publication Date: Sep 2020 DOI: 10.1093/oxfordhb/9780198825098.013.7

Abstract and Keywords

Varieties of unionism in Scotland may be found in the debates in the last Scottish Parliament in 1705–1707 and persisted for three centuries. In modern politics, they may be roughly mapped to social unionism, trade and security unionism, and nationalist unionism. The three strands map poorly on to contemporary party labels but are conceptually coherent. A social union entails uniform welfare standards and a uniform safety net throughout the UK. The trade and security union is about the economies of scale generated by free trade within the UK. It used also to be about the military and the British Empire, to which Scots contributed massively, but has been reborn as a primordial concern for the Union in and of itself, but with added Faslane. Nationalist unionism insists on the integrity of Scots constitutional law and on the sovereignty of the Scottish people. It remains a live strand of unionism, although the least-understood one.

Keywords: British Constitution, nationalism, Scotland, Union, unionism

Strands of Unionism

VARIETIES of unionism in Scotland may all be found in the debates in the last Scottish Parliament in 1705–1707. The Earl of Roxburghe, one of the *Squadrone Volante* who swung from opposing to supporting the Union, predicted that ‘The motives will be, Trade with most, Hanover with some, ease and security with others, together with a general aversion to civill discords, intolerable poverty and…constant oppression’. Opposing him, Andrew Fletcher of Saltoun sought a federal union in which Scottish institutions would be preserved, but was not (contrary to the modern popular picture of him) in favour of an independent Scotland.

These strands of unionism have persisted for three centuries. In modern politics, they may be roughly mapped to social unionism (relieving intolerable poverty and constant oppression); trade and security unionism (preserving the nation state under the Hanoverian

Crown); and nationalist unionism (protecting separate Scottish institutions in a union state). The last of these is not a contradiction in terms.

The three strands map poorly onto contemporary party labels but are conceptually coherent. A social union entails uniform welfare standards and a uniform safety net throughout the UK. The trade and security union is about the economies of scale generated by free trade within the UK. It used also to be about the military and the British Empire, to which Scots contributed massively, but has been reborn as a primordial concern for the Union in and of itself, but with added Faslane. Nationalist unionism, well represented by the MacCormicks father and son, insists on the integrity of Scots constitutional law and on the sovereignty of the Scottish people. Nationalist unionism's intellectual high point came in the *obiter dicta* of the (Unionist) Lord President Cooper in *MacCormick v. Lord Advocate* (1953), recently echoed in some submissions to *Miller (R (on the application of Miller and another) v. Secretary of State* *(p. 119)* *for Exiting the European Union)*. It remains a live strand of unionism, although the least-understood one.

Scotland in Union: Guaranteed Autonomy or Incorporation?

'The motives will be, Trade with most, Hanover with some, ease and security with others, together with a general aversion to civill discords, intolerable poverty and…constant oppression' (Earl of Roxburghe, a swing voter in the last Scottish Parliament in 1707, cited in McLean and McMillan 2005: 13)

As discussed elsewhere in this *Handbook*, the motives of the Scottish Union negotiators, and of members of the last pre-union Parliament, varied. Fundamentally, 1707 was not an English takeover; but 1712 arguably was (McLean and McMillan 2005; Whatley 2014).

Daniel Defoe, travel writer, agent in Scotland for the English minister Robert Harley, and softener-up of the General Assembly of the Church of Scotland, wrote in 1707:

> [N]othing is more plain than that the articles of the treaty…cannot be touched by the Parliament of Britain; and that the moment they attempt it, they dissolve their own Constitution; so it is a Union upon no other terms, and is expressly stipulated what shall, and what shall not, be alterable by the subsequent Parliaments. And as the Parliaments of Great Britain are founded, not upon the original right of the people, as the separate Parliaments of England and Scotland were before, but upon the Treaty which is prior to the said Parliament, and consequently superior; so, for that reason, it cannot have power to alter its own foundation, or act against the power which formed it, since all constituted power is subordinate, and inferior to the power constituting.
>
> This is so clear, and has been so often inculcated in this very case, and is so unanswerably stated in the very acts of Parliament themselves, ratifying the treaty, that I need say no more to it here.

> (Defoe [1709] 1786: 246. Spelling as in 1786 reprint)

It did not take long for the new Union parliament to betray Defoe's promise, which had helped to swing the leaders of the Church of Scotland behind the union project (McLean and McMillan 2005: 51). One of the terms of the Treaty and subsequent Acts was to protect the establishment of the (Presbyterian) Church of Scotland. The Scottish Act, incorporated and endorsed in the final Act of Union, provides that:

> it being reasonable and necessary that the true Protestant Religion as presently professed within this Kingdom with the Worship Discipline and Government of this Church should be effectually and unalterably secured Therefore Her Majesty (p. 120) with Advice and Consent of the said Estates of Parliament doth hereby establish and confirm the said true Protestant Religion and the Worship Discipline and Government of this Church to continue without any Alteration to the People of this Land in all succeeding Generations.
>
> (*Union with Scotland Act 1706 c. 11 Article XXV*)

The Tory-dominated House of Commons elected in 1710 enacted a statute that seemed, to Scots lawyers and church leaders (and seems to me), to be starkly inconsistent with this constitutional guarantee. The *Patronage Act 1711 c.12*, according to its long title, is 'An Act to restore the Patrons to their ancient Rights of presenting Ministers to the Churches vacant in that Part of Great Britain called Scotland'. This was anathema to Presbyterians, as landowning patrons might not even be Presbyterians themselves; and the right of a congregation to call its own minister was a fundamental tenet of the Scottish version of Calvinism (Peterson and McLean 2014: 62–5). Presbyterianism had been incorporated in the Claim of Right Act 1689 (*ASP 1689 c.28*), as one of the conditions to which William and Mary assented in exchange for the offer of the crown of Scotland. The 1711 Act (actually enacted in 1712, by the modern way of counting) is the first known instance of what is now called the 'West Lothian Question' (McLean 2012: 172), in which an Act affecting only Scotland was opposed by the majority of Scottish MPs. It led to two centuries of discord, peaking in the Disruption of the Church of Scotland 1843 (Rodger 2008), and settling only when the *Church of Scotland Act 1921 c.29*, discussed below, restored the position that the Scottish Parliament thought it had secured in 1706.

In the next three sections, I discuss the competing visions of Union as Scottish politicians and commentators saw them in 1707. The least-understood of them, nationalist unionism, regained its political prominence only in the 1950s and it makes sense to take the initial narrative from 1707 to 1953. The other two main strands—social unionism and trade and security—are each discussed in separate Then and Now sections of the chapter.

