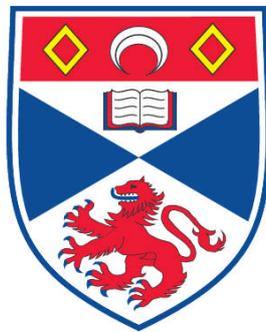


**HIS MAJESTY'S ADVOCATE:
SIR JAMES STEWART OF GOODTREES (1635-1713)
AND COVENANTER RESISTANCE THEORY
UNDER THE RESTORATION MONARCHY**

E. Calvin Beisner

**A Thesis Submitted for the Degree of PhD
at the
University of St. Andrews**



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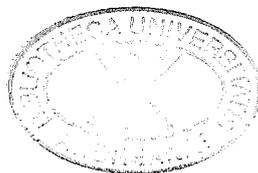
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2002

Abstract

This thesis is the first to explore the life and political thought of Sir James Stewart of Goodtrees (1635-1713). The first part reviews the life of his father, Sir James Stewart of Kirkfield (1608-1681) to 1661, and Goodtrees' own life from birth to his admission to the Scots bar in 1661. This provides the backdrop of history necessary to appreciate his contributions as both writer and radical activist. Particular attention focuses on the conflict between Charles I and Charles II, on the one hand, and the Church of Scotland, on the other; the National Covenant (1638) and the Solemn League and Covenant of (1643); the British wars of religion; and the upheavals following the Restoration in the 1660s, culminating in the Pentland Rising of 1666.

The next part develops Goodtrees' political philosophy from his two most important writings. Chapter 3 reviews and interprets *Naphtali* (1667), a defence of those who rose at Pentland. Chapter 4 reviews Andrew Honyman's *Survey of Naphtali* (1668, 1669), a rebuttal of *Naphtali* and standard Anglican case for royal absolutism. Chapter 5 reviews and interprets Goodtrees' *Jus Populi Vindicatum, or The People's Right, to defend themselves and their Covenanted Religion, vindicated* (1669), his rejoinder to Honyman. His Calvinist, covenantal constitutionalism is shown to be an important link between earlier resistance theorists like John Knox and Samuel Rutherford and the later Whigs, represented preeminently by John Locke.

The third part (chapters 6-7) reviews Goodtrees' life and minor writings as a radical critic of the Restoration monarchy; a participant in plots among British exiles in Holland to overthrow it; a member briefly of James's Scottish government before the Revolution; and lord advocate and churchman pursuing political, legal, and ecclesiastical reforms afterward.

Declarations

(i) I, E. Calvin Beisner, hereby certify that this thesis, which is approximately 115,000 words in length, has been written by me, that it is the record of work carried out by me and that it has not been submitted in any previous application for a higher degree.

Date 4 October 2002 Signature of candidate



(ii) I was admitted as a research student in October 1995 and as a candidate for the degree of Doctor of Philosophy in September 1996; the higher study for which this is a record was carried out on a part-time basis between 1995 and 2002.

Date 4 October 2002 Signature of candidate



(iii) I hereby certify that the candidate has fulfilled the conditions of the Resolution and Regulations appropriate for the degree of Doctor of Philosophy in the University of St Andrews and that the candidate is qualified to submit this thesis in application for that degree.

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Acknowledgments

I owe thanks to so many people at the end of this seven-year project that it is almost certain that I shall unintentionally leave some unnamed who deserve mention. I beg their pardon.

Covenant College President Frank Brock and Vice President Nick Barker first urged me, in August 1994, to pursue a Ph.D. I distinctly remember praying, after a little checking on costs, ‘Lord, the only way this could possibly happen is if someone were to give me a grant not only to cover full tuition, fees, and expenses, but also to replace all my self-employed income—and that’s so ridiculous, Lord, I’m not even going to ask You about it’. I told no one of that prayer, and for eight months I didn’t so much as think again of pursuing a Ph.D. Then one day the phone rang and President Brock said he had just received ‘the strangest phone call’. Some supporters of the college said they thought I should have a Ph.D., and ‘they want to pay for it, and they want to do it right. They want to pay your full tuition, fees, and expenses, and replace all your self-employed income. They wanted me to call and ask you if you’re interested’. It was as if I were hearing Jesus say, ‘Oh ye of little faith, how long must I put up with you?’! So the next thanks go to a couple, who would prefer to remain unnamed, whose generous grant enabled me to pay for the studies and take the time necessary for them, and to Herbert Schlossberg and Steve Ferguson, who suggested that they do it.

Thanks go next to Roger A. Mason, my supervisor at St Andrews, who not only suggested Sir James Stewart of Goodtrees for my focus but also patiently guided me through these seven years during which I learned that I had not begun nearly so well seasoned a scholar as I had thought—never once did he point out the unwarranted pride with which I began.

Several other scholars have offered specific assistance, including J. D. Douglas, Iain Murray, John Cairns, Aza Goudriaan of the University of Leiden’s faculty of theology, Georgina Jan Gardner who sent me a copy of her excellent Oxford thesis, and Jackie Cork. Tineke Goudriaan helped me find archival information at the University of Leiden. My friend Rev. David Hall, himself a scholar on the history of Calvinist political thought, kindly included me in a Liberty Fund scholars’ colloquium on the monarchomachs where I met Johann Sommerville and David Wootton, whose comments and conversations helped shape my thinking. Dr. Fowler White, my dean at Knox Theological Seminary, has generously arranged my teaching schedule to accommodate the need to finish the dissertation.

Many librarians have helped, including University of St Andrews rare books librarian Christine Gascoigne and archivist Norman Reid, the University of Aberdeen library's Linden C. Rogers, Edinburgh University archivist Arnott T. Wilson and library staff member Irene A. Ferguson, and the University of Leiden library's Silvia Compaan-Vermetten. For her indispensable aid, patience, and good humour in teaching me to read seventeenth-century Scots paleography and to navigate the Wodrow Collection at the National Library of Scotland, not to mention sharing her insights into the Covenanters' spirituality, I owe special thanks to Louise Yeoman. Ethan Pettit of the Covenant College library, Ron Kilpatrick, librarian at Knox Theological Seminary, and Sean McNulty, interlibrary loan officer at Broward Community College have helped me obtain many items through interlibrary loan.

Friends and family also deserve my thanks. Hundreds of Christian brothers and sisters, especially members of Reformed Presbyterian Church of Lookout Mountain, Georgia, and St. Andrews Presbyterian Church of Hollywood, Florida, and colleagues at Covenant College and Knox Theological Seminary, have prayed for me. I owe thanks particularly to Douglas and Di Taylor and their six children for welcoming and loving our family during our year there, and to their son Luke for making about 4,500 photocopies of rare books from the Hay Fleming Reference Library after Sabena Airlines lost the box that contained the first set of copies I had made. Rev. Kevin Skogen was a tremendous encouragement and gave me the opportunity to labour with him on the church session, affording me first-hand experience of the inner workings of Presbyterian government, discipline, and worship, matters dear to Sir James Stewart's heart and integral to the history surveyed here. My father, who died nine years before I began this project, first instilled in me a love of liberty and political thought. My mother and my father-in-law encouraged and prayed for me. My wife Deborah, to whom I dedicate this work (Yes, it's about time—after dedicating a book to each of our seven children!), has encouraged me, prayed with and for me, and borne much more than her share of the load of raising and home schooling our children to free me to concentrate on this work. Our children—David, Susan, Kilby, Becky, Peter, Arthur John, and Grace (who was born in St Andrews during my first year of study)—have encouraged and prayed for me, patiently accepted my distraction from them, and been constant sources of great joy.

Pembroke Pines, Florida

4 October 2002

Soli Deo Gloria.

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List of Abbreviations

For publication information see Bibliography.

Althusius, <i>Politica</i>	Althusius, Johannes. <i>Politica Methodice Digesta</i> . Translated and abridged by Frederick S. Carney. References are to chapter and section, followed by page number in parentheses.
Althusius, <i>Politica</i> (Latin)	Althusius, Johannes. <i>Politica Methodice Digesta of Johannes Althusius (Althaus)</i> . References are to chapter and section.
APS	<i>Acts of the Parliaments of Scotland</i>
Beza, <i>Right</i>	Beza, Theodore. <i>Right of Magistrates</i> . In <i>Constitutionalism and Resistance in the Sixteenth Century: Three Treatises by Hotman, Beza, & Mornay</i> , translated and edited by Julian H. Franklin.
RPC	<i>The Register of the Privy Council of Scotland</i>
Buchanan, <i>De Jure Regni</i>	Buchanan, George. <i>De Jure Regni apud Scotos</i> . Quotations from the Sprinkle publication (MacFarlan translation) unless otherwise indicated.
DSCHT	Cameron, Nigel M. de S., et al., eds. <i>Dictionary of Scottish Church History and Theology</i> .
Carstares <i>State Papers</i>	M'Cormick, Joseph, ed. <i>State-Papers and Letters Addressed to William Carstares</i> .
Coltness <i>Collections</i>	Dennistoun, James, ed. <i>The Coltness Collections</i> .
BDBR	Greaves, Richard L., and Robert Zaller, ed. <i>Biographical Dictionary of British Radicals in the Seventeenth Century</i> .
Honyman, <i>Survey</i> [or simply] <i>Survey</i>	[Honyman, Andrew]. <i>A Survey Of the Insolent and Infamous Libel, entituled Naphtali, &c. and Survey of Naphtali, Part II. Discoursing of the Heads proposed in the Preface of the former</i> . Citations will appear as follows: 1.1:3 will designate Part I, section 1 (that is, the preface), p. 3; 1.2:85 will designate Part I, section 2, p. 85; 2:15 will designate Part II, p. 15.
<i>Jus Populi</i>	[Stewart, James]. <i>Jus Populi Vindicatum, Or The People's Right, to defend themselves and their Covenanted Religion, vindicated</i> . References will put supplied page numbers for the 'Epistle', counting the first as [1], in brackets.
Locke, <i>Two Treatises</i> Locke, <i>First Treatise</i> Locke, <i>Second Treatise</i>	Locke, John. <i>Two Treatises of Government</i> (1690), with Robert Filmer, <i>Patriarcha</i> . Edited by Thomas I. Cook. References are to section numbers.

<i>Naphtali</i>	[Stewart, James, and James Stirling]. <i>Naphtali, Or The Wrestlings of the Church of Scotland For the Kingdom of Christ</i> . Citations will be as follows: <i>Naphtali</i> , [3], will be to the third unnumbered page of the opening section; <i>Naphtali</i> , 3 or 195 will be to the respective numbered pages of the second or third part of the work.
NAS	National Archives of Scotland (formerly Scottish Record Office), Edinburgh
NLS	National Library of Scotland, Edinburgh
Rutherford, <i>Lex, Rex</i>	[Rutherford, Samuel]. <i>Lex, Rex, or The Law and the Prince; a Dispute for the Just Prerogative of King and People: containing the Reasons and Causes of the Most Necessary Defensive Wars of the Kingdom of Scotland</i> . Citations are from the 1982 edition and show the question number and the page number, thus: Q. XXX, 153.
<i>Source Book</i>	Dickinson, William Croft, and Donaldson, Gordon. <i>A Source Book of Scottish History</i> .
<i>Vindiciae</i>	[Languet, Hubert, and Philippe du Plessis Mornay]. <i>Vindiciae, Contra Tyrannos</i> (1579), edited and translated by George Garnett. Where citations are to question number, page number follows in parentheses.
Wodrow, <i>Analecta</i>	Wodrow, Robert. <i>Analecta: Or, Materials for a History of Remarkable Providences; mostly relating to Scotch Ministers and Christians</i> .
Wodrow, <i>History</i>	Wodrow, Robert. <i>The History of the Sufferings of the Church of Scotland from the Restoration to the Revolution</i> , 2d ed.

Introduction

I find no more privilege granted unto kings by God, more than unto the people, to offend God's majesty.—John Knox¹

Whatever anyone might think of their political ideals and practice in governing, it would be difficult to ignore the devotion of Covenanting Presbyterians of the seventeenth and early eighteenth centuries to high moral principle and personal piety—at least so far as they understood these. The focus of this study, Sir James Stewart of Goodtrees (1635-1713), exemplified that devotion. The Covenanters' principal historian, Robert Wodrow, who knew him intimately, called him 'that great man, and extraordinary Christian', noting that the whole general assembly of the Church of Scotland, meeting in Edinburgh when Stewart died, attended the funeral of this 'soe fast and usefull a freind' whose passing he called a greater loss to Presbyterians than that of any man since King William. He had all the qualities the Covenanters admired in a man: 'He was mighty in the Scriptures', wrote Wodrow. ' . . . He was wonderfull in prayer. . . . His temper was most sweet and

¹John Knox, *John Knox's History of the Reformation in Scotland*, 2 vols., ed. William Croft Dickinson (New York, 1950), 2:121, cf. 128, the latter cited in *Jus Populi*, 58. Compare Locke, *Second Treatise*, §176.

easy, and very pleasant. He had a way in conversation and reason[ing] of bantering and scolding, where he used freedom; and many a “beast”, and “fool”, and “ignoramus”, he would have called these he reasoned with’. Still, ‘In his publick appearances, in the Parliament and Council, readily he heard all, and spoke among the last, if he did speak, and spoke short’.² The Covenanters never confused meekness with weakness, however. For all their appreciation of the tender grace of God, they also appreciated a robust argument and the man who could wield it. In this regard Stewart resembled an earlier Covenanter, one of greater devotional and exegetical reputation, but his confederate in inferring the political implications of Calvinist theology and ecclesiology, Samuel Rutherford (c. 1600-1661), author not only of letters, sermons, and theological and moral treatises that remain dear to Presbyterians today but also of *Lex, Rex* (1644), which insisted that the prince ruled only under law. Elsewhere Wodrow described Stewart as ‘a person every way eminent for religion, learning, and law, and far above any character in my power to give’.³

Stewart wrote, in 1667, with Covenanted minister James Stirling (both anonymously), *Naphtali, or the Wrestlings of the Church of Scotland*, simultaneously a biting indictment of the Restoration government’s oppressive policies toward religious nonconformists in Scotland and a feisty defense of the Pentland rebels of 1666. For nearly two centuries *Naphtali* was one of the most popular books among Covenanters in Scotland and America. From exile in Holland in 1669 he wrote—again anonymously—*Jus Populi Vindicatum, or The People’s*

²Wodrow, *Analecta*, 2:202-4.