Social Union in 1707

Sir John Clerk of Penicuik (2nd baronet, 1676–1755; cf. Clerk 1892) was MP for Whithorn, a public finance expert, and one of the Scottish Union commissioners. John Clerk is to the

union negotiations as James Madison is to the drafting of the US Constitution in 1787 (Madison 1787/1966): a participant-observer without whose witness we would not know what happened. For several subsequent years Clerk helped oversee the ‘Equivalent’. This was formally compensation to Scotland for agreeing to take on a share of the national debt of the new kingdom. Actually, it was a combination of Marshall Plan and massive bribe. As the Marshall Plan enabled democracy to survive in Europe after 1945, so the Union and subsequent Equivalent enabled Scotland to survive the Darien disaster of 1699–1700.

(p. 121) The Company of Scotland was chartered by the Scottish Parliament in 1695, in the same year as the Bank of Scotland. Ministers aimed to make Scotland an independent trading nation, and to break the trading monopoly claimed by the English East India Company, by creating a trading post called ‘New Caledonia’ in Darien (modern Panama). The effort was an unmitigated disaster. Two expeditions were sent out, but more than half of the colonists died. It did not suit King William’s statecraft to offend either the East India Company or the Spanish Empire (Insh 1932; Devine 2003). Darien is estimated to have consumed a quarter of Scotland’s capital stock after the Company of Scotland had been barred from English capital markets (Riley 1978). The promise of an Equivalent also smoothed the way for some Scottish MPs to switch from opposing to supporting the Union, although we have shown (McLean and McMillan 2005: table 2.6) that this was not statistically associated with having held Darien stock.

It is anachronistic to call Clerk ‘left-wing’, but he clearly cared about what his fellow-parliamentarian Roxburghe called the ‘intolerable poverty and…constant oppression’ of Scotland between Darien and the Union. He understood, much faster than most of his contemporaries, that integrating Scotland into a much larger economy, whilst giving Scots access to the British Empire, could pull Scotland out of its intolerable poverty. The results were not immediate. Clerk thought, with good evidence, that the Union was unpopular in Scotland (Clerk 1892: 63–6). The Jacobite risings of 1708, 1715, and 1745 were a symptom. Only after 1746 did the Union settle down in Scotland. In 1760, Adam Smith wrote to his publisher that

> The Union was a measure from which infinite Good has been derived to this country [i.e. Scotland]. The Prospect of such good, however, must then [in 1707] have appeared very remote and uncertain. The immediate effect of it was to hurt the interest of every single order of men in the country…The views of their Posterity are now very different.
>
> (Adam Smith to William Strahan, 4 April 1760, in Mossner and Ross 1987, Letter 50)

Trade and Security Unionism in 1707

'Hanover with some, ease and security with others', said Roxburghe in 1707. The Scots had brought the English to the table by threatening not to copy the English choice of the Hanoverian dynasty in succession to the childless Queen Anne. But Clerk saw that

> [I]t wou'd be next to madness to imagine that the Scots cou'd set up a separat King, or force any King on England but the person chosen by that nation.
>
> (Clerk 1892: 58)

(p. 122) It was true that Scots had defeated their much larger neighbour at Bannockburn (1314) and Newburn (1640). They had tried to force their Presbyterian settlement on England in the Solemn League and Covenant of 1643, which for a whilst both Charles I and Charles II were willing to accept. But for every Bannockburn there was a Flodden (1513); for every Newburn a Dunbar (1650). Clerk and Roxburghe were right to predict that ease and security would require Hanover. The matter was finally settled in 1746.

The seminal accounts by Devine (2003) and Colley (2009) explore how quickly Britain became a nation. As soon as the Acts of Union named the newly created union *Great Britain*, there was a spurt in the use of the words Britain, British, and Briton. A book entitled *The British Empire in America* was published in 1708 (Devine 2003: xxiii). Trade and security went together. More security fostered more trade and vice versa. Scots' access to Empire trade gave them the security that Darien had cruelly shown to be lacking. Devine (2003: 58) notes that Article IV of the Treaty of Union, the one which gives Scotland equal access to trade and navigation, had the highest vote in its favour in the Scottish Parliament, with only nineteen members voting against Union. James Thomson, a Scotsman, celebrated Britannia's rule of the waves by writing *Britons never, never, never shall be slaves* in 1740—a phrase that would not have been nearly as resonant had it not been set to music by Thomas Arne. Thomson may have had in mind the *Cruisers and Convoys Act 1708 6 & 7 Anne c.13*, which suppressed the pirates of the Caribbean (some of them), reduced transaction costs, and made trade to the Caribbean colonies cheaper and therefore more profitable. Britons might never (never, never) be slaves, but they profited at least indirectly from the slave-owning sugar and tobacco colonies. In 1786, Robert Burns was ready to embark at Greenock, about to go to Jamaica as the bookkeeper on a slave plantation, until the unexpected success of the Kilmarnock Edition of his poems made him change his mind (Crawford 2004).

It was after British victories in India and Canada in the so-called Seven Years' War (1756–1763) that the empire really opened up to both Scottish trade and Scottish emigration. Defoe, in his multiple capacities as journalist, lobbyist, and travel writer, had already noted that Glasgow was the best-placed port in Britain for the American trade. A (Port-) Glasgow-based ship could make two transatlantic voyages a year; a London-based ship only one. Even the leading English west-coast ports, which were Bristol, Liverpool, and Whitehaven, had less favourable geography than Glasgow (Defoe 1928: vol. II, 746–8; Price

1954). Shorter voyages meant higher productivity not only directly, but also because ‘commercial intelligence could pass more quickly’ (Price 1954: 187).

The Glasgow tobacco trade had already begun before the Union, despite severe trading restrictions. It therefore blossomed after the Union, helping to foster (and be fostered by) Glasgow University in its golden age (1750–64), when Adam Smith taught economics, sociology, and moral philosophy, and James Watt repaired scientific instruments next door. It peaked immediately before American independence, building a capital base which enabled Glasgow to become the Second City of the Empire until its collapse in the 1930s.

(p. 123) The British Empire meant jobs as well as trade. Numerous studies have drawn attention to the disproportionate number of Scottish settlers in the British Empire. These came in all shapes and conditions: factors in the Chesapeake; administrators and doctors in India; rail and marine engineers everywhere; Gaels to Nova Scotia and Orcadians to Hudson’s Bay (summarized by Devine 2003: 100–8, 251). And, relatedly, the Empire was an opportunity for military service. British ministers realized remarkably quickly after 1746 how Highland rebels could be turned into soldiers of empire, thus killing two birds with one stone:

> I sought for merit wherever it was to be found;…I was the first minister who looked for it and found it in the mountains of the north.
>
> (William Pitt the elder, 1766, quoted by Devine 2003: 311)

The ideology of unionism grew alongside its material outputs. Much of this comprised an apparently odd nationalist version of unionism to be considered in the next section. Part, however, depended on assertions of a common Protestant heritage, on which Colley (2009) lays great stress. Until 1815, Roman Catholics were widely defined as the ‘other’, who threatened both parts of Great Britain (‘Frustrate their knavish tricks’, chants a seldom-sung verse of the UK National Anthem). Anti-Catholic prejudice did not die out with the end of the Napoleonic wars (being prominent in reactions to Irish Home Rule from the 1840s until 1921), in corners of the west of Scotland until the present day, and in Northern Ireland. However, as we have seen, the radically different forms of Protestantism in Scotland and England meant that Protestantism could divide as well as unite. The Colley hypothesis should be stated in terms of ‘common anti-Catholic’ rather than ‘shared Protestant’ heritage.

Nationalist Unionism in 1707 and Now

The fourth Duke of Hamilton nominally led opposition to union in the last Scottish Parliament, but ineffectually: Clerk suggests that he was so ‘unlucky in his privat circumstances that he wou’d have complied with any thing on a suitable encouragement’ (Clerk 1892: 58). The most prominent opponent of the Treaty was rather Andrew Fletcher of Saltoun, member for East Lothian. Fletcher was a cosmopolitan figure who had spent most of his life outside Scotland, much of it in the Netherlands (Robertson 1997). His model for

Union was, accordingly, a federal one, somewhat like that of the United Provinces of the Netherlands, from which William III had come in 1689. In his powerful speeches to Parliament, he proposed that if the union of crowns should continue (which he supported: he was no Jacobite, but nor was he a Presbyterian), there should be two equal parliaments under it, that of England and that of Scotland. The Scottish Parliament should be solely responsible for appointing the monarch's Scottish ministers:

(p. 124)

> [T]here is no way to free this country from a ruinous dependence on the English court, unless by placing the power of conferring offices and pensions in the parliament, so long as we shall have the same king with England.
>
> (speech on 28 May 1703 in Robertson 1997: 133)

Although Fletcher was willing to support Hamilton's proposal that the Scottish Parliament should be free to nominate a successor other than the Elector of Hanover on Queen Anne's death (Robertson 1997: 147), it seems that his, and probably Hamilton's, motives were tactical. That was the threat that brought the English to the table.

However, once brought to the table, Fletcher's (con)federalist vision got short shrift. Clerk explains:

> The first grand point debated by the Commissioners for Scotland amongst themselves was whether they should propose to the English a Federal union between the two nations, or an Incorporating union. The first was most favoured by the people of Scotland, but all the Scots Commissioners, to a Man, considered it rediculous and impracticable…And in things of the greatest Consequence to the two nations, as in Councils relating to peace and war or subsidies, it was impossible that the Representatives or their suffrages in both nations cou'd be equal, but must be regulated in proportion to the power and richess of the several publick burdens or Taxations that cou'd affect them.
>
> (Clerk 1892: 60)

Here it is necessary to distinguish between the Treaty of Union and the two (Scottish and English) Acts of Union. The Treaty itself may fairly be read as an incorporating union, just as Clerk says, but the Acts cannot. The Union proposal was unpopular not only in the streets of Edinburgh but also in the General Assembly of the Church of Scotland. Defoe and William Carstares (Clarke 2004) were the key players in bringing the church round, without which the Scottish Parliament would not have voted for Union. With Defoe's encouragement, Carstares helped draft the *Act of Security 1706 APS xi 402, c.6*, guaranteeing the establishment of the Church of Scotland. The Scottish Parliament incorporated this Act into their Act of Union, and said that they would not accept the Union unless the English Parliament accepted the Act of Security, whilst being at liberty to enact a similar provision to protect the establishment of the Church of England. This duly happened, so that the final Act of Union contains constitutional guarantees to *two* 'true Protestant' reli-

gions even though at most one religion can be true. Hence the final Act was not an incorporating union.

But, as already discussed, the Patronage Act 1711 showed that the constitutional guarantee might be empty. Throughout the following three centuries the tussle between Diceyan and nationalist unionism has waxed and waned, and the issues are as live in 2020 as they were in 1711. The current constitutional issues are discussed shortly, but it is appropriate to mention some intervening history first.

There has been a long literary history of nationalist unionism. Some of the most-read Scottish writers since 1707, including (certainly) Walter Scott and (arguably) Robert Burns, celebrated nationalist themes whilst benefiting from (Burns), or propagandist (p. 125) for (Scott), the Union. This has been extensively discussed in studies of Scottish literature (see, latest, Carruthers and Kidd 2018), but it is not the focus of this chapter, which is about nationalist unionism in politics and law.

The patronage dispute at first seemed controllable. From about 1750 until 1834 the General Assembly of the Church of Scotland was in the control of a faction who called themselves the Moderates. Although the Assembly passed an annual resolution protesting against the Patronage Act, the Moderates, who tended to be ministers around Edinburgh with prosperous congregations, were not inclined to do anything about it. This changed in 1834 when the 'popular' or 'Evangelical' party gained control, setting in train the events that led to the Disruption of 1843. The law cases surrounding that, brilliantly analysed by the late Supreme Court judge Alan Rodger (Rodger 2008), represent a fight between incorporating and nationalist conceptions of union. But patronage was abolished in 1874, and the Church of Scotland Act 1921, with its privileging of rules made by the Church of Scotland over statutes made by Parliament, closed that issue.