³Wodrow, *History*, 4:232.

Right, to defend themselves and their Covenanted Religion, vindicated—a meticulous rejoinder to Episcopal Bishop Andrew Honyman, who in his two-part *Survey of Naphtali* (1668, 1669) had attempted to rebut *Naphtali*. Still in exile, he wrote—yet again anonymously and probably with assistance from the covenanting Presbyterian minister William Carstares (1649-1715)—*An Accompt of Scotland's Grievances By reason of the D. of Lauderdale's Ministrie, Humbly tendred To His Sacred Majesty* (1674), continuing his attack on Charles II's Scottish ministry and its persecuting policies. Returning to Scotland in 1679, by 1681 he gained a reputation 'as the ablest man at the Bar'⁴—this during the time of the great jurist Sir James Dalrymple of Stair (1619-1695) and the great lawyers Sir George Mackenzie of Rosehaugh (1636-1691) and Sir George Lockhart of Carnwath (ca. 1630-1689). Exiled yet again in 1681, he wrote the *Declaration* for Argyll's invasion, for which he was also one of the plotters. In the *Declaration* he laid 'great stress upon the risk to Protestantism involved in the accession to the throne of a Roman Catholic prince so able and determined and ruthless as the Duke of York had shown himself to be'—though with foresight he predicted the invasion's failure and refrained from taking part.⁵ While in Holland he cooperated in efforts to persuade the prince and princess of Orange to intervene in British affairs for the defence of Protestantism against James VII—father to the princess, father-in-law and uncle to the prince. He served nearly twenty years as lord advocate under William and Mary and then Anne, had a major part in settling church government after the Revolution, and joined Andrew Fletcher of Saltoun in opposition to the Union of 1707. He seems

⁴David M. Walker, *The Scottish Jurists* (Edinburgh, 1985), 182.

⁵John Willcock, *A Scots Earl in Covenanting Times: Being Life and Times of Archibald 9th Earl of Argyll (1629-1685)* (Edinburgh, 1907), 267, 357.

even to have had, indirectly, some influence on the political understanding of an American pamphleteer during the American Revolution.⁶

The purpose of this study is to describe Stewart's life and interpret his major published political writings (*Naphtali* and *Jus Populi*) and thus to indicate his place in the stream of Calvinist political writers. It will be argued that he forms a link between such earlier British writers as Ponet, Buchanan, and Rutherford, on the one hand, and Locke, on the other.

The first chapter, to make up somewhat for the paucity of information available about Stewart's own life before the Restoration, will provide historical context for Stewart's life and thought by surveying the life of his father, Sir James Stewart of Kirkfield, up to the Restoration of Charles II in 1660. The second will follow Stewart's career through the early part of Charles II's turbulent reign, through the publication of *Jus Populi* in 1669. The third through fifth will analyse Stewart's first two political treatises, *Naphtali* (1667) and *Jus Populi*, and Honyman's *Survey of Naphtali*. The sixth will sketch briefly Stewart's life during the remaining years of Charles II's reign, his activities among British radicals early in the reign of James VII and II, and his brief and surprising career in James's government in 1687-1688, up through the Glorious Revolution. The seventh will review briefly his long career in government between the Revolution and his death in 1713, reflect on his personal character, and sum up his significance in the history of Calvinist political thought.

It is to be regretted that this dissertation can attempt no more than a cursory

⁶[Stephen Case], *Defensive Arms Vindicated and the Lawfulness of the American War Made Manifest. To which is added, A short Receipt for a Continental Disease, &c.* (1783), in *Political Sermons of the American Founding Era 1730-1805*, ed. Ellis Sandoz (Indianapolis, 1991), 720. I am indebted to Reverend David Hall for this reference. Sandoz explains in the 1996 reprint of *Political Sermons* that [Case's] tract is actually a chapter extracted from [Shields, Alexander {and James Renwick?}.] *A Hind Let Loose, or an historical Representation of the Testimonies of the Church of Scotland* (Utrecht, 1687). I am indebted to John Coffey for this reference.

discussion of Stewart's political thought in three writings after *Jus Populi*: his *Accompt of Scotland's Grievances by reason of the Duke of Lauderdale's Ministry* (1674), the *Declaration* he penned for the Duke of Argyll's invasion of Scotland (1685), and correspondence that he carried on with Carstairs and Gaspar Fagel, grand pensionary to the Prince of Orange, culminating in his *Answer To . . . Fagel*,⁷ in the crucial months before the Revolution. It can only scratch the surface at determining precisely what Stewart's intentions were in accepting a pardon from and joining the government of James VII in 1687. There is far more to be learned of Stewart's life from 1670 to 1688 and from then to his death in 1713 than can be addressed here, but the focus on his earlier political philosophy requires the treatment of the rest of his life to be brief. It is to be hoped that some other scholars—including some focusing on the history of Scottish legal practice—can give those periods of Stewart's career the close scrutiny they deserve.

A Note on Sources

Extensive sources dealing in any depth with Stewart's life are few. Much must be reconstructed from bits and pieces in the *Registers of the Privy Council of Scotland*, the *Acts of Parliament*, and correspondence (some his own) and diaries of his contemporaries, many unpublished and to be found only in archival collections. Several secondary sources, such as Omond's *Lord Advocates of Scotland* and passing references in general histories of Scotland and England in most instances depend on superficial readings of *The Coltness Collections* and

⁷*James Steuarts Answer To a Letter Writ by Mijn Her Fagel Pensioner to the States of Holland and West-Friesland, Concerning the Repeal of the Penal Laws and Tests* (London and Edinburgh, 1688).

occasional references in such well-known primary sources as Wodrow's *History of the Sufferings of the Church of Scotland*, Burnet's *History of His Own Time*, and Mackenzie's *Memoirs of the Affairs of Scotland*. Gardner's *The Scottish Exile Community in the United Provinces* contains much helpful information about Stewart's life in exile.⁸

By far the most important printed primary source for Stewart's life is *The Coltness Collections*, which includes, *inter alia*, family memoirs compiled by Stewart's nephew, Sir Archibald Stewart Denham of Westshield (1683-1773).⁹

⁸Gardner's thesis raises serious questions regarding Stewart's intentions in accepting a pardon from and joining the government of James VII and II in 1687-1688. While I differ with Gardner's judgment, it is beyond the scope of this dissertation to engage the question in depth. Certainly, however, that is an excellent topic for further research, and Gardner has brought considerable relevant evidence to light. I am grateful to her for sending me a complete copy of her thesis.

⁹Some of the material printed in *Coltness Collections* exists in manuscript form in MSS 2291 and 2293 of the Edinburgh University Library. James Dennistoun, editor of the printed *Collections*, remarks in the preface, 'The older diaries and papers, from which [the Denham Memoir, Part First of the *Collections*] was compiled [by Sir Archibald Stewart Denham (1683-1773)], have unfortunately been lost or destroyed, in the disasters that have of late [Dennistoun wrote in 1842.] overtaken the Coltness family'. A large number of manuscripts of the Coltness families, most not published in *Coltness Collections*, constitutes MSS 2291-2295 in the Edinburgh University Library. A complete list of that collection could (as of March 2, 2002) be viewed online at <http://www.lib.ed.ac.uk/lib/about/pubs/lg51/guide/h17.shtml>. In addition to those printed in *Coltness Collections*, the following items, as listed there, are of particular relevance to our subject (this selection limited to items related to James Stewart of Kirkfield, the subject's father; Thomas Stewart of Coltness, the subject's elder brother; and the subject himself):

1. Coltness family papers and letters, 1623-1774, including 27 letters of Sir James Stewart of Goodtrees (1635-1713), later Lord Advocate, to his father, 12 October 1671 to 30 May 1673 and two undated, and items relating to Sir James Stewart Denham's pardon from the government. 79 documents. (See [but most not printed in] C.C., pp.359-362.) (Mic. Dup. 653.7) MS 2291/26
2. Estate account book, 1683-1710. (Mic. Dup. 653.8) MS 2291/27.
3. Work in holograph by Sir James Stewart of Goodtrees, in the form of a letter to a fellow Presbyterian, relating to the ordination of ministers, 1660s-1670s. 30 fols. (Mic. Dup. 653.9) MS 2291/29.
4. Two works: 1) fragment of a tract on the Picts and other early inhabitants of Scotland, 1730s? (obviously not by Stewart); 2) fragmentary draft of a work by Sir James Stewart of Goodtrees on political theory, c.1670? 21 fols. (Mic. Dup. 653.10) MS 2291/30.
5. Two religious works by Sir James Stewart of Goodtrees, one on Roman Catholicism, the other a verse-by-verse commentary on Isaiah. 31 double sheets, with a single insert between the first and second. (Mic. Dup. 653.11) MS 2291/31.
6. Part of letter book of James Stewart of Goodtrees, future Lord Advocate and grandfather of the economist, relating to business transactions with Rouen, 1672-1673. 8 fols. (Mic. Dup. 653.12) MS 2291/32.
7. Glencoe Papers. 'Answers to the information for the Master of Stair upon the affair of Glenco, wrote by Thos Spence and corrected by Sir Jas Stewart Lord Advocate, his master'. 8 fols., and old covering material. (Mic. Dup. 655.1) MS 2291/35.
8. Deed of exoneration, dated 7 January 1671, in favour of James Stewart of Kirkfield. On vellum. With remains of seal attached. (Not microfilmed.) MS 2294/1.
9. Deed of remission, dated 9 December 1687, in favour of Thomas Stewart of Coltness. On vellum. With remains of seal attached. (Not microfilmed.) MS 2294/2.
10. Document creating Thomas Stewart of Coltness a burghess and gildbrother of Edinburgh, dated 19 February 1690. On vellum. (Not microfilmed.) MS 2294/3.

James Dennistoun, the nineteenth-century editor of the work, estimated the *Collections* as ‘of unquestionable authenticity’ as to ‘the history, the habits, the public actions, and the private circumstances of individuals who lived within the memory of those among whom the author’s childhood was passed, and to whose papers and journals he had full access.’¹⁰ That assessment remains reasonable today. Sir Archibald’s interpretation of facts, questionable in some instances, is generally plausible.

Stewart’s life and ideas make best sense in the context of an understanding of the Covenanters, and for their history there are many more sources. Wodrow’s detailed and meticulously documented *History of the Sufferings of the Church of Scotland* remains the most thorough history of the Covenanters from the Restoration to the Glorious Revolution, for which there is no substitute.¹¹ Three modern works—Douglas’s *Light in the North*, Barr’s *The Scottish Covenanters*, and Cowan’s *The Scottish Covenanters 1660-1688*—provide readable surveys. Stevenson’s *King or Covenant?* provides excellent, well-researched sketches of the character, ideas, and psychologies of specific Covenanters and their opponents, and his *The Government of Scotland Under the Covenanters 1637-1651* puts thousands of archival records for the period 1637-51 in easy reach. Watt’s *Recalling the Scottish Covenants* interprets the historical significance of the Covenanters’ period briefly and perceptively. Several older secondary works remain instructive. Hewison’s *The Covenanters: A History of the Church in Scotland from the*

11. Document creating Sir Thomas Stewart of Coltness a burgess and gildbrother of Glasgow, dated 11 March 1695. On vellum. (Not microfilmed.) MS 2294/4.

¹⁰*Coltness Collections*, xvi-xviii.

¹¹Wodrow’s reliability as a historian was defended by W. J. Couper in two articles, ‘Robert Wodrow’, *Records of the Scottish Church History Society*, III (1929): 112-34, and ‘Robert Wodrow and His Critics’, *Records of the Scottish Church History Society*, V (1935): 238-50.

Reformation to the Revolution is more extensive than anything but Wodrow's *History*. Johnston's *Treasury of the Scottish Covenant* collects in one place many whole and partial documents from the period. M'Crie's *A Vindication of the Scottish Covenanters*, although in response to fiction (Sir Walter Scott's *Tales of My Landlord*), nonetheless corrects misconceptions about the Covenanters common not only to Scott's time but also before and since. The treatments in modern broader histories, like Lynch's *Scotland: A New History* and Donaldson's *Scotland: James V-James VII*, while giving bare outlines, often show considerable incomprehension of the Covenanters' underlying motivations. Hutton's *Charles the Second*, Fraser's *Royal Charles*, and Loth's *Royal Charles* helpfully describe the reign of the merry monarch. Miller's *James II: A Study in Kingship* and Mullett's *James II and English Politics 1678-1688* do likewise for the troubled reign of the last Stuart king. MacKenzie's *The Life and Times of John Maitland, Duke of Lauderdale (1616-1682)* and Kenyon's *Robert Spencer Earl of Sunderland 1641-1702*, able biographies, are similarly helpful. Howie's *Scots Worthies*, Simpson's *Traditions of the Covenanters*, and Smellie's *Men of the Covenant*, though hagiographical, still give insight into the character of the major Covenanters. On the more general seventeenth-century ecclesiastical history of Scotland, Buckroyd's *Church and State in Scotland 1660-1681* targets precisely the period most important to this study, while Mullan's *Episcopacy in Scotland* and *Scottish Puritanism* are invaluable, despite their concluding at 1638, as is MacDonald's *The Jacobean Kirk, 1567-1625*. Also helpful are Kirk's *Patterns of Reform: Continuity and Change in the Reformation Kirk* and, though narrower, Coffey's *Politics, Religion, and the British Revolutions: The Mind of Samuel Rutherford*. Older but still helpful are

Henderson's *The Burning Bush: Studies in Scottish Church History and Religious Life in Seventeenth-Century Scotland*.

It is also helpful to see Stewart's life and ideas in the context of the wider movement of British radicals throughout the Restoration period. Greaves's *Deliver Us From Evil, Enemies Under His Feet, Saints and Rebels*, and *Secrets of the Kingdom* are four outstanding works on the subject, and his co-edited *Biographical Dictionary of British Radicals in the Seventeenth Century* (3 volumes) contains very helpful articles on hundreds of radicals. Ashcraft's *Revolutionary Politics* is especially important for taking John Locke out of the philosopher's armchair and putting him in the radical context in which he belongs. Also useful are Gardner's *Exile Community*, Marshall's *Intelligence and Espionage in the Reign of Charles II, 1660-1685*, Houston's *Algernon Sidney and the Republican Heritage in England and America*, Scott's *Algernon Sidney and the English Republic, 1623-1677* and *Algernon Sidney and the Restoration Crisis, 1677-1683*, Ashley's *John Wildman: Plotter and Postmaster*, and Claydon's *William III and the Godly Revolution*, among others. More broadly, Stewart's life and ideas are clarified by the background of the political scene culminating in the Revolution of 1689, for which G. H. Jones's *Convergent Forces: Immediate Causes of the Revolution of 1688 in England* and Charles Middleton: *The Life and Times of a Restoration Politician*, J. R. Jones's *The Revolution of 1688 in England* and (ed.) *The Restored Monarchy 1660-1688*, Macaulay's *History of England*, Speck's *Reluctant Revolutionaries: Englishmen and the Revolution of 1688*, and Haley's *William of Orange and the English Opposition 1672-4*, among many others, are all valuable.

Chapter 1

The Stewarts of Kirkfield and Coltness

The pedigree of any Steuart, Stewart, or Stuart in Scotland is an elaborate affair, not seldom beset with mysteries. So it is of Sir James Stewart of Goodtrees (1635-1713). His father, Sir James Stewart of Kirkfield and Coltness, was the first son of James Stewart the Younger of Daldowie and Allantoun, called The Hopeful (d. 1607), by Marion, sister of Lord Carmichael. His mother was Anna Hope, niece of Sir Thomas Hope (c. 1580-1646), who defended ministers indicted for meeting in a General Assembly contrary to the orders of King James VI in 1606. Later, having been made Lord Advocate in 1626 and baronet in 1628, Sir Thomas cooperated with Sir Archibald Johnston of Wariston (1611-1663), who himself would later be Lord Advocate, in drawing up petitions against the Service Book in 1637 and early 1638 and then in defending the legality of the National Covenant of 1638.¹ Our

¹James Rankin, *The Church from the Reformation to the Revolution of 1688*, in Robert Herbert Story, ed., *The Church of Scotland, Past and Present: Its History, Its Relation to the Law and the State, Its Doctrine, Ritual, Discipline, and Patrimony*, 5 vols. (London, n.d.), 2:504-5; P. Hume Brown, *The History of Scotland to the Present Time*, 3 vols. (Cambridge, 1911), 2:238; Thomas Hope, *A Diary of the Public Correspondence of Sir Thomas Hope of Craighall, Bart., 1633-1645*, ed. Thomas Thomson (Edinburgh, 1843); Thomas Hope, 'Twenty-four letters of Sir Thomas Hope, Bart., of Craighall, Lord-Advocate of Scotland, 1627-1646', ed. Rev. Robert Paul, in *Miscellany of the Scottish History Society* (Edinburgh, 1893), 71-139; G. W. T. Omond, *The Lord Advocates of Scotland*, 2 vols. (Edinburgh, 1883), 1:93-147; David Stevenson, 'A Lawyer and His Loyalties: Sir Thomas Hope of Craighall', in David Stevenson, *King or Covenant? Voices From Civil War* (East Linton, 1996), 105-114. As an officer of the crown Hope did not sign the Covenant, but he did defend its legality and support the Covenanters' cause. Omond, *Lord Advocates*, 1:120-22; Allan I. Macinnes, *Charles I and the Making of the Covenanting Movement 1625-1641* (Edinburgh, 1991) 163.

James's nephew, Sir Archibald Stewart Denham of Westshield (1683-1773), Baronet, author of the *Denham Memoir*, the principal published part of the family's memoirs,² expressly disavows responsibility for the accuracy of the genealogy before the seventeenth century. According to that questionable part, however, Sir James Stewart of Kirkfield and his sons might have laid some claim to royal heritage—though they never seem to have done so.³ James (Goodtrees' father) was born in 1608, shortly after his father's death. In 1610 his mother married James Denham of Westshield, the elder brother-in-law to her first husband. James was apprenticed soon afterward to a merchant in Edinburgh, under whose guidance he became a highly successful merchant and banker himself, 'usefull, benevolent and beneficent', often helping needy relatives and neighbors.⁴

On business in London in the latter half of the 1620s, James met Alexander Leighton, a zealous Puritan and author of *An Appeal to the Parliament; or Sions Plea against Prelacie* (Amsterdam, 1628), who suffered severe punishment later under Archbishop Laud. Even at this young age—for he could have been no more than about twenty-one—and unmarried, James apparently impressed the Puritan, for Leighton asked James to provide a home and supervision to his own son, Robert, while he studied at the University of Edinburgh. James agreed, and here is one of history's little ironies, for after his graduation this son of an anti-prelatic Puritan,

²The *Denham Memoir*, otherwise titled *Memorials of the Stewarts of Allanton, Coltness, and Goodtrees . . . M.DC.VIII.—M.DC.XCVIII*, is published as Part First of *Coltness Collections*.

³The genealogy before this generation was the subject of hot controversy, published in the early nineteenth century in *Blackwood's Magazine*, reprinted in *The Salt-Foot Controversy, as It Appeared in Blackwood's Magazine; to Which is Added a Reply to the Article Published in No. xviii. of that work; with other extracts, and an appendix, containing some remarks on the present state of the Lyon Office* (n.p.: Caw & Elder, n.d.). See also *Genealogical Accounts of a number of families of the name of Stewart—The Stewarts of Kirkfield, Cultness, Westshiel, Allantoun, Allanbank, Goodtrees, &c. &c.* (thus the title is listed in the catalogue of the National Library, but the actual work has the title *A Short Genealogical and Historical account of the Steuarts of Allanton and their Descendants*), in NLS, Adv.Mss.6.1.12.

⁴*Coltness Collections*, 14.

entrusted to a stern Scottish Presbyterian, later powerfully influenced by Jansenists and Thomas à Kempis's *De imitatione Christi*, returned to Scotland in 1641 to be ordained minister of Newbattle, Midlothian; signed the National Covenant in 1643; became principal and professor of divinity at Edinburgh in 1653; and after the Restoration accepted the bishopric of Dunblane, one of four Scottish ministers consecrated at London on December 15, 1661, in what Scottish Presbyterians of the Protester party (like Stewart) saw as a traitorous act. In 1662, on Leighton's first visit after returning from London, James reportedly greeted him warmly but with reproach: 'Welcome, Robin!—you loved gauding abroad too much;—you have the fate of Dinah, Jacob's daughter, for now I may say the Schekamites have caught and defloured you'. Apparently their friendship ran deep enough that Leighton took no offense, but it was otherwise with comments made by James's eldest son, Thomas, for Leighton is reported to have said to someone who saw him on his return from the visit, 'I have dined at Goodtress [sic]; I wish I had stayed at home, and chawed gravell! That young man, Sir James Stewart's son Thomas, is as hott as peper; he was never off this turff of Scotland, has gott a presbyterian crochet in his perecranium, and will never get it out again'.⁵ Of Thomas's brother, our James, Leighton reportedly thought more highly, for he refrained from criticizing Leighton on principle but 'thought Christian charity, as to not giving offence, should incline one, had been a publick teacher in a different way, not to cast a stumbling-block before the weak of his former party, for things more indifferent', saying, '. . . truly,

⁵Thomas had chided Leighton for the offense his renouncing the Covenants and accepting re-consecration in London must cause to all faithful Presbyterians in Scotland, particularly to those who—like the Stewarts—had so frequently communed under his administration when he was minister at Newbattle, since the re-consecration implied that the sacrament had been falsely administered. *Coltness Collections*, 68.

my Lord, you must be convinced that all the odds of dignity and titles, or a parity among brethren ministers, is not to be ballanced with the disturbance it will create, and the offence it gives many truly godly in the Church of Scotland'. Sir James (Kirkfield) reportedly remarked after his departure, 'I . . . think him a pious good man. The Court have called up three little better than Judas, and seduced one Nathaniell'. Events proved his assessment of Leighton's character fair.⁶ Leighton was to become Archbishop of Glasgow in 1670, but, detesting the extreme politicization of the Church of that time, resigned in 1674 and died in London ten years later.

The family line from James of Kirkfield forward is more reliable and includes some illustrious names. He and Anna Hope had seven sons and a daughter. The fourth son, our James, first married Agnes Traill (d. 1690), daughter of Covenanting minister Robert Traill and sister of conventicle-preacher James Traill,⁷ by whom he had three children. After her death in 1690, he married Margaret Air (d. 1743), by whom he had four more children.

Though Anna was herself a successful merchant, leaving her husband and family an estate of 36,000 merks of her own earning, she was more devoted to home life and rearing her children. She died in 1646, and near the end of 1648 James married Marion M'Culloch, widow of John Eliot, advocate, and daughter of David M'Culloch, writer to the signet and first clerk to Sir Thomas Hamilton (1563-1637), Lord President of the Session, Secretary of State, and Earl of Haddington. From this

⁶*Coltness Collections*, 68-9, 21-3. See Gilbert Burnet, *History of His Own Time: With Notes By the Earls of Dartmouth and Hardwicke, Speaker Onslow, and Dean Swift*, 6 volumes, 2d ed., ed. M. J. Routh (Oxford, 1833), 1:242-51.

⁷Sir John Lauder of Fountainhall, *Historical Notices of Scottish Affairs, Selected from the Manuscripts of Sir John Lauder of Fountainhall, Bart., One of the Senators of the College of Justice*, 2 vols. (Edinburgh, 1848), 2:819.

marriage he acquired the estate of Gutters (later called Goodtrees).⁸ Marion apparently had a quick temper that James occasionally had to rein in, but she, like Anna, also had a reputation for piety, and this marriage, like the first, seems to have been happy. Marion gave James four daughters before his death in 1681; she survived him until 1690.

There was to be considerable entangling of the Stewart and Denham lines with families of legal prowess. No fewer than five descendants born to James's mother Marion and step-father Denham became or married advocates, including one great-granddaughter who was to marry Sir David Dalrymple (1726-1792) of North Berwick, Lord Hailes, who became Lord of Session in 1766.⁹

Little is known of our James's early experiences, but we can learn some things about the character of his parents and the sort of household in which he was raised. We know that his father, 'a staunch protestant of the Geneva forme' who 'thought our nationall covenant a barrier or out-work of his religion',¹⁰ was a man of piety. He was an elder in the Presbyterian church and active at the synod level.¹¹ Robert Wodrow reports that one of his daughters told him 'that her father . . . had in every room of his house a Bible, that still lay there as part of the furnitour'.¹² Kirkfield was a close friend of Archibald Johnston of Wariston, one of the Covenanters who led in drawing up and promulgating the National Covenant in 1638, the diaries of whom reveal a man of a strong and mystical religious turn, an inference confirmed by his selection as one of the Scottish Presbyterian delegates to the Westminster

⁸*Coltness Collections*, 18, 27; *Short Genealogical and Historical Account*, 16.

⁹*Coltness Collections*, 5-6; William Croft Dickinson and Gordon Donaldson, *A Source Book of Scottish History*, 3 vols. (London, 1954) 92.

¹⁰*Coltness Collections*, 19.

¹¹Robert Baillie, *Letters and Journals of Mr. Robert Baillie*, 3 vols., ed. David Laing (Edinburgh, 1842; photoreprint ed., Edmunton, AB, n.d.), 3:544.

¹²Wodrow, *Analecta*, 1:71.

Assembly in 1643.¹³ He was also closely acquainted with at least one other Scottish delegate to the Westminster Assembly, the young, learned, and saintly George Gillespie (1613-1648). Once,

Some were talking of Sir James Stewart his character, others of his money and credit; said Mr Gillespie, 'I know little of these last particulars, and value them less the more I know of them. But I aver, Sir James Stewart has more sterling religion in ready cash than any man ever I knew; he is always agreeably composed and recollected, in a permanent devoted frame of spirit, and such as I should wish to have in my last moment'.¹⁴

Kirkfield was a man of no ordinary religiosity in a time of no ordinary religiosity. Anna, too, not only was pious herself but also came from a family of strong religious–Presbyterian–heritage. Consistent with this, our James's upbringing would have been of an intensely devout sort common to Covenanters,¹⁵ and in his case the rearing proved effective, for he was never to depart from that faith.

Kirkfield played an active part in the political upheavals of his day, always standing for the Presbyterians. According to the family memoirs, when Charles I held Parliament in Edinburgh in 1633 Kirkfield, as Town-commandant, stood athwart the door to parliament to prevent the entry, contrary to Scots law, of Roman Catholic members of the king's retinue—earning both popularity and royal resentment.¹⁶

¹³On Wariston's spirituality, see Louise Yeoman, 'Archie's Invisible Worlds Discovered—spirituality, madness and Johnston of Wariston's family', *Records of the Scottish Church History Society* XXVII (1997): 156-86.