The 1921 Act provides that

> The Declaratory Articles are lawful articles, and the constitution of the Church of Scotland in matters spiritual is as therein set forth, and no limitation of the liberty, rights and powers in matters spiritual therein set forth shall be derived from any statute or law affecting the Church of Scotland in matters spiritual at present in force, it being hereby declared that in all questions of construction the Declaratory Articles shall prevail, and that *all such statutes and laws shall be construed in conformity therewith and in subordination thereto, and all such statutes and laws in so far as they are inconsistent with the Declaratory Articles are hereby repealed and declared to be of no effect*.
>
> (s.1, my emphasis)

Because the Declaratory Articles were drafted not by Parliament, but by the Church of Scotland itself, the 1921 Act is therefore on its face a challenge to the doctrine of parliamentary sovereignty as enunciated by A.V. Dicey, constitutional scholar and later unionist firebrand, in 1885:

> Neither the Act of Union with Scotland nor the Dentists Act, 1878, has more claim than the other to be considered a supreme law. Each embodies the will of the sovereign legislative power; each can be legally altered or repealed by Parliament; neither tests the validity of the other. Should the Dentists Act, 1878, unfortunately contravene the terms of the Act of Union, the Act of Union would be *pro tanto* repealed…The one fundamental dogma of English [sic] constitutional law is the absolute legislative sovereignty or despotism of the King in Parliament. But this dogma is incompatible with the existence of a fundamental compact, the provisions of which control every authority existing under the constitution.
>
> (Dicey 1885: 141)

One conception of Union is Diceyan. Was Dicey slapdash, or insulting, or neither, when he spoke of the English Constitution? Whether or not the historical Union of (p. 126) 1707 was one in which England simply incorporated Scotland and sailed on, Diceyan unionism behaves as if it was, by the by treating *English Constitution* as a synonym for *British Constitution*. Colin Kidd (2008) has recently coined the phrase ‘banal unionism’. In England, its most banal form is simply not knowing, or not caring, that ‘England’ and ‘Britain’ mean different things. This annoys Scots, even expatriates. It also has repercussions in Scotland when it takes the legal or political form of treating the Act of Union on a par with the Dentists Act 1878. This is fully discussed elsewhere in this *Handbook* (Chapter 8), but I recur to it later in this chapter, as it is highly topical for issues surrounding both Scottish independence and Brexit as this chapter is drafted.

An intellectually bright but politically (it seemed) irrelevant comet crossed the sky in 1953. John MacCormick, a classical nationalist unionist, had asked the courts to intervene in the refusal of the UK government to style the new queen ‘Elizabeth II and I’. There had never been a Queen Elizabeth of Scotland; therefore, on the analogy of James VI and I, the monarch should have a different number in England and in Scotland. The courts dismissed MacCormick’s claim rather summarily, saying that royal titles were a matter of royal prerogative and not justiciable. Then came the kicker, in the following *obiter dicta* (remarks by the way) from Lord President Cooper. The Lord President is the senior judge in Scotland’s senior court, the Court of Session.

> The principle of the unlimited sovereignty of Parliament is a distinctively English principle which has no counterpart in Scottish constitutional law. It derives its origin from Coke and Blackstone, and was widely popularized during the nineteenth century by Bagehot and Dicey, the latter having stated the doctrine in its classic form in his Law of the Constitution. Considering that the Union legislation extinguished the Parliaments of Scotland and England and replaced them by a new Parliament, I have difficulty in seeing why it should have been supposed that the new Parliament of Great Britain must inherit all the peculiar characteristics of the English Parliament but none of the Scottish Parliament, as if all that happened in 1707 was that Scottish representatives were admitted to the Parliament of England. That is not what was done. Further, the Treaty and the associated legislation, by

> which the Parliament of Great Britain was brought into being as the successor of the separate Parliaments of Scotland and England, contain some clauses which expressly reserve to the Parliament of Great Britain powers of subsequent modification, and other clauses which either contain no such power or emphatically exclude subsequent alteration by declarations that the provision shall be fundamental and unalterable in all time coming, or declarations of a like effect. I have never been able to understand how it is possible to reconcile with elementary canons of construction the adoption by the English constitutional theorists of the same attitude to these markedly different types of provisions.
>
> *(MacCormick v Lord Advocate SC 1953 396 at p. 411)*

Lord Cooper went on to point out that Dicey himself had been inconsistent, and that in a later work (Dicey and Rait 1920) the authors wished to contend that the Act of Union was indeed a fundamental constitutional statute. In 1920, Dicey and his co-author made no mention of the Dentists Act 1878.

(p. 127) Thomas Cooper was a former Unionist MP. His *obiter* in *MacCormick* was the most intellectually cogent statement of nationalist unionism since Defoe. Legally, it seemed to have few consequences. Arguments similar to Cooper's were not found persuasive in several cases (Chapter 8 in this *Handbook*). However, beginning in the 1990s, several judges in UK constitutional cases did accept a distinction between constitutional statutes and others. The former, unlike the latter, were immune to implied repeal if a later statute contradicted them.[1]

The revival of nationalist unionism is due largely to John MacCormick's son (Sir) Neil MacCormick (1941–2009; cf. Twining 2012; Walker 2012). In a British Academy lecture entitled 'The English Constitution, the British State, and the Scottish anomaly' (MacCormick 1998; cf. also MacCormick 1999), MacCormick drew renewed attention to Defoe's promise and Dicey's dentistry. He labels them the 'Defoe view' and the 'Dicey view', labels borrowed in this chapter. In his lecture, followed closely by his influential book *Questioning Sovereignty*, he admitted that whilst Defoe had the better arguments, Dicey had won most of the law suits.

The Modern Social Union

Since 1760 the Scottish and English economies have been integrated, to the great advantage of Scotland and the minor advantage of England. Smith's *Wealth of Nations* (1776/1987) is full of examples, although he is much more cautious about politics in his publications than his surviving letters (McLean 2006). As regards government policy, the value of union as a pooling device did not become clear until governments started spending money on what is now statistically classed as the Social Protection function of government (of which public pensions, sickness, and unemployment insurance are the largest components). Traditionally, poor relief was a local concern, but various reformers from Edwin Chadwick onwards (Finer 1952) understood that that was unsustainable, because

poor areas have the most demand for social protection and the weakest tax base to pay for it.

Explicit redistribution through the UK tax system began in 1888, with the 'Goschen Formula' (McLean 2005). As part of what was incautiously called 'killing [Irish] Home Rule by kindness', the Unionist Chancellor of the Exchequer George Goschen introduced an assignment of some tax receipts in the magic proportion 80:11:9 to England and Wales, Scotland, and Ireland respectively. This kindness did not kill Irish Home Rule, and after most of Ireland left the UK in 1921 the Goschen formula applied only to Scotland. There were other means, outside the scope of this chapter, to ensure that generous subsidy flowed to Northern Ireland. From 1921 until Goschen was succeeded by the current Barnett Formula, it became the principal means of redistribution to (p. 128) Scotland, whose population had fallen below 11/80ths of that of England and Wales by 1921 and continued to fall further. For fifty years, the Goschen gambit was to accept 11:80 as a floor ratio for any public expenditure and argue for the ratio to be higher whenever the Scottish administration could make a special case (bad weather, bad housing, bad health, remoteness…). The Goschen gambit appealed to Secretaries of State of both parties and to finance civil servants at the Scottish Office. The Labour Secretary of State in the World War II coalition, Tom Johnston, was perhaps the most fearsome player of it (Morrison 1960: 199). Goschen began life as a formula to apportion *tax proceeds*, but it became a formula to apportion *expenditure shares*, which was not at all what Chancellor Goschen had had in mind.