¹⁴*Coltness Collections*, 15.

¹⁵Hector MacPherson, *The Covenanters Under Persecution: A Study of Their Religious and Ethical Thought* (Edinburgh, 1923), chs. 3-7.

¹⁶*Coltness Collections*, 19. I have found no corroborating evidence for this colorful story, but it does not seem out of character.

During our James's early childhood, the rise of the National Covenant and then the Bishops' Wars in Scotland—linked with the upheavals in England on the eve of the Civil War—threw Kirkfield once again into a sensitive position. On business in London, he was closeted in late January 1640 by Lord Thomas Saville (1590-c. 1659), comptroller of the King's house and later Earl of Sussex. Saville sought to persuade him that the 'ferment was in England' because Sir Thomas Wentworth, Earl of Strafford (1593-1641), favored the Roman Catholic cause in the Queen's household and Ireland, and that therefore 'Scotland could not long be safe'. The king's servant represented himself as striving to save simultaneously a monarch dominated by his Roman Catholic wife, and two Protestant kingdoms. Saville urged Kirkfield to alert key men in Scotland to the danger by delivering a message from him. Kirkfield, however, acknowledging that leading Scots shared the same assessment of British affairs, nonetheless thought it safest to decline. The next day Saville revealed to him, under an oath of secrecy, the identities of many English leaders who, he assured him, 'would stand by the Scots in defence of their liberties, sacred and civil'. As if in premonition of events that would mount far beyond his own imagination, Saville reportedly told Kirkfield 'that in a desperate defence extraordinary remedies were to be used, and that in gangrenes sometimes to save the body amputations were to be used, and a hearty friend could never refuse to carry advice with medicaments, though from a foreign physitian'. Kirkfield still declined to play messenger, but he agreed to have a servant of Saville, traveling under the name of Frost, accompany him to Scotland with a hidden message to deliver to Alexander Henderson (1583-1646), minister of Leuchars, one of the authors of the National Covenant, moderator of the general assembly in Glasgow

in 1638, and deeply involved in Scottish government and negotiations with Charles I. Henderson, in turn, was to pass the message to Archibald Campbell, the Earl of Argyll (1607-1661), and John Leslie, Earl of Rothes (c. 1600-1641), both leaders of the Covenanters in opposition to Strafford and Archbishop William Laud's (1573-1645) policy of forcing Episcopalianism on Scotland. Among the signatures—the authenticity of which may be questioned¹⁷—on the message apparently were those of men in the thick of opposition to Charles I: Sir Henry Vane (1589-1655), then Secretary of State; William Strode (1599-1645); John Hampden (1594-1643); and Baron Denzil Holles (1599-1680)—the last three all among the five members of parliament whose attempted arrest by Charles I on 4 January 1642 precipitated the parliament's war against him. Upon his return to Edinburgh, Kirkfield wrote in his diary for 6 February:

What have I to doe in the quarel, Earl Strafford and Lord Savill? Savill dryves one way and looks ane other, yet Providence may bring good out ther jarrings to his own cause: I eye not these the humours of men. O Lord, I have sought thee, and aime at thy glory; in this vew accept my endeavours, and forward thy own work!

Whatever his own intentions, his role in the affair, according to his grandson, 'shews whence [his] publick character grew in aftertimes, and by his wise conduct and probity, he came to be in universall esteem, and much employed in affairs of State, and much depended upon'.¹⁸

¹⁷Burnet thought the signatures forged. Burnet, *Own Time*, 1:48-50. But Archibald Stewart Denham, author of the *Coltness Collections*, insists that 'there were more than a dozen genuine, and most of them Parliament men.' Denham and his later editor, James Dennistoun, had access to Stewart's day book—which I have been unable to unearth. This, combined with several confusions in Burnet's account and the greater detail and consistency in Denham's, favor the credibility of the latter. See also *Short Genealogical and Historical Account*, 15-16.

¹⁸*Coltness Collections*, 19, 21.

Through most of the war between parliament and king, Kirkfield occupied himself mainly with his business as a leading Edinburgh merchant. Like most Covenanters, he was devoted to both the Covenant and his king. Consequently he sympathized religiously with the more extreme Covenanters but politically and socially with Charles I. Nonetheless, he served under the Covenanter government. Parliament contracted with him repeatedly for food and other provisions to the army and appointed him to serve on various committees.¹⁹ Kirkfield often went long without payment for his large services to the Scots army, despite repeated attempts by the financially fragile Parliament to pay him.²⁰

In late December 1647 and early 1648, at the time of the Engagement, when James Douglas, 1st Duke of Hamilton (1606-49), led moderate Covenanters to invade England in support of Charles I in exchange for the king's accepting Presbyterianism in Scotland and promising to try it for three years in England,²¹ Kirkfield's loyalty was strained to the breaking point. His royalist instincts sided with Hamilton and the king, but his religious instincts pulled against the Engagement. Apparently the religious instincts prevailed, for on 5 May 1648, he resigned—or perhaps was dismissed—from the office of treasurer of the excise, apparently because he 'was hostile to the Engagement'.²² Yet his royalist sympathies survived. When Cromwell defeated the Scots at Preston 17-19 August

¹⁹APS VI:I (1643-47): 57, 93, 199, 211-14, 237-45, 288, 380-83, 561-2, 567-70, 627; David Stevenson, ed., *The Government of Scotland Under the Covenanters 1637-1651* (Edinburgh, 1982), 197. Stewart's participation on committees of parliament and of the committee of estates was unusually heavy. John R. Young *The Scottish Parliament 1639-1661: A Political and Constitutional Analysis* (Edinburgh, 1996), 73, 89, 107, 156, 157, 189, 190, 191, 193, 203, 215, 231, 233, 242, 246, 250, 251, 253, 254, 255, 256, 257.

²⁰APS VI:I (1643-48), 380-86, 395, 466, 533, 563-4, 686, 798, 811; Stevenson, ed., *Government*, 55-6, 69, 77.

²¹*Source Book*, 3:134-9.

²²Stevenson, ed., *Government*, 197; David Stevenson, 'The financing of the cause of the Covenanters, 1638-51', *Scottish History Review* LI:II (1972), 89-123, at 113.

1648 and radical Covenanters marched on Edinburgh in the Whiggamore Raid to impose a new government, Kirkfield 'could not countenance such tumultuary doings, and retired with his family to Westsheild'.²³

He was not long out of government. His opposition to the Engagement gave him credit with the new government, and on 27 September he was appointed commissary general (from which he desired to resign 30 May 1650 and was replaced 15 October), collector of the maintenance and other public dues, and treasurer of the excise (from which he resigned 3 March), all of which appointments were ratified 16 March 1649.²⁴ Stewart had been treasurer of the excise and had loaned £201,822 (mounting by February 1649 to £380,000) Scots in money and provisions to the government, and—as David Stevenson puts it—'the easiest way of guaranteeing him repayment was to make him commissary general and stipulate that all the maintenance and excise should in the first instance be devoted to entertaining the army and paying the debts due to him'.²⁵ On 3 October he was elected lord provost of Edinburgh; he was rechosen in 1649. The next day, he sent a party of bailies down the Canongate to welcome Cromwell on his arrival at Edinburgh.²⁶ In late January 1649, the committee of estates consulted him on the best means for transporting cannon, arms, and other items left by the Scots armies in England and Ireland back to Scotland and about provisions for the garrison of Blair Atholl.²⁷

Like most leading Covenanters, including the Scottish delegates to the

²³*Coltness Collections*, 29.

²⁴Stevenson, ed., *Government*, 197.

²⁵Stevenson, 'Financing', 113-14.

²⁶*Coltness Collections*, 338.

²⁷Stevenson, ed., *Government*, 85-7.

Westminster Assembly, he protested the king's execution (30 January 1649) at the hands of the English Parliamentarians.²⁸ By February he was a member of the Committee for Dispatches and, with Argyll and the Lord Advocate Wariston, specially burdened with gathering intelligence.²⁹ State and personal business, however, were not his sole occupation, for the next month he donated to the University of Edinburgh 'ten great tomes of the Bible in diverse languages, printed at Paris', 'the Biblia Polyglotta of Michel le Jay, then worth about L.50 sterling'.³⁰ As the year wore on, he continued his services on the Committee for Dispatches, sitting with it at least four times in June and once in July.³¹

Royalist though he was, his stern religious conscience forbade his supporting negotiations with Charles II. This of course made it awkward for him to continue as treasurer of the excise and commissary general, from both of which he offered in February 1650 to resign, an offer that must have been welcome to the more moderate men in government. But the financial confusions of the time made finding an adequate replacement difficult, and he was persuaded to remain while two men became joint treasurers. His actual resignation as treasurer of the excise came on 3 March, and his resignation as commissary general on 30 May.³²

A day or so before the execution of James Graham, Marquis of Montrose (1612-1650) for his leadership of anti-Covenanter forces, Stewart accompanied some ministers who visited Montrose in prison. The prisoner had requested a conference in hopes of having the sentence of excommunication removed. Stewart was in favor

²⁸*Coltness Collections*, 29.

²⁹Stevenson, ed., *Government*, 90.

³⁰*Coltness Collections*, 341.

³¹Stevenson, ed., *Government*, 104.

³²Stevenson, ed., *Government*, 197; Stevenson, 'Financing', 119; John Nicoll, *A Diary of Public Transactions and Other Occurrences, Chiefly in Scotland, From January 1650 to June 1667* (Edinburgh, 1836), 5.

of granting absolution, but the clergy refused. On 21 May he presided, with protests against the extremity of the punishment, at Montrose's execution.³³

Stewart opposed negotiations to bring Charles II to the throne, probably because he detected the young king's insincerity. Nonetheless, after Charles subscribed the National Covenant and the Solemn League and Covenant on 23 June 1650 and was proclaimed king, Stewart on 10 July led a delegation from Edinburgh to Falkland to salute him. Sixteen days later, the council of Edinburgh, in gratitude to Stewart for his services to the city, granted to him and his wife in perpetuity the seat they normally occupied in the east kirk. Five days later he and other city magistrates summoned the city's populace to fight against Cromwell's forces, who were invading Scotland in what they considered a preemptive strike against a country now ruled by the son of the king they had beheaded. After the Scots' defeat at Dunbar and Charles's flight, Stewart 'withdrew from civic honours until his re-election as Provost in 1658, and in 1659'. His withdrawal might not have been entirely voluntary; the committee of estates advised him to go into retirement.³⁴

It appears that from this time Stewart's ties to the more radical Covenanters grew stronger. According to Sir George Mackenzie of Rosehaugh (1636-1691), by October he had attached himself to the western Remonstrants, who

declared that it was sinful, and a breach of Covenant, to associate with malignants; under which name they comprehended all such as had serv'd under Montrose, or in the Engagement 1648; and that it was not lawful to admit them to places of trust, or even to use their arms against the common

³³*Coltness Collections*, 30, 338; Douglas, *Light*, 63; *DSH*, 154.

³⁴*Coltness Collections*, 338-9, 341-2; Omond, *Lord Advocates*, 1:244-5.

enemy Cromwel: which remonstrance was presented to the Committee of Estates by Sir James Stewart and some ministers, in *anno* 1650, in so insolent a manner, as is reported, that Sir James would take no notice of the King, nor bow to him when it was presented.³⁵

Not surprisingly, on 15 October he was replaced as commissary general.³⁶ The western Remonstrance showed the radical Presbyterians' hardening of ideological resolve 'and a willingness to defy the government and split the church'.³⁷ Despite support for the Remonstrance from such wealthy and powerful merchants as Stewart³⁸ and former Aberdeen provost Robert Farquhar, plus a few lairds and burgesses and most ministers in Glasgow and the southwest, lack of support among all Scots nobles and among ministers outside the southwest doomed it to failure. Indeed, Stewart was among many leaders of it who later renounced it.³⁹

Stewart fairly disappeared from government for the next eight years.⁴⁰ After the king's defeat at Worcester, 3 September 1651, the Cromwellian government in Scotland called Stewart

to exhibit his books and vouchers, and clearances with the Scots Estates of Parliament, and though they, as conquerors and masters, could have used Sir James with rigour, yet he had of them all the justice and equity he could

³⁵Sir George Mackenzie of Rosehaugh, *Memoirs of the Affairs of Scotland from the Restoration of King Charles II* (Edinburgh, 1821), 14.

³⁶Stevenson, ed., *Government*, 197.

³⁷Keith M. Brown, *Kingdom or Province? Scotland and the Regal Union, 1603-1715* (London, 1992), 135.

³⁸Young, *Scottish Parliament*, 263

³⁹David Stevenson, *Revolution and Counter-Revolution in Scotland, 1644-1651* (London, 1977), 188-9, 203.

⁴⁰A few references to him appear in archives of the NAS, mostly in connection with legal matters. On 25 Nov. 1651 there was recorded a charter by John, Lord Belhaven, to James's children Walter, James, Henry, John, Robert, Margaret [the wife of James's son Sir David of Coltness?] and Marion. In NAS, see GD6/342 and GD6/2196. On 7 Sept. and 22 Oct. 1652 there were recorded decrees of apprising at his instance. In NAS, see GD20/1/810. On 2 June 1654 there was recorded a discharge to him by Sir Archibald Prymrois of bond by John, Lord Belhaven. In NAS, see GD6/2041 (Biel muniments).

[have] expected from friends. And when some spoke unfavourably of him, Cromwell's answer was, 'I have seen the gentleman, and have had Sir James Stewart's character from severals, and no good man shall have disquiet, so long as I have power to prevent it'.⁴¹

Stewart continued laboring in the kirk, cooperating with his son Thomas in 1655-1656 to relocate the parish kirk of Coltness to a more central location. His next significant appearance on the public stage was his reelection as lord provost of Edinburgh 6 October 1658.⁴² His firm support of the Remonstrants made his election alarming to the more moderate Presbyterian minister Robert Baillie.⁴³ Shortly after this, General George Monck, who had largely governed Scotland under Cromwell and after the latter's death (3 September 1658), met secretly with Stewart and some other leading Scots to sound out the pulse of the nation. Stewart is said to have told him that after all the tumults died down, 'his excellency might, by balanceing parties, and catching favourable opportunities, save much bloodsheid, and had it in his power to retriue the honour of his country; and [he] prayed God might direct all to a happy settlement on the old fundation [apparently, of Presbyterian church government], and begged him to have all regards for the Solemn League, and the King's interests'.⁴⁴ Here were compressed into a single statement Stewart's competing loyalties: to the monarchy and to Presbyterianism.

Whatever his conflicting loyalties, political and religious, apparently the electors of Edinburgh thought him at least an honest man, for he was elected to replace

⁴¹*Coltness Collections*, 34.

⁴²*Coltness Collections*, 58-60; John Lamont, *The Diary of Mr. John Lamont of Newton from the Year 1649 to the Year 1671* (Edinburgh, 1830), 108; Thomas B. Whitson, *The Lord Provosts of Edinburgh 1296 to 1932* (Edinburgh, 1932), 44-5.

⁴³Baillie, *Letters and Journals*, 3:382-90 at 389.

⁴⁴*Coltness Collections*, 34-5.

Andrew Ramsey, who had earned the citizens' resentment by going to London on city business but achieving nothing but procuring a knighthood for himself and spending considerable public money.⁴⁵ His labors in the kirk continued, and he was in attendance at a synod meeting 6 May 1659—evidence that he was an elder serving on the kirk session at the time. Six months later, he was still endeavouring to obtain payment for loans he had made to the government, asking Andrew Hay of Craignethan, after another synod meeting, if he could be of assistance, but receiving no encouragement. On 15 November the burgesses of Edinburgh elected Stewart their president for a meeting of commissioners from all the shires and burghs of Scotland at which, by Monck's arrangement in anticipation of the restoration of Charles II, they would be informed of the state of the nation.⁴⁶ Less than a month later, Hay and John Chiesly dined with Stewart at his home, and after dinner they were joined by Lady Monck. She related to them the general's view—which turned out true—that there would be no renewed civil war in England. (Two months later Monck was to lead his troops into London, after which he would persuade the Long Parliament to arrange for the election of the Convention Parliament and then dissolve itself.)⁴⁷

With the Restoration there came a great change in Stewart's condition. Like all too many Covenanters, he had found himself torn between two loyalties. Although he had signed and constantly supported the Covenants, he had opposed and protested the execution of Charles I. Then he had opposed negotiations to proclaim Charles II king, on grounds that he could not be trusted to be faithful to the

⁴⁵Nicoll, *Diary*, 218-19.

⁴⁶Young, *Scottish Parliament*, 304.

⁴⁷Andrew Hay, *The Diary of Andrew Hay of Craignethan 1659-1660*, ed. Alexander George Reid (Edinburgh, 1901), 6 (including note), 181, 203, 209.

Covenants but rather would force episcopal church government on the Scots once again. But once Charles had been proclaimed, Stewart had served him dutifully, despite his own growing sympathies with the radical Covenanters of the western Remonstrance. He had opposed Cromwell's efforts to conquer Scotland, but once Cromwell had succeeded he had submitted conscientiously—a submission made easier by Cromwell's policy of religious toleration—although he had largely withdrawn from official government service, returning only after Cromwell's death and when it was becoming clear that monarchy was to be restored. Now, with Charles II firmly in command of both kingdoms, Stewart found himself among the targets of the king's vengeance.

On 11 May 1660 Stewart prepared an address from the council of Edinburgh to Charles II, then still at the Hague, lamenting 'that *the iniquity of the times* had so long prevented them from tendering their faithful service; they declared their concurrence with those who had prudently laid themselves out to settle the king upon the throne of his dominions; and they rejoiced that they might now expect, from their lawful prince, a redress of those grievances under which *they had so long fainted*'.⁴⁸ The address read in part, 'Bless the Lord for raising up such a Plant of Renown, as your Majestie, to repair our Breaches'. 'This ostentatious loyalty', wrote Omond, the historian of the lord advocates of Scotland, 'procured substantial favours for the city'. But Stewart's staunch Presbyterianism made him 'a man to be distrusted'.⁴⁹ Charles was proclaimed at Edinburgh three days later, and on 21 May Stewart's 'attendance at the council board was discontinued'.⁵⁰ Two days later

⁴⁸George Chalmers, *Caledonia: or, A Historical and Topographical Account of North Britain from the Most Ancient to the Present Times*, 7 vols., new ed. (Paisley, 1889), 4:692.

⁴⁹Omond, *Lord Advocates*, 1:244-5.

⁵⁰Douglas, *Light*, 79; *Coltness Collections*, 339.

Charles took ship from the Hague for England, landing on 25 May, enthusiastic throngs accompanying him to London.⁵¹ On 29 May ‘ane order came down from court, dismissing Sir James from his chief magistracy of the city of Edinburgh, and a warrant to Morgen to imprison him, Sir John Cheisly and Lord Waraston’. On 8 July Argyll, who had gone to London to see the king, was arrested and imprisoned. Six days later,⁵² Stewart and Chiesly were arrested and imprisoned in the Castle of Edinburgh.⁵³ According to Thomas Stewart, his father was kept in prison for a full year, being ‘sett at liberty the same day twelvemonth after’.⁵⁴ Argyll was charged with treason.⁵⁵ Stewart’s son James—our subject—was to write seven years later in *Naphtali, Or The Wrestlings of the Church of Scotland For the Kingdom of Christ* that the real reason for the arrests was not that these men had committed treason in the past but that they could be expected to oppose the restoration of episcopacy in the future.⁵⁶ Mackenzie was to attribute Argyll’s arrest at least in part to Lauderdale’s rivalry.⁵⁷

The charges against Stewart are unclear. Thomas Whitson wrote, ‘The accusation . . . was twofold: of countenancing the execution of Montrose, and of embezzlement of public funds while Receiver-General of the Army in Scotland’.⁵⁸ However, Stewart was actually charged and imprisoned two separate times. The charge in the first instance seems to have been that he had been ‘obnoxious to his

⁵¹Julia Buckroyd, *The Life of James Sharp Archbishop of St Andrews 1618-1679: A Political Biography* (Edinburgh, 1987), 58.

⁵²Baillie, *Letters and Journals*, 3:423-51 at 447.

⁵³Baillie, *Letters and Journals*, 3:423-51 at 447.

⁵⁴*Coltness Collections*, 63.

⁵⁵Ian B. Cowan, *The Scottish Covenanters 1660-1688* (London, 1976), 40; Nicoll, *Diary*, 295; *Coltness Collections*, 339; *Short Genealogical and Historical Account*, folio 24a; Mackenzie, *Memoirs*, 12.

⁵⁶*Naphtali*, 85.

⁵⁷Mackenzie, *Memoirs*, 13.

⁵⁸Whitson, *Lord Provosts*, 45.

Majesty at Stirling'. In this instance, he found a friend in Sir Archibald Primrose (1616-1679), first clerk register and then lord of session in 1661, whose life Stewart had saved after Philiphaugh. Primrose 'in a short time after . . . procured Sir James's liberation' 14 July 1661.⁵⁹ In late 1665, Stewart was imprisoned in the Castle again, this time charged initially with continued hostility to the bishops' rule in the church⁶⁰ but later also with 'intromission with publick money, for which he had not finally accounted as Collector, Recevar-Generall and Commissary for the army'. According to the *Coltness Collections*, at trial before the lords of treasury and exchequer, Stewart's accounts were found to have been 'so duely stated by the assistance of his son Mr James Stewart, (now entered advocate,) who framed and gave in proper memorialls for his father, that nothing less than sharpers . . . could have demurred doing justice, admitting his ballance, and acquitting him, and repaying what was due upon the publick faith'. When it became apparent that Stewart could not be convicted by the evidence, he was transferred to Dundee to prolong the proceedings, which dragged on for years, although, according to the grandson, the evidence showed that it was not Stewart who owed the government but vice versa. In 1669, however, being informed 'that the Government was intended to attack him on higher matters, and a prosecution for treason was intended, but that if he . . . would pay in 1000 lib. he should have an ample discharge for all, and full pardon . . . he [presumably paid the bribe and] accepted the indemnity and pardon'. He was finally released from his second, longer imprisonment at Dundee on 14 January 1670.⁶¹

⁵⁹*Coltness Collections*, 37-8, 63, inferred. See also *Short Genealogical and Historical Account*, folio 24a.

⁶⁰Nicoll, *Diary*, 439.

⁶¹*Coltness Collections*, 38-9. Compare Story, *William Carstares: A Character and Career of*

On 29 September 1660—two-and-a-half months into Stewart’s first imprisonment—Robert Douglas (1594-1674) and George Henderson, ministers in Edinburgh, wrote to Lauderdale at Whitehall in hopes of securing his release. Lauderdale stonewalled with a noncommittal letter dated 23 October saying he had referred the matter to the committee of estates.⁶² On the same day, Lauderdale wrote to Douglas assuring him that Charles II intended ‘not to alter any thing in the government of that Church’ and that the king intended to call a Generall Assembly’.⁶³ (Lauderdale’s promises regarding the government of the church were to be dashed.⁶⁴) On 13 November the ministers replied to Lauderdale with a letter of thanks for referring Stewart’s case to the committee of estates.⁶⁵

Such was the state of the former lord provost when his son James was admitted to the bar on 28 November 1661.⁶⁶ It was to fall to the son—with help, as we have seen, from Primrose—to win his father’s release. To his life we turn.

the Revolutionary Epoch (1649-1715.) (London, 1874) 39. Story apparently conflates the two arrests and cases. It was in the second that the younger Stewart succeeded in defending his father and incurred the government’s resentment.

⁶²NLS, Wodrow Collection, Wod.Mss.Fol.XXVI, No. 68, f. 131.

⁶³NLS, Wodrow Collection, Wod.Mss.Fol.XXVI, No. 69, f. 133.

⁶⁴The first official confirmation of this came in a letter, under Lauderdale’s hand, from Charles II to Douglas dated 16 Aug. 1661. NLS, Wodrow Collection, Wod.Mss.Fol.XXVI, No. 70, f. 135.

⁶⁵NLS, Wodrow Collection, Wod.Mss.Fol.XXVI, No. 108.

⁶⁶W. G. Scott-Moncrieff, *The Records of the Proceedings of the Justiciary Court Edinburgh 1661-1678* (Edinburgh, 1905), 1:65n. Compare Francis J. Grant, *The Faculty of Advocates in Scotland 1532-1943 with Genealogical Notes* (Edinburgh, 1944), 198. See also *Short Genealogical and Historical Account*, folio 35a.

Chapter 2

An Advocate of Liberty in Turbulent Times: Stewart's Life, 1635-1669

On 23 August 1635, a fourth child was born to James Stewart of Kirkfield and Anna Hope near Edinburgh. Like the second, he bore his father's name. Unlike him, he lived beyond infancy.

An event precisely three months before in Greenwich, England, would influence his life powerfully. There, on 23 May, King Charles I, 'adamantly and blindly securing absolutist rule' and—unlike his father James VI when he used a packed general assembly to push through the Five Articles of Perth—disdaining even 'the appearance of consultation and participation . . . imposed canons and liturgy without the advice or consent of any representative body'.¹ He confirmed by letter a new *Book of Canons*, rules binding the Church of Scotland to hierarchical episcopacy, the abolition of kirk sessions and presbyteries, and the use of a service book and ordinal both of which were being crafted by the Anglican Archbishop Laud without regard to the wishes of the general assembly of the Scottish kirk, which by act of parliament had authority over such things, though it had not met since 1618. This

¹David George Mullan, *Episcopacy in Scotland: The History of an Idea, 1560-1638* (Edinburgh, 1986), 173, 174.

thoroughly Erastian² move was an early salvo in a struggle between king and kirk that would dominate Scottish history for nearly sixty years.

For the last thirty of those years and for nearly twenty years beyond, the man born three months later was to struggle with might and main against Erastianism and for the liberties—religious and civil—of the Scottish people and church. Our aim in this chapter is to survey his life through 1669 to provide historical context for interpretations, which we shall undertake in chapters three and five, of *Naphtali* (1667) and *Jus Populi* (1669).

Stewart's Youth

Next to nothing is known directly of Stewart's childhood. From his earliest years he would, of course, have been shaped by the devout faith and exacting practice of his covenanting parents. His father's 'Presbyterianism was well known. A Bible, it was said, lay in every room of his house'.³ His nurture probably was similar to that of many other children of covenanting parents, though with some differences owing to his family's wealth and social status.