Goschen, and now Barnett, apply to specific programmes that are in principle controllable by governments. But another class of public expenditure comprises benefits paid to individuals. Most of Social Protection comes under this heading, with the big-ticket items being state pensions, sickness benefit, unemployment benefit, and housing benefits. In the UK, non-contributory state pensions date back to 1908, and contributory National Insurance to 1911. The drivers of Lloyd George's ambulance wagon (the team responsible for introducing National Insurance) had to concede a separate committee for Ireland, demanded by the Irish Party as its condition for supporting the minority Liberal Government. Me-too pressure then led to committees for Wales and Scotland as well, to the fury of Lloyd George's right-hand man, W.J. Braithwaite (Braithwaite 1957: 222–4). Braithwaite fretted that separate national committees would undermine UK-wide uniform rates and benefits. As it turned out, his worry was ill-founded. Rates and conditions have always been uniform throughout the UK. Hence, pensions and National Insurance, both vastly expanded under the 1945–1951 Labour governments, function as 'automatic stabilizers' to shield part of the Union facing hard times by a transfer from more prosperous parts. If there is structural depression in Scotland, then additional unemployment (and probably sickness) benefit will automatically be payable to Scotland. An instance is the collapse of its heavy capital-goods industries such as ship- and locomotive-building from 1921 to the 1960s. The automatic stabilizers create a geographical transfer that dampens the shock.

Thus, in the early twentieth century, the left-wing parties in the UK shifted their priorities on devolution. The Scottish Home Rule Association was a Liberal project founded in support and imitation of the Irish Home Rule proposed by W.E. Gladstone in 1886. It hired as its secretary a young man called Ramsay MacDonald. In March 1888, he wrote to another youngish Scotsman, Keir Hardie, who was running as an 'Independent Labour' candidate in a by-election, urging Hardie to stand firm in the 'cause of Labour and of Scottish Nationality' (Stewart 1921: 40; Marquand 1977: 23). One cause, not two. Thus both of the Labour Party's most important pioneers started their careers as devolutionists, in an era when Irish Home Rule was the great progressive cause. The pensions and National Insurance legislation of 1908–1911, together with Labour pressure via the 1909 Royal Commission on the Poor Law (Harris 1997: 158–62), pushed the left-wing parties away from devolution towards uniformity. This is encapsulated in the career of the 'Red Clydeside' Labour, later ILP, MP George (p. 129) Buchanan. In 1924, Buchanan proposed a Government of Scotland Bill, which failed to make progress, with a speech arguing that such matters as the Scottish church settlement of 1921 were no business of the English and should be settled by Scottish representatives alone (*HC Deb 09 May 1924 vol. 173 c.792*. Available at: https://api.parliament.uk/historic-hansard/commons/1924/may/09/government-of-scotland-bill#S5CV0173P0_19240509_HOC_56 (accessed 18 May 2018)). In 1948 he became the first chair of the National Assistance Board, one of the institutions set up by the 1945–1950 Labour Government to ensure uniform national rates and criteria for social protection (McLean 1999: 207, 211).

All parties in Scotland—including the SNP—say that they support the 'social union' (McLean et al. 2014, chapter 5), although they mean very different things by that. Public services (health, education, transport) are the responsibility of the Scottish Government and are funded out of Scottish taxation and Barnett transfers. Social protection (pensions and benefits) remain the responsibility of the UK government, although the *Scotland Act 2016 c.11* and the associated Fiscal Framework Agreement between the Scottish and UK governments (HM Government and Scottish Government 2016) devolve responsibility for some discretionary benefits, such as cold weather payments, to the Scottish Government.

Commitment to a social union may be regarded as the left-wing version of contemporary unionism. After the 'no' vote in the 2014 Referendum, the SNP Government pinned its hopes on the Fiscal Framework just mentioned. It required a year's hard bargaining between the two governments after the referendum, in which the Scottish Government held out for Barnett transfers to continue, and with it a formula that was highly favourable to Scotland for calculating the financial effects of transfers of powers. Details are given in David Heald's chapter (Chapter 28 in this *Handbook*); suffice it to say that until 2021 the SNP Government has secured an agreement that mitigates the decline of transfers to Scotland on account of Scotland's declining relative population. This is Goschen all over again: a unionist triumph for a nationalist government.

The Modern Trade and Security Union

With the disappearance of the British Empire, one might think that trade and security unionism had become an empty husk. The chief engineer of the *Starship Enterprise* is Scotty, but the oceans are no longer full of McAndrews (cf. Rudyard Kipling, 'McAndrew's Hymn' (1894) in Eliot 1941: 13–14). Nor are there Scots doctors in Mysore or Scots writers in Bengal. The Scottish diaspora remains culturally important, but is that relevant to unionism? Probably not.

Nevertheless, 'trade and security' remain features of contemporary unionism in Scotland. In the run-up to the 2014 independence referendum the UK Treasury led a (p. 130) series of studies under the title 'Scotland Analysis', designed to show that union was in the material interest of Scotland. Under headings such as 'borderless trade' and 'the advantages of the pound', the studies drew attention to disadvantages of independence. An independent Scotland, they contended, would be unable to use the pound sterling; would be unable to shelter its finance and oil industries from systemic risks; would suffer, as would the rest of the UK, from trade friction; and would have to raise taxes and/or cut expenditure because of a structural deficit in Scottish public finance. Together, these disadvantages of independence were calculated as offering a 'UK Dividend' of £1400 per person in Scotland (HM Government 2014: vol. 3, 3). The 'Yes' side in the referendum campaign, and the Scottish Government, denounced these conclusions, and in particular the £1400 per head 'Union Dividend', as part of 'Project Fear'. However, the Scottish Government's counterclaims, including that independence would lead to each Scottish citizen being £1000 better off by 2030, were thinly evidenced. Its White Paper, *Scotland's Future* (Scottish Government 2013) contains rather few numbers, but one of them is a table (Annex C) showing a projected fiscal balance for what it hoped would be year 1 of independence, 2016/2017. One line was 'Offshore receipts', which it projected to be between £6.8 and £7.9 billion. The bottom line—Scotland's net fiscal balance—was to be a deficit of between £2.7 and £4 billion.