Assuming that it was similar to that of the Stewarts' friends, the Waristons,

²Mullan, *Episcopacy*, 174; Rankin, *Church from the Reformation to the Revolution*, 2:500. Thomas Erastus (1524-1583) argued that the church had authority to determine doctrine and limit membership but not to discipline members, that power belonging to civil magistrates. Although a small party at the Westminster Assembly favoured Erastianism, the Assembly as a whole—ironically, since it was created by the English Parliament—rejected it, influenced particularly by Scottish delegates Samuel Rutherford (1600-1661) and George Gillespie (1613-1648). S. W. Carruthers, *The Everyday Work of the Westminster Assembly*, ed. J. Ligon Duncan III (Greenville, SC, 1994), 21. The Scottish Reformation denied religious supremacy to the state, and the Covenanters insisted that Christ alone is Head of His Church and its only lawgiver. See William Cunningham, *Historical Theology: A Review of the Principal Doctrinal Discussions in the Christian Church Since the Apostolic Age*, 2 vols. (1862; rep. Edinburgh, UK, and Carlisle, PA, 1994), 2:557-87; James Walker, *The Theology and Theologians of Scotland*, 2d ed. (1872, 1888; rep. Edinburgh, 1982), 127-56; John Coffey, *Politics, Religion, and the British Revolutions: The Mind of Samuel Rutherford* (Cambridge, 1997), 207-10; John McClintock and James Strong, edd. *Cyclopedia of Biblical, Theological, and Ecclesiastical Literature*, 12 vols. (1895; rep. Grand Rapids, 1992; digital ed. on CD-ROM, Rio, WI, 2000), s.vv. 'Erastianism' and 'Erastus, Thomas'; S. Isbell, 'Church and State (Theological Questions)', and F. Lyall, 'Church and State (Legal Questions)', in *DSCHT*, 178-82.

³Omond, *Lord Advocates*, 1:244-5.

whose practice was revealed in Wariston's diaries, it is quite likely that the Stewart household's practice conformed to the *Directory for Family Worship* even before it was issued⁴ by the Westminster Assembly and adopted by the general assembly of the Church of Scotland 24 August 1647—one day after James's twelfth birthday.

The Directory listed as the 'ordinary duties' of family piety

First, Prayer and praises performed with a special reference, as well to the publick condition of the kirk of God and this kingdom, as to the present case of the family, and every member thereof. Next, Reading of the scriptures, with catechising in a plain way, that the understandings of the simpler may be the better enabled to profit under the publick ordinances, and they made more capable to understand the scriptures when they are read; together with godly conferences tending to the edification of all the members in the most holy faith: as also, admonition and rebuke, upon just reasons, from those who have authority in the family.

The directory prescribed daily Bible reading by the head of the family, to be followed by careful application. Family members were to consider whether they were guilty of sins like those mentioned in the reading and, if so, to repent of them; or, if they read of a duty or a promise, 'to stir up themselves to employ Christ for strength to enable them for doing the commanded duty, and to apply the offered comfort'. Reflecting the Covenanters' belief that ministers and elders had not only the right but also the duty to inquire into and improve domestic religious practice,

⁴Just as the doctrines embraced in the *Westminster Confession* and catechisms reflected already current beliefs, and the form and processes of church government in the *Westminster Form of Presbyterian Church Government* reflected already current form and practice, so it is more likely that the prescriptions of the *Directory* reflected already current practice among the more scrupulous Covenanters and Puritans than that it was created out of whole cloth and initiated those practices.

the directory required the minister 'to stir up such as are lazy, and train up such as are weak, to a fitness to these exercises'.

The directory, to prevent 'error, scandal, schism, contempt, or misregard of the publick ordinances and ministers', urged against including more than one family in private worship 'when God hath blessed us with peace and purity of the gospel', though it admitted the sad necessity of the contrary 'in the times of corruption or trouble, (in which cases many things are commendable, which otherwise are not tolerable)'. Covenanters were to judge themselves often in such times, especially after the Restoration.

On the Lord's Day, heads of families were to ensure attendance by everyone at public worship, after which they were to lead their families in prayer and then take an account [of] what they have heard; and thereafter, to spend the rest of the time which they may spare in catechising, and in spiritual conferences upon the word of God: or else (going apart) they ought to apply themselves to reading, meditation, and secret prayer, that they may confirm and increase their communion with God: that so the profit which they found in the publick ordinances may be cherished and promoted, and they more edified unto eternal life.

Assuming that such was his experience in his father's household, it seems to have taken firm hold in James. Many years later, after he had become lord advocate of Scotland, his own household was to live out this sabbatarian conviction:

In the Advocate's house, after prayers by the chaplain at nine o'clock, all went together to church, at ten Half after twelve, they came home; at one had prayers again by the chaplain, after which they had a bit of cold

meat or an egg, and returned to church at two; was out again by four, when everybody retired to their private devotions, except the children and servants, who were convened by the chaplain and examined: This continued till five, when supper was served up, or rather dinner. A few more friends generally partaked of this meal, and sat till eight; after which, singing and reading and prayer was performed by the old gentleman himself, after which they all retired.⁵

Presbyterianism was no individualistic religion but steeped in the *koinonia* of the earliest Christians (Acts 2 and 4). Consequently, the *Directory*, ‘specially in this time, wherein profanity abounds, and mockers, walking after their own lusts, think it strange that others run not with them to the same excess of riot,’ instructed ‘every member of this kirk . . . to stir up themselves, and one another, to the duties of mutual edification, by instruction, admonition, rebuke; exhorting one another to manifest the grace of God in denying ungodliness and worldly lusts, and in living godly, soberly and righteously in this present world; by comforting the feeble-minded, and praying with or for one another’. Such efforts were to be made at all times, but especially ‘when an offender is to be reclaimed by private admonition, and if that be not effectual, by joining one or two more in the admonition, according to the rule of Christ, that in the mouth of two or three witnesses every word may be established’.⁶

No doubt young James shared with his family and all the inhabitants of Edinburgh great fear of the plague that struck when he was nine years old.⁷ He must

⁵*Coltness Collections*, 367-8.

⁶Matthew 18:15-18; *Directions of the General Assembly, Concerning Secret and Private Worship, and Mutual Edification; for Cherishing Piety, for Maintaining Unity, and Avoiding Schism and Division*, adopted 24 Jan. 1647.

⁷*Coltness Collections*, 53-4.

have been aware of the difficulties his father experienced through the vicissitudes of Scottish government from 1635 through 1660, and he grew up in a household a great deal wealthier than the average and of some public and political influence and consequent visibility. He must have known of his father's resistance to royal absolutism, probably hearing more than once the colorful story of the young moderator-captain's refusing to admit papist members of the king's retinue into the parliament house. But he must also have known of his father's loyalty to the monarch on the rise of the Commonwealth.⁸ Unfortunately, no direct accounts of the impact of these experiences on him seem to have survived.

At age eighteen Stewart visited his father's friend, the great Covenanter and Lord Advocate Sir Archibald Johnston of Wariston, to ask his advice about a vocation. On Thursday, 9 February 1654, Wariston advised him 'to confesse his sines according to al the particulars under the Comands, to reade Perkins his tractat of callings,⁹ to sett tyme apairt to seek the Lord's special direction anent the choyse of a calling, . . . and to begge the Lord to putt them in station and condition wherin they might most glorifye and injoye Him'.¹⁰ Wariston does not reveal in his diary whether he sought to influence Stewart toward the law, but no doubt Stewart would have held the lord advocate's profession in high esteem enhanced by his maternal grand-uncle Sir Thomas Hope's having been lord advocate 1626-1646. Whatever the considerations that led him, his work as an advocate first threatened his own destruction and later raised him to eminence as he himself filled that highest legal office in the kingdom.

⁸Wodrow called the elder James Stewart and Sir John Chiesly 'two gentlemen of very strict morals, shining piety, considerable influence, and singular for their loyalty to the king under Oliver's government'. *History*, 1:78.

⁹'In 1633 Wariston had studied Perkins's *Treatise of the Vocations or Callings of Men*. See previous volume of the *Diary*, pp. 134-136'. [Editor's note in Sir Archibald Johnston of Wariston, *Diary of Sir Archibald Johnston of Wariston, Volume II: 1650-1654*, ed. David Hay Fleming (Edinburgh, 1919), 204.] William Perkins (1558-1602) was a Puritan lecturer in theology at Cambridge, a High Calvinist and scholastic, one of the early proponents of the view that the Christian's liberty of conscience justified his disobeying civil authorities when their instructions countervailed the laws of God revealed in Scripture, which alone were binding on the conscience. Stewart was later to use similar arguments. See L. John Van Til, *Liberty of Conscience: The History of a Puritan Idea* (Nutley, NJ: 1972), 16-25.

¹⁰Wariston, *Diary*, 2:204.

At some time in the late 1640s or early 1650s Stewart began a university education. Unfortunately, it is impossible to determine with confidence where or what he studied. The *Coltness Collections* is silent on the matter, as are standard secondary sources on Stewart like Omond's *Lord Advocates* and the *Dictionary of National Biography*. Almost certainly there is no record of his studying at either the University of St. Andrews or the University of Aberdeen.¹¹ The record of matriculated students at the University of Glasgow includes reference to a James Stewart *ex secunda classe* in 1648, but it is very unlikely that this is he; it would have him beginning suspiciously early, certainly already to have reached *classe secunda*. The record does not indicate his course of studies. In 1651 the same source indicates the attendance of a Thomas Stewart, a Thomas Steuart—either of whom might be our James's eldest brother—and a James Stewart. This would have been more likely, particularly since he was only *classe tertia*. But it is still fairly long removed from the start of his law studies at Leiden in October, 1657. Glasgow lists a Jacobus Steuart as graduating with a master of arts in 1659, and this could be Stewart, but it would involve unlikely juggling of studies at Glasgow and Leiden, and it was at the time more common to begin law studies after earning a master of arts than before. No other James Stewart—by any spelling—is recorded as graduating from the University of Glasgow in any year close enough to his admission to the bar to be he.¹² Edinburgh University would seem most likely granted his father's position as the city's lord provost and apparent partiality to the university, indicated

¹¹This does not mean it is impossible that he studied there. Two students named James Stewart matriculated at St. Andrews in the 1650s, but one was *minus potens*, a 'middle-class' student and therefore of the wrong social standing, and the other was probably too old. (I am indebted to Dr. Norman Reid, University of St. Andrews archivist, for supplying this information in a personal communication by electronic mail 25 June 2001.) Four students named James Stewart matriculated at Aberdeen in the 1650s and early 1660s, but they were from Banff, Moray, Culon, and Strathdon, not Edinburgh, where Stewart lived; three studied there too late to finish before Stewart was admitted to the bar in November 1661 and the fourth during a period while Stewart was studying law at the University of Leiden. Peter John Anderson, ed., *Roll of Alumni in Arts of the University and King's College of Aberdeen 1596-1860* (Aberdeen, 1900), 20-23, 27. (I am indebted to Linden C. Rogers at the library of the University of Aberdeen for this reference.)

¹²*Munimenta Alme Universitatis Glasguensis: Records of the University of Glasgow From Its Foundation till 1727*, 4 vols. (Glasgow, 1854), 3:101, 104, 33.

by his gift of the 'Great Bible' in March 1649,¹³ but 'Until the 1730s, the only evidence of a student's presence is a signature in the matriculation or enrolment books, dating from 1627, and, if the student graduated, a signature in the graduation album, dating from 1587. At no time was any information about family, parents, or anything else of a genealogical nature recorded'—i.e., it is nearly impossible to learn from university records whether Stewart studied there. Nonetheless, matriculation records do include Jacobus Steuart or Steuartus on 17 February 1649 and 11 January 1650, both under Duncan Forrester, professor of philosophy, and while it is probable that the records are for the same student, it is impossible to know whether he was our James Stewart, and at least the earlier date would have had him quite young (thirteen-and-a-half) to begin university studies. Graduation records include a Jacobus Steuart in July, 1649, again under Forrester, but granted that this would have been before his fourteenth birthday it is very unlikely that this was our Stewart.¹⁴ The signature on the 1650 matriculation record¹⁵ is sufficiently different from known signatures of our Stewart, though they are of much later date, to make it impossible to identify it as his.¹⁶ In the end it appears impossible to be certain where Stewart studied for an arts degree or if he completed one (It was common for students to begin but not complete the degree at the time.), but it is most likely that he studied under Forrester, a regent and professor of philosophy (1639-1654) at Edinburgh. As was typical of the regenting system, this would have meant that Forrester first taught Stewart Greek and then led him through the remaining subjects in the curriculum.¹⁷

What is verifiable is that Stewart, like many other Scots law students in the late-sixteenth through early-seventeenth centuries, chose to study law in the

¹³*Coltness Collections*, 341.

¹⁴Personal communication from Arnott T. Wilson, University Archivist, Edinburgh University Library, Special Collections, in electronic mail from Irene A. Ferguson, of the University Library staff, 28 June 2001, and from Ferguson in electronic mail 10 Oct. 2001.

¹⁵Edinburgh University Library, Da 34/1Matriculation Book, 1623-1704, 48. I am indebted to Arnott Wilson for this reference.

¹⁶I wish to thank Louise Yeoman, curator of the Wodrow Collection of the National Library of Scotland, for her evaluation of this signature in an electronic mail of 7 Jan. 2002.

¹⁷Personal communication from Wilson, via Ferguson, 28 June 2001, and 10 Oct. 2001.

Netherlands.¹⁸ The Dutch universities were common places for Scots to study law,¹⁹ and Stewart, like perhaps twenty others from 1651-1660,²⁰ chose Leiden. He matriculated there 16 October 1657 and subsequently stayed in the house of Eduard Dey, *handschoemaecker* (a maker of gloves), in the street called Sonneveldsteegh.²¹ It does not appear precisely what courses Stewart took or how long he remained at Leiden, or even whether he completed a degree.²² The curriculum focused principally on Roman civil law and natural law, the latter particularly as developed by the famed Dutch jurist Hugo Grotius (1583-1645). But there remained the strong influence of the older French Humanist tradition associated with Huguenots such as François Hotman (1524-1590), whose *Francogallia* (1573) influenced many Calvinists on law and politics, and Hugo Donellus (1527-1591).²³ Professors of law there during the likely three years of Stewart's studies were Jacobus Maestertius (1610-1658),²⁴ Daniel Colonius (1608-1672; extraordinary professor of law 1648-

¹⁸John W. Cairns, 'Importing Our Lawyers from Holland: Netherlands Influences on Scots Law and Lawyers in the Eighteenth Century,' in *Scotland and the Low Countries 1124-1994*, ed. Grant G. Simpson (East Lothian, 1996), 136-53, and James K. Cameron, 'Some Scottish Students and Teachers at the University of Leiden in the Late Sixteenth and Early Seventeenth Centuries,' in *ibid.*, 122-35. Cameron writes, 'From May 1582 to May 1642, the names of some seventy-nine Scots were entered in the *Album Studiosorum*' at Leiden (124).