The referendum result was 'No' to independence, and neither the UK government's 'Union dividend' nor the Scottish Government's 'independence dividend' can be verified. The former depends on an untestable counterfactual; the latter was due to have accumulated by 2030. However, another Scottish Government publication, the annual *Government and Expenditure and Revenue Scotland* (GERS: latest Scottish Government 2017) offers a reality check. In 2016–2017, offshore receipts from the Scottish sector were £0.2 billion, having been indistinguishable from zero in 2015–2016. Scotland's net fiscal balance was a deficit of £13.3 billion (GERS 2017, tables S.6 and 2.1). Oil revenue bounced back a little the following year, but not to anywhere near the Scottish Government's 2013 projection (Scottish Government 2018, table 2.3). Progress towards the Scottish Government's 2030 projected dividend appears to be slow (Table 7.1).

Table 7.1 Offshore Revenue and Net Fiscal Balance 2016–2017: Scottish Government Projection and Outturn, £bn

	Projected 2013 (midpoint)	**Outturn 2016–2017**
Offshore revenue	7.35	0.2
Net fiscal balance	−3.35	−13.3

Sources: Column 1 Scottish Government (2013); Column 2 Scottish Government (2017).

The other current issue in the trade and security union is the UK's defence, and in particular the future of HMNB (HM Naval Base) Clyde. This comprises the base for the UK's nuclear-armed submarine fleet at Faslane on the Gare Loch, and the weapons store at Coulport, on the adjoining Loch Long. Both of these are fjords on the west (p. 131) coast, about thirty miles from Glasgow, and the geography of the UK dictates that there are no potential deep-water ports outside Scotland with similar characteristics. For decades, SNP policy was to expel the UK's submarines after independence and not to join NATO. It reversed itself on NATO in 2012 (McLean et al. 2014: 21). The 2017 SNP Manifesto states:

> SNP MPs will build a cross-party coalition to scrap Trident as quickly and safely as possible…At Westminster we will press the UK government to meet their international obligations with regard to multilateral nuclear disarmament. SNP MPs will support long-term investment in HMNB Faslane as a conventional military base.
>
> (SNP 2017: 42)

In one aspect, the SNP's 'scrap Trident' manifesto commitment is a rerun of the Duke of Hamilton's Resolve, a resolution passed by the Scottish Parliament in 1705 'Not to name the Successor [to Queen Anne] till we have a Treaty with *England* for regulating our Commerce' (cited in McLean and McMillan 2005: 22). In both cases, it shows the English that the Scots can bring a credible threat to bear. The latest Scottish Government-sponsored publication at the time of writing, (Sustainable Growth Commission 2018) is slightly more in the real world of public expenditure than was the 2013 White Paper, but it proposes to pay the fiscal gap between Scotland's tax receipts and Scotland's current expenditure by using savings from cancelling the Trident nuclear submarine replacement programme. Not only does this fail to close the fiscal gap, but it asks questions of the vulnerability of the British Isles to hostile powers. This raises issues that go beyond this chapter (e.g. whether Trident's successor would actually be undetectable under water). But Clerk

and Roxburghe would have recognized the dilemma this poses for both Scotland and the rest of the UK.

Miller and the Contest between Defoe and Dicey

Even before MacCormick the scholar (1998, 1999), Neil MacCormick the politician had started to revive the Defoe view in Scotland. A lifelong Scottish Nationalist who served a term as an SNP MEP from 1999 to 2004, his ideas permeated the 1989 ‘Claim of Right’ (McLean 2012: 137) This document presented the case for a devolved Scottish Parliament, and the ensuing Scottish Constitutional Convention was backed by leading Labour and Liberal Democratic politicians, as well as figures from civil society; its chair was an Episcopal clergyman. To MacCormick’s annoyance, the SNP declined to take part.

The title ‘Claim of Right’ deliberately echoes two earlier documents of the same title. *The Claim of Right Act 1689 c.28*, still in force, is by its extended title *The Declaration of the Estates of the Kingdom of Scotland containing the Claim of Right and the offer of the* *(p. 132)* *Croune to the King and Queen of England*. It sets out the terms of that offer, and, to followers of Defoe and the MacCormicks, it has the same standing as the English *Bill of Rights Act*. One of its terms is,

> [t]hat all Proclamationes asserting ane absolute power to Cass annull and Dissable lawes The Erecting Schools and Colledges for Jesuits The Inverting protestant Chappells and Churches to publick Mass houses and the allowing Mass to be said are Contrair to Law.
>
> (*1689 c.28*, preamble, from http://www.legislation.gov.uk/aosp/1689/28 (accessed 30 May 2018))

After a long recital of other rights that it alleges were abused by James VII, the Act then offers the crown of Scotland to William and Mary as a contractual deal:

> Haveing therfor ane entire confidence that his said Majesty the King of England will perfect the Delyverance so far advanced by him and will still preserve them from violation of their Rights which they have here asserted and from all other attempts upon their Religion lawes and liberties
>
> The said Estates of the Kingdome of Scotland Doe resolve that William and Mary King and Queen of England France and Ireland Be and be Declared King and Queen of Scotland To hold the Crowne and Royall Dignity of the said Kingdome of Scotland.
>
> (Ibid.)

In the sovereignty contest which led to the Disruption, when the Court of Session was appointing one set of parish ministers, the General Assembly another, and each purporting to unseat its opponents, the Assembly majority issued another Claim of Right (1842), making the same Defoeian claims that the Court of Session was rejecting (Rodger 2008: 17–24). So the conflict between Defoe and Dicey spans more than three centuries and three Claims of Right. The most important is the first, because it is a current UK statute.

The first UK government document, as far as I am aware, to acknowledge the Claim of Right Act 1689 as having the same standing as the Bill of Rights 1688 is the 2007 White Paper on constitutional reform, issued under the (Scottish, son of the manse) Prime Minister Gordon Brown (HM Government 2007: Cm 7170, Box 1 on p. 12). But that White Paper led nowhere towards replacing Dicey by Defoe. The UK devolution statutes remained firmly Diceyan. The *Scotland Act 1998 c.46*, which creates the Scottish Parliament, states at s.28.

28 Acts of the Scottish Parliament

> (1) Subject to section 29, the Parliament may make laws, to be known as Acts of the Scottish Parliament.
>
> …
>
> (7) This section does not affect the power of the Parliament of the United Kingdom to make laws for Scotland.

(p. 133) This was modified by the *Scotland Act 2016 c.11*, enacted after the 2014 referendum and as a consequence of the ‘Vow’ signed by all the unionist parties immediately before that. The 2016 Act inserts the following subsection to s.28 of the 1998 Act:

> (8) But it is recognised that the Parliament of the United Kingdom will not normally legislate with regard to devolved matters without the consent of the Scottish Parliament.

That word ‘normally’ carries enormous political weight. The *Miller* litigation *R (on the application of Miller and another) v. Secretary of State for Exiting the European Union)* [2017] UKSC 5 was centrally about whether the Secretary of State—that is, the UK government—could issue an Article 50 declaration to the European Union announcing its intention to withdraw without first seeking parliamentary approval. On that issue the *Miller* claimants won. It may seem to have been a hollow victory from the point of the Remainer Ms Miller, as Parliament promptly did pass the statute the court required, empowering the UK government to issue the Article 50 notice.

But the *Miller* litigation drew in litigants from all three devolved territories—Scotland, Wales, and Northern Ireland. This section considers the Scottish arguments only. Two of the parties supporting Ms Miller—the Scottish Government and the Independent Workers of Great Britain—both referred in their submissions to the 1689 Act’s prohibition on executive acts that would ‘Cass annull and Dissable lawes’ in support of Miller’s argument

that the Government could not use prerogative to send an Article 50 letter. It may be said that they won on that point, since the majority judgment cites the Scottish Act as one of the relevant statutes which led them to rule in Miller's favour.

Although an earlier Supreme Court decision had given some hope to anti-Diceyans (*AXA… v. Lord Advocate…[2011] UKSC 46*; see the discussion of Lord Hope's and Lord Reed's speeches in Chapters 8 and 30 in this *Handbook*), the *Miller* court unanimously rejected another devolution argument: viz., that the Scotland Act 1998, as amended in 2016, required the UK government to seek the consent of the Scottish Parliament before enacting the bill to invoke Article 50. The court's argument was legally orthodox. The subsection that the 2016 Act adds to the 1998 Act includes the word 'normally'. It acknowledges that the Sewel Convention, which it puts into statute, is just a convention, and conventions are for politicians, not courts. But that merely defers the constitutional crisis that seems to be brewing as this chapter is drafted, eighteen months after *Miller*. The Scottish Parliament has refused legislative consent (that is, refused to issue a 'Sewel motion' or LCM) on the UK government's main Brexit bill. What does that imply for s.28(8) of the Scotland Act 1998? To a lawyer, nothing. The section says that the UK Parliament will not normally legislate for Scotland in a devolved matter. If the Brexit bill is enacted despite the Scottish Parliament's refusal to pass an LCM, this implies that the Act is not 'normal'. But the consequences are political, not legal. They reveal that s.28(8), which purported to be a constitutional guarantee to Scotland in light of the narrow 'No' to independence in 2014, is legally empty. This problem would be familiar to the Scots who were scandalized by the Patronage Act 1711.

(p. 134) Conclusion

This chapter has shown that three concepts of union, all present in 1707, are still present in 2018. In one aspect, the Union is a social union, which guarantees equal treatment for equally situated citizens in every part of the UK. In a second, it is a trade and security union, whose parts benefit from free trade and a common security envelope. In the third, and currently most intriguing, it is a union in which two legal systems, and two concepts of sovereignty, coexist uneasily. Daniel Defoe argued that the Treaty of Union was fundamental law which extinguished the traditions and conventions of both predecessor parliaments. A.V. Dicey argued that the Acts of Union had no higher status than the Dentists Act 1878 (although his behaviour during the Irish Home Rule crisis proved that he did not hold that view consistently—McLean 2012). Until recently, this arcane dispute interested only a few lawyers. However, a UK constitutional crisis is looming as this chapter is being finalized. Some brute facts may bring it on. In the 2014 referendum, the unionist No side said that only by remaining in the UK could Scots continue to access the European Union. That argument looked sick in light of the Brexit referendum, and SNP figures used the opportunity to turn the tables immediately. Since the Brexit result, they said, the only way for Scots to remain in, or re-join, the EU was to hold a second independence referendum with an opposite outcome. This argument did not immediately move the needle—the proportion of Scots saying they would vote for independence did not rise. The monthly

polling reported by the authoritative What Scotland Thinks shows ‘Yes’ vote intention for Scottish independence crossing above ‘No’ only twice since the Brexit referendum (Source: http://whatscotlandthinks.org/questions/how-would-you-vote-in-the-in-a-scottish-independence-referendum-if-held-now-ask#line, accessed 11 December 2019).

However, the constitutional dramas just discussed, plus the reality of Brexit, may move the needle. As noted in the previous section, neither the UK government nor the Supreme Court has been willing to give the Scottish Parliament a say in the terms of Brexit. This is one of the Brexit factors—not the only one—which may put a thumb in the scale in favour of Scottish independence in a second referendum. That will not be clear until after this chapter is published. But these events at least show that the context between Defoe and Dicey is not yet resolved.

References

Braithwaite, W.J. 1957. *Lloyd George’s Ambulance Wagon: Being the Memoirs of William J. Braithwaite, 1911–12*. London: Methuen.

Carruthers, G. and Kidd, C. (ed.). 2018. *Literature and Union: Scottish Text, British Contexts*. Oxford: Oxford University Press.

(p. 135) Clarke, T. 2004. ‘Carstares [Carstairs], William (1649–1715)’, in *Oxford Dictionary of National Biography* online. Available at: **https://doi.org/10.1093/ref:odnb/4777**, accessed 23 May 2018.

Clerk, Sir J. 1892. *Memoirs of the Life of Sir John Clerk of Penicuik…Extracted by Himself from his own Journals*, ed. by J. Gray. Edinburgh: Scottish History Society.

Colley, L. 2009. *Britons*. 2nd edition. New Haven, CT: Yale University Press.

Crawford, R. 2004. ‘Burns, Robert (1759–96)’, in *Oxford Dictionary of National Biography* online. Available at: **https://doi.org/10.1093/ref:odnb/4093**, accessed 5 June 2018.

Defoe, D. 1786. *The History of the Union between England and Scotland*, ed. by G. Chalmers. London: John Stockdale. Originally published in 1709.

Defoe, D. 1928. *A Tour through the Whole Island of Great Britain*, ed. by G.D.H. Cole, 2 vols. London: Dent (Everyman). Originally published in 1723.