¹⁹Electronic mail from John W. Cairns, 31 May 2001.

²⁰Robert Feenstra, 'Scottish-Dutch Legal Relations in the Seventeenth and Eighteenth Centuries', in *Scotland and Europe 1200-1850*, ed. T. C. Smout (Edinburgh, 1986), 128-42, at 130.

²¹*Album studiosorum Academiae Lugduno Batavae MDLXXV-MDCCCLXXV*, Hagae Comitum: Apud Martinum Nijhoff, 1875, col. 461. That this was our James Stewart is almost certain, for the entry identifies the student as from Edinburgh and 'being 22 years old, to study law'. I owe thanks to Silvia Compaan-Vermetten, of the University of Leiden library, for first finding the information for me, and to Aza Goudriaan, of the Faculty of Theology at the University of Leiden, for providing the citation.

²²It was fairly unusual for Scots law students to complete degrees when they studied at Leiden or the other Dutch universities, and the procedure for admission to the Faculty of Advocates in Edinburgh, ordinarily 'after examination on a title of the Digest by a committee of examiners appointed by the Faculty', made completing a degree abroad of 'no use'. Feenstra, 'Scottish-Dutch Legal Relations', 131. Compare Paul Nève, 'Disputations of Scots Students Attending Universities in the Northern Netherlands', in *Legal History in the Making: Proceedings of the Ninth British Legal History Conference Glasgow 1989*, ed. W. M. Gordon and T. D. Fergus (London and Rio Grande, 1991), 95-108, at 103, 104.

²³Leiden University sought to attract Hotman to teach there, but he refused, and eventually Donellus went instead. But Leiden's invitation to Hotman clearly indicated the university's leanings. Feenstra, 'Scottish-Dutch Legal Relations', 129; J. H. Burns and Mark Goldie, ed., *The Cambridge History of Political Thought 1450-1700* (Cambridge, 1991), 679.

²⁴Maestertius was the author of *de Iustitia Romanarum legum libri duo* (Leiden, 1547), a copy of which is in the National Library of Scotland's St. Benedict's Abbey collection (SBA 448; {<http://www.nls.uk/catalogues/online/sba/sba400-501.html>}), and of *Sedium atque tractatum illustrium juris materiarum, annotatis auctoribus qui quamque scriptis suis illustrarunt, volumen, cui nunc accessit augmentum auctoris post mortem defuncti inventum* (Lugduni Batavorum [Leiden], 1659), a copy of which is in the Brand van Zyl Collection of the Law Library of the University of Capetown {<http://www.lib.uct.ac.za/law/colcatm1.htm>}.

1672), Adriaan Beeckerts van Thienen (1623-1669; extraordinary professor of law 1654, ordinary professor beginning in 1655), Stephanus Marchant (ca. 1632-1670; began teaching law in 1658, became extraordinary professor in 1660 and ordinary professor 1661), and Albertus Rusius (1614-1678; professor of law beginning 11 March 1659).²⁵ Although he matriculated four years too late to study under him, Stewart's citations of Marcus Zuerius Boxhornius (or Boxhorn), who taught at Leiden 1533-1653, in *Jus Populi* (87, 154, 161) evidence Boxhorn's significant though indirect influence on his thought. Stewart's strong interest in theology might have led him to take advantage of the opportunity to take courses in theology at Leiden as well, in which his Calvinist beliefs would have been strengthened. On the theology faculty at the time were Abraham Heidanus, the celebrated federal theologian Johannes Coccejus, and Johannes Hoornbeek.²⁶ Leiden, though its theology was largely Calvinistic and it 'maintained a particularly close connection with similarly minded academic institutions in France, Germany, England, and Scotland', was 'noted for its religious tolerance'. The University sought to introduce 'a complete humanistic *Academia* in which no faculty was necessarily superior to another'. By the latter half of the seventeenth century, Leiden had already become 'one of the foremost academic centres of the continent'. By the end of the century, at latest, legal education at Leiden was largely 'inspired by the French humanism of the sixteenth century', focused mainly 'on the texts of the [sixth-century Roman] *Corpus iuris civilis*', and included studies of history, eloquence, and philosophy, especially the natural law philosophy of Grotius. It is likely that the same emphases already dominated in the 1650s.²⁷

²⁵C. A. Siegenbeek van Heukelom-Lamme and O. C. D. Idenburg-Siegenbeek van Heukelom, *Album Scholasticum Academiae Lugduno-Batavae MDLXXV-MCMXL* (Leiden, 1941), 162, 101, 33-4, 9, 130, and 102. I owe thanks to Aza Goudriaan of the Faculty of Theology at the University of Leiden for these references.

²⁶Siegenbeek and Idenburg-Siegenbeek, *Album Scholasticum*, 66, 31, and 74.

²⁷Cameron, 'Some Scottish Students', 123, 134; Cairns, 'Importing Our Lawyers from Holland', 138. A great deal of information on education at the University of Leiden in this period is available in P.C. Molhuysen, ed., *Bronnen tot de geschiedenis der Leidsche universiteit [1574-1811]* ('s-Gravenhage, 1913ff), volumes 20, 29, 38, 45, 48, 53, and 56 of the *Rijks Geschiedkundige Publicatiën*. A helpful discussion of typical education at Leiden in the period is in Georgina Jan Gardner, *The Scottish Exile Community in the United Provinces, 1660-1690* (Oxford University,

Stewart was admitted to the bar, after presenting a public lesson (which implies that his legal training had included courses in Roman law), on 28 November 1661.²⁸ At the time, so soon after the Restoration, procedures for admission to the Faculty of Advocates were in flux. It seems likely that his admission would have been preceded by his providing proof of his academic achievements and literature to the Faculty, probably being questioned on the civil law by a small group of advocates selected by the dean, who upon his successful trial would have recommended him to the Lords of Session, and then presenting a discourse, i.e., a lesson (though perhaps instead a disputation, i.e., a defense of a thesis in response to questions), on the Roman civil law, probably in Latin, in the presence of the Lords.²⁹

Four and a half months before Stewart's advocacy began, his father had been arrested for the first of two times. From this charge, as we have seen, he found release through the intervention of Primrose. But in 1665 he was imprisoned again. Stewart argued his father's case, thus bringing on himself royal displeasure.

The Religious Situation in the 1660s

That displeasure was not personal but comprehended all who stood true to the Covenants. After his restoration, Charles II (following in the footsteps of his grandfather, for whom 'No bishop, no king' was proverbial³⁰) was determined to restore episcopal government to the Church of Scotland. No one who stood true to the Covenants could fail to resist. The government knew this and, from the start of Charles's reign, acted vigorously to render the Covenanters powerless. Thus Stewart

unpublished Ph.D. thesis, 1998), 163-5.

²⁸NAS, *Books of Sederunt of the Lords of Council and Session, CS*, 1/6, 46 (I am indebted to Dr. John Cairns of the University of Edinburgh for this reference.); Scott-Moncrieff, *Records . . . Justiciary Court*, 1:65n. Compare Grant, *Faculty of Advocates*, 198. See also *Short Genealogical and Historical Account*, folio 35a. *Coltness Collections*, 40, reports his entering advocacy in 1660 (no specific date given), but it is mistaken, the courts not then sitting (electronic mail from John Cairns, 31 May 2001).

²⁹John W. Cairns, 'Advocates' Hats, Roman Law and Admission to the Scots Bar, 1580-1812', *Journal of Legal History* 20:2 (August 1999), 24-61, at 31-41. It seems likely that Stewart's admission would have followed a procedure similar to that in the case of Alexander Oswald, admitted in 1662, which Cairns describes (41-2).

³⁰It is cited thus, e.g., in Honyman, *Survey*, II.12.

and his father and brothers were only a few of the many targeted.

As his admission to the bar approached, Stewart must have watched the government's acts with growing apprehension. A week after Charles was proclaimed king in Scotland on 14 May 1660, and four days before Charles landed in Great Britain, his father's attendance at the Edinburgh council board was discontinued. The next month, the Privy Council ordered the suppression of George Buchanan's *De Jure Regni apud Scotos*—a stern assault on royal absolutism first published in 1579—as 'very pernicious to monarchy, and injurious to his majesty's blessed progenitors. . .'.³¹ On 8 July Argyll, with the Earl of Antrim and Sir Henry Vane, two leaders of English republicanism, was arrested in London and imprisoned in the Tower. (It probably was not only Argyll's leadership among the Covenanters, Charles's belief that Argyll was a threat to the royal absolutism that was his reigning vision, and the king's resentment of Argyll's cooperation with Cromwell, but also the personal rivalry of the Earl of Lauderdale, Charles's Scottish secretary, that precipitated Argyll's treatment.) On 14 July Stewart's father, along with Sir John Chiesley of Carsewell, was arrested in Edinburgh, while Johnston of Wariston delayed his own arrest only by fleeing to the continent. In August, the committee of estates ordered tombs of two leading Covenanters defaced and Rutherford's *Lex, Rex* burned, 'Which procedure did immediately alarm the presbyterians; but every man was so afraid of his own case, that no noise was then made upon the account of any public quarrel'.³²

Charles sought to soothe the Presbyterians' fears with a letter signed 10 August and sent 16 August 1660, thought by some to have been composed by Lauderdale³³ but probably composed and certainly delivered by Rev. James Sharp,³⁴ who already

³¹Douglas, *Light*, 88.

³²MacKenzie, *Memoirs*, 17, cf. 13; cf. Nicoll, *Diary*, 295; *Naphtali*, 85; Ronald Hutton, *Charles the Second: King of England, Scotland, and Ireland* (Oxford, 1989), 172; Cowan, *Covenanters*, 40; Baillie, *Letters and Journals*, 3:423-51, at 447.

³³Mackenzie, *Memoirs*, 16. Hutton asserts that the letter was drafted by Lauderdale (*Charles II*, 150), but it is not apparent what evidence there is for that.

³⁴Baillie, *Letters and Journals*, 3:485; Burnet, *Own Time*, 1:167n; Sharp, letter to Baillie, 5 Sept. 1660, in Baillie, *Letters and Journals*, 3:409-411 at 410; MacKenzie, *Maitland*, 227n; Crichton, *Blackader*, 54n.

anticipated his elevation to the Archbishopric of St. Andrews upon the restoration of episcopacy. The letter was addressed to the Rev. Robert Douglas, a leader of the moderates in Edinburgh, to be read to the presbytery there:

We do . . . resolve to protect and preserve the government of the church of Scotland, *as it is settled by law*, without violation; and to countenance, in the due exercise of their functions, all such ministers who shall behave themselves dutifully and peaceably as becomes men of their calling. We will also take care that the authority and acts of the general assembly at St. Andrews and Dundee, 1651, be owned and stand in force *until we shall call another general assembly* (which we purpose to do as soon as our affairs will permit),³⁵ and we do intend to send for Mr. Robert Douglas, and some other ministers, that we may speak with them in what may further concern the affairs of that church.³⁶ And as we are very well satisfied with your resolution not to meddle without your sphere, so *we do expect that church judicatories in Scotland, and ministers there, will keep within the compass of their station, meddling only with matters ecclesiastic, and promoting our authority and interest with our subjects against all opposers*; and that they will take special notice of such, who, by preaching, or private conventicles, or any other way, transgress the limits of their calling, by endeavouring to corrupt the people, or sow seeds of disaffection to us or our government.

. . .³⁷

Sharp's part in the letter is itself sufficient to raise suspicion. There is every reason to accept the judgment of Osmund Airy, no particular friend of the Covenanters or enemy of episcopacy, royalism, or the Restoration monarchy, 'that Sharp's letters to Lauderdale show him to have been "in the most comprehensive

³⁵In fact he never called one.

³⁶He never called for or met with them. Baillie, *Letters and Journals*, 3:483-7 at 485; Wodrow, *History*, 1:81.

³⁷NLS, Wodrow Collection, Wod.Mss.Fol.XXVI. No. 70; emphases added.

sense of the word, a knave *pur sang*”³⁸. A former professor of philosophy at the University of St. Andrews and minister of Crail, Sharp was suspect among Covenanters because of episcopalian tendencies and rumours (probably false) of private scandals but was sent by the Resolutioners to London in 1657 to negotiate on behalf of the Church of Scotland. He remained there after the return of Charles II. His role in the restoration of episcopacy has been hotly debated. The common perception among Presbyterians from that time to this has been that he sold out their cause because of ambition.³⁹ Lately he has been defended,⁴⁰ but overall the evidence appears to indicate that Sharp was duplicitous in his representation of the Scottish Presbyterians and ambitious in his pursuit of power rather than that he initially sought to represent their interests conscientiously and later was persuaded that the restoration of episcopacy, with himself as primate, was the best he could do for them.⁴¹

The presbytery heard the letter read on 3 September. The king’s promise ‘to protect and preserve the government of the church of Scotland, as it is settled by law, without violation’ was comforting. Indeed, ‘the ministers of Edinburgh were in such a transport of joy upon the letter, they thought it not enough to praise it in their pulpits, but bought for it a silver box, a shrine for such a precious relict’.⁴² Reading it in light of the king’s many pre-restoration assurances of his intent to continue presbytery in his northern kingdom, the majority of Presbyterians took it at face value.⁴³ But its ambiguities unsettled those who thought they had recognized Charles’s early anti-Presbyterian sentiments. As Kirkton reported:

³⁸MacPherson, *Covenanters*, 43n, citing Airy’s preface to *Lauderdale Papers*, 1:x.

³⁹*DSCHT*, s.v. James Sharp.

⁴⁰Buckroyd, *Life of James Sharp*, esp. 63-5.

⁴¹Burnet, *Own Time*, 1:199-200; Baillie, *Letters and Journals*, 3:415-16 at 416, 423-51 at 440 and 444-5, 453-4, 457, 458-60 at 460, 462-73 at 468, 473-4, 483-7 at 484-5; D. C. Lachman, ‘Resolutioners’, *DSCHT*, 710. For examples of the disgust with which Covenanters referred to him, see also Crichton, *Blackader*, 54-5n; Douglas, *Light*, 88; *Jus Populi*, 128 (‘that Arch-knave *Sharp*’ who ‘advanced unto (in stead of a gallows) an arch-prelacy’), 445 (‘that Arch-traitour *Sharpe*’), 471 (‘that Arch-deceiver, and prime parasite *Sharpe*’). The early twentieth-century historian MacPherson, in *Covenanters*, wrote that ‘his policy as one of the rulers of Scotland reveals him not merely as a traitor, but as a cruel, vindictive, irreligious man’.

⁴²Kirkton, *History*, 76.

⁴³Crichton, *Blackader*, 54-5, cf. 49, 51-2.

The protesters smiled, and said to their brethren, . . . that the clause imported no more, but the king resolved to maintain that government of the church which at any time coming should be the legal government, whatever it was or should be; and that as in that year, 1660, the government was presbyterial, so in the year 1662, the legal government might be episcopacy, and either of these the king engaged to protect. Providence cleared and confirmed this interpretation.⁴⁴

Stewart, in *Naphtali*, added another reason for skepticism as to Charles II's intent in the letter:

. . . the whole strain of the Letter, is such as tendeth only to divide the whole Ministry, and to abuse the greater part of them: And particularly, the altering and suppressing of that most fixed and certain ground of his Engagement, even the Word of God and the Holy Covenant, for that of *Law*, which is but frail and moveable, did even then discover to many, that latent Dissimulation and Instability, whereby others were either weakly or willingly deluded.⁴⁵

That is, they and other Protesters believed the government of the Church of Scotland, and with it the king's obligation to protect and preserve it, was founded not on 'frail and moveable' laws but on the 'fixed and certain' Word of God (on the basis of which they asserted *jure divino* presbyterianism) and National Covenant and Solemn League and Covenant, oaths they considered perpetually binding in the sight of God.

Sir George Mackenzie of Rosehaugh, later lord advocate and founder of the Advocates' Library, whom persecuted covenanters called 'Bloody Mackenzie' and who was a strong supporter of the Stuart restoration monarchy, later wrote in his *Memoirs* that in the letter the king

⁴⁴Kirkton, *History*, 75-6.

⁴⁵*Naphtali*, 82.

promised *in verbo principis*, to uphold the government of the church as it was established by law; which phrase, some thought . . . Lauderdale . . . had used, to infer from the King an homologation of the presbyterian government, and an acknowledgment that the laws whereby it was established were valid and binding laws. But thereafter when episcopacy was restored, and this letter objected by the presbyterians, it was answered, that before the restoration of episcopacy all the acts whereby episcopacy was abrogated, or presbyterial government was asserted, were annulled [sic] by the Act Rescissory; so that episcopacy being the only church government then established by law, his Majesty was, even by that letter, oblig'd to own it.⁴⁶

The eventual effect of the 'double-faced expression'⁴⁷ in the letter was clear. It released the king from any obligation to preserve Presbyterianism. But was the effect intended? Despite recent arguments otherwise, there is good reason to think the cynics (mainly the Protestors) were right—that the letter was intended merely 'to lull the Kirk into a state of false security'⁴⁸ until the court could consolidate its positions in parliament and public sufficiently—or so it hoped—to reduce the risk of serious unrest in response to the restoration of episcopacy. Ronald Hutton, Charles's premier biographer, in words that moderately support the recent arguments, points out:

At the time of his return, episcopacy had been abolished for over a decade in all three kingdoms. . . . Within eighteen months it was restored in all. This apparently remarkable fact used to be ascribed to the machinations of Charles's government. Since the mid-1970s the separate researches of Ian

⁴⁶Mackenzie, *Memoirs*, 16.

⁴⁷D. Hay Fleming, *Notes on Vindiciæ Foederum, Its Allies, and Antagonists, and Their Authors. With a Sketch of Henry Thomson* (Perth, 1881), 46n. Compare Andrew Crichton, *Memoirs of the Rev. John Blackader* (Edinburgh, 1826), 55: Charles II's 'letters and professions of attachment [to presbyterianism] were a mere expedient to lay asleep the suspicions and apprehensions that had arisen on some alarming symptoms of alteration'.

⁴⁸W. C. MacKenzie, *The Life and Times of John Maitland, Duke of Lauderdale (1616-1682)* (London and New York, Dutton, 1923), 227.

Green in England, Julia Buckroyd in Scotland, and J. I. McGuire in Ireland have instead portrayed a hesitant monarchy acting in response to pressures from outside.⁴⁹

But ascribing the swift restoration of episcopacy to ‘the machinations of Charles’s government’ and recognizing a ‘hesitant monarchy acting in response to pressures from outside’ are not mutually incompatible. Charles’s government might have acted cautiously, even hesitantly, as it weighed outside pressures, and still have intentionally pursued the restoration of episcopacy from the start. At least in regard to Scotland, the evidence admits an interpretation less ambiguous than appears in Hutton and Buckroyd’s works, and in the opposite direction.⁵⁰

First, Charles himself had undergone humiliation repeatedly by the Covenanters’ insistence that he sign the National Covenant and the Solemn League and Covenant before and at his coronation and by some of their sermons, which had charged his father and himself with religious and moral failings. He still harbored rage against them for it.⁵¹ That he ‘had no affection for the “Kirk party”’ was already well known⁵² and reflected, for example, in one comment ‘that he would rather trust a papist than a presbyterian rebel’ and another—to Lauderdale on the latter’s first visit after the Restoration (when, according to Burnet, the king told him to ‘let [presbyterianism] go’)—that presbyterianism ‘was not a religion for gentlemen’.⁵³ He owed personal gratitude to three groups at the Restoration—‘his

⁴⁹Hutton, *Charles II*, 149; cf. Young, *Scottish Parliament*, 314.

⁵⁰Hutton, depending heavily on Julia Buckroyd, discusses the matter in chapter 7 of *Charles II*; Buckroyd discusses it in chapter 3 of *Church and State in Scotland 1660-1681* (Edinburgh, 1980). See also I. M. Green, *The Re-Establishment of the Church of England, 1660-1663* (Oxford, 1978), and J. I. McGuire, ‘The Dublin Convention, the protestant community and the emergence of an ecclesiastical settlement in 1660’, in Art Cosgrove and J. I. McGuire, ed., *Parliament and Community* (Belfast, 1983).

⁵¹Hutton, *Charles II*, 150. See, e.g., Robert Douglas, *The forme and order of the coronation of Charles the Second, king of Scotland, England, France, and Ireland* (Aberdeen, 1651; facsimile edition on CD-ROM in *The Puritan Bookshelf*, 30 vols., Edmonton, AB, 2001, volume 5). Douglas’s coronation sermon, there reproduced, charged Charles’s father and mother with religious failings.

⁵²According to Buckroyd, ‘Lauderdale . . . was aware that presbyterian church government and the Solemn League and Covenant were by no means to Charles’ liking’, and ‘The king had no love for presbytery. That had been as clear in 1650 as it was in 1660 to all except presbyterian ministers’. *Church and State in Scotland*, 23, 28. See also MacKenzie, *Maitland*, 212-13; Crichton, *Blackader*, 56

⁵³Hutton, *Charles II*, 137, 148; Burnet, *Own Time*, 1:197; compare Crichton, *Blackader*, 56.

companions in exile, royalist conspirators of the 1650s, and the people who had brought about the Restoration itself⁵⁴—among none of which were leading Presbyterians conspicuous. In addition, Charles had an ‘ingrained habit of coping with conflicts by stealth and circumvention’ that displayed itself equally before and after the Restoration, and he exhibited no great scruples against deceiving even his own court when it appeared to his advantage to do so—as, for example, when he ‘dealt with Middleton’s possible opposition⁵⁵ to the royal letter [of 16 August 1660] by the characteristic trick of failing to tell him that he was sending one’.⁵⁶ If he would so readily deceive his friends, would deceiving his enemies be shocking?⁵⁷ In summary remarks on his character, Hutton wrote that Charles linked to habitual disorganization and forgetfulness in handling his political affairs ‘a moral cowardice as remarkable as his physical courage’, adding that he ‘fled from personal unpleasantness’ and ‘would assure ministers to their faces of his affection and support and then allow them to be criticized, or dismiss them, in their absence’.⁵⁸ These character traits are entirely consistent with an interpretation of the letter as duplicitous. All these things taken together make it likely that at this early stage Charles already intended the restoration of episcopacy and saw the letter as no more than a delaying tactic—which is precisely how Sharp defended it to Middleton, who wanted the immediate restoration of episcopacy.⁵⁹

⁵⁴Hutton, *Charles II*, 142.

⁵⁵Middleton would have opposed the letter because he wanted to move swiftly to restore episcopacy (Mackenzie, *Memoirs*, 54-5; MacKenzie, *Maitland*, 223;), and, taken at face value, the letter appeared to promise continued presbytery. Burnet confirms that ‘as soon as [Middleton] heard of [the letter], he thought Sharp had betrayed the design . . .’ (*Own Time*, 1:200). (John, Earl of Middleton [ca. 1608-1674] was king’s commissioner to the Scottish Parliament.)

⁵⁶Hutton, *Charles II*, 137, 150; Burnet, *Own Time*, 1:199-200.

⁵⁷Charles’s general disdain for keeping inconvenient commitments was sufficiently patent to lead one of his biographers, Antonia Fraser, to write of his taking the oath of the Covenant as a condition for his coronation in 1650, ‘With hindsight and with history’s more profound knowledge of his character, one is able to see that the King never indicated that the price [subscribing the Covenant] was too high for one very good reason—because he had no intention of paying it. His restoration to power was for him an end in itself; from that, all blessings would flow, including the supreme blessing of declaring that all previous commitments, made to secure this position, would not now have to be honoured’. Antonia Fraser, *Royal Charles: Charles II and the Restoration* (New York, 1980), 54.

⁵⁸Hutton, *Charles II*, 454.

⁵⁹Burnet, *Own Time*, 1:200. Compare Rankin, *Church from the Reformation to Revolution*, 537-8.

Second, while Buckroyd interprets the evidence as indicating that the intention to restore episcopacy to the Church of Scotland did not solidify until after a joint meeting of Scottish commissioners and selected members of the English council in December 1660,⁶⁰ the protesters' interpretation, cited from Kirkton above and endorsed by Wodrow,⁶¹ equally—indeed better—explains even the evidence she presents. There are two problems with Buckroyd's interpretation. The first problem is that it confuses lack of official action with lack of intention by officials. Intention apart from action may be inferred from preferences otherwise known, and absence of formal action at a given time is no evidence of absence of intention. While it appears that the first formal discussion of restoring episcopacy in Scotland took place in the December 1660 conference, Charles's loathing of Presbyterianism had been evident even long before his Restoration. The second problem is that Charles's intentions at that meeting were not so ambiguous as Buckroyd's theory—which infers indecision in August from indecision later in December—needs them to have been. Not only is there simply no evidence that Charles was neutral during that conference, there is evidence that he was not, and that instead he favoured restoring episcopacy.⁶² Baillie wrote a year and a half after the conference that Lauderdale and Crawford, who 'were a while contrare' to Middleton's insistence on the restoration of episcopacy, '*seeing the King peremptor, . . . gave over*'.⁶³ Burnet wrote that Sharp, in defending to Middleton the 10 August royal letter, explained that 'the king was engaged to nothing; for his confirming [the presbyterians'] government, as it was established by law, could bind him no longer than while that legal establishment was in force: *so the reversing of that would please the king*'⁶⁴—i.e., even at that time Sharp knew (and embraced) Charles's intent to restore

⁶⁰Buckroyd, *Church and State*, 25.

⁶¹Wodrow, *History*, 1:81.

⁶²Buckroyd's argument requires the rather dubious feat of imagining that Charles long loathed presbyterianism before his Restoration, a fact for which there is no contrary evidence; then suspended his loathing for about eight months, a claim for which there is only ambiguous evidence and against which, as we shall see, there is considerable unambiguous evidence; and finally returned to it just in time to approve episcopacy's restoration in late March, 1661.

⁶³Baillie, *Letters and Journals*, 485, emphasis added.

⁶⁴Burnet, *Own Time*, 1:200, emphasis added.

episcopacy.

These sources, however, have only minor weight. The most important primary source for the conference is its description by Clarendon,⁶⁵ and he, far from stating or even implying that Charles was undecided whether to continue presbytery or restore episcopacy, makes it clear that the sole reason the king hesitated, upon hearing Lauderdale's opposition to pressing the next Scottish parliament for the immediate restoration of episcopacy, was his fear that immediate action might set the project back. Indeed, Monck, no friend to presbytery, 'was inclined' to accept Lauderdale's advice, 'not a little moved by what had been said of Argyle, to whom he was no friend, but much more by the disadvantage which might arise, by a precipitate proceeding in Scotland, to the presbyterian party' in England. If Monck can have adopted that attitude without casting his rejection of presbytery in doubt, how much more Charles? Further, Clarendon reports that the others at the meeting, who disagreed with Lauderdale, urged Charles 'not to do his business by halves, when he might with more security do it all together, and the dividing it would make both the more difficult'. That