Devine, T. 2003. *Scotland’s Empire*. London: Allen Lane.

Dicey, A.V. 1885. *Introduction to the Study of the Law of the Constitution*. London: Macmillan. 8th edition with a new introduction 1915.

Dicey, A.V. and Rait, R.S. 1920. *Thoughts on the Union between England and Scotland*. London: Macmillan.

Eliot, T.S. (ed.) 1941. *A Choice of Kipling’s Verse*. London: Faber & Faber.

Finer, S.E. 1952. *The Life and Times of Sir Edwin Chadwick*. London: Methuen.

Harris, J. 1997. *William Beveridge: A Biography*, 2nd edition. Oxford: Clarendon Press.

HM Government. 2007. *The Governance of Britain*, Cm 7170. Available at: **https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/228834/7170.pdf**, accessed 5 June 2018.

HM Government. 2014. *United Kingdom, United Future: Conclusions of the Scotland Analysis Programme*. London: HMG. Available at: **https://www.gov.uk/government/publications/united-kingdom-united-future-conclusions-of-the-scotland-analysis-programme**, accessed 18 May 2018.

HM Government and Scottish Government. 2016. *The Agreement between the Scottish Government and the United Kingdom Government on the Scottish Government's Fiscal Framework*. London and Edinburgh: HMG and SG. Available at: **https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/503481/fiscal_framework_agreement_25_feb_16_2.pdf**, accessed 18 May 2018.

Insh, G.P. 1932. *The Company of Scotland Trading to Africa and the Indies*. London: Charles Scribner's Sons.

Kidd, C. 2008. *Union and Unionisms: Political Thought in Scotland, 1500–2000*. Cambridge: Cambridge University Press.

MacCormick, N. 1998. 'The English Constitution, the British State, and the Scottish anomaly', *Proceedings of the British Academy*, 101: 289–306.

MacCormick, N. 1999. *Questioning Sovereignty: Law, State, and Nation in the European Commonwealth*. Oxford: Oxford University Press.

Madison, J. 1787/1966. *Notes of Debates in the Federal Convention of 1787*, ed. and intro by Adrienne Koch. New York: W.W. Norton.

Marquand, D. 1977. *Ramsay MacDonald*. London: Jonathan Cape.

McLean, I. 1999. *The Legend of Red Clydeside*, 2nd edition. Edinburgh: John Donald.

McLean, I. 2005. *The Fiscal Crisis of the United Kingdom*. Basingstoke: Palgrave Macmillan.

McLean, I. 2006. *Adam Smith, Radical and Egalitarian: An Interpretation for the 21st Century*. Edinburgh: Edinburgh University Press.

(p. 136) McLean, I. 2012. *What's Wrong with the British Constitution?* 2nd revised edition. Oxford: Oxford University Press.

McLean, I. and McMillan, A. 2005. *State of the Union: Unionism and the Alternatives in the United Kingdom since 1707*. Oxford: Oxford University Press.

McLean, I., Lodge, G., and Gallagher, J. 2014. *Scotland's Choices: The Referendum and What Happens After It*. Edinburgh: Edinburgh University Press, 2nd revised edition.

Morrison, H. 1960. *Herbert Morrison: An Autobiography*. London: Odhams Press.

Mossner, E.C. and Ross, I.S. (eds). 1987. *Correspondence of Adam Smith*. Indianapolis, IN: Liberty Fund.

Peterson, S. and McLean, I. 2014. *Legally Married: Love and Law in the UK and the US*. Edinburgh: Edinburgh University Press.

Price, J.M. 1954. 'The Rise of Glasgow in the Chesapeake Tobacco Trade, 1707–1775', *William and Mary Quarterly*, 11/2, Scotland and America (April): 179–99.

Riley, P.W.J. 1978. *The Union of England and Scotland*. Manchester: Manchester University Press.

Robertson, J. (ed.). 1997. *Andrew Fletcher: Political Works*. Cambridge: Cambridge University Press.

Rodger of Earlsferry, A., Lord. 2008. *The Church, the Courts, and the Constitution: Aspects of the Disruption of 1843*. Edinburgh: Edinburgh University Press.

Scottish Government. 2013. *Scotland's Future: Your Guide to an Independent Scotland*. Edinburgh: Scottish Government. Available at: **http://www.gov.scot/resource/0043/00439021.pdf**, accessed 18 May 2018.

Scottish Government. 2017. *Government Expenditure & Revenue Scotland 2016–17*. Edinburgh: Scottish Government. Available at: **http://www.gov.scot/Publications/2017/08/7201**, accessed 18 May 2018.

Scottish Government. 2018. *Government Expenditure & Revenue Scotland 2017–18*. Edinburgh: Scottish Government. Available at: **https://www2.gov.scot/Topics/Statistics/Browse/Economy/GERS**, accessed 14 November 2018.

Scottish National Party (SNP). 2017. *Stronger for Scotland*. Available at: **https://d3n8a8pro7vhmx.cloudfront.net/thesnp/pages/9544/attachments/original/1496320559/Manifesto_06_01_17.pdf?1,496,320,559**, accessed 18 May 2018.

Smith, A. 1776/1987. *Wealth of Nations*, 2 vols. Indianapolis, IN: Liberty Fund.

Stewart, W. 1921. *J. Keir Hardie: A Biography*. London: Keir Hardie Memorial Committee.

Sustainable Growth Commission. 2018. *Scotland—The New Case for Optimism: A Strategy for Intergenerational Economic Renaissance*. Edinburgh: The Commission. Available at: **https://static1.squarespace.com/static/5afc0bbbf79392ced8b73dbf/t/**

5b0a988c352f53c0a5132a23/1527421195436/SGC+Full+Report.pdf, accessed 30 May 2018.

Twining, W. 2012. 'Donald Neil MacCormick', in *Biographical Memoirs of Fellows of the British Academy* XI. Available at: **https://www.britac.ac.uk/sites/default/files/11_15-Neil_MacCormick.pdf**, accessed 30 May 2018.

Walker, N. (ed.). 2012. *MacCormick's Scotland*. Edinburgh: Edinburgh University Press.

Whatley, C.A. 2014. *The Scots and the Union*. 2nd edition. Edinburgh: Edinburgh University Press.

Notes:

([1]) The most important are *Thoburn v. Sunderland City Council* [2002] EWHC 195 (Admin) and *R (Jackson) v. Attorney General* [2005] UKHL 56.

Iain McLean

Iain McLean is Professor of Politics at Oxford University and a fellow of Nuffield College, Oxford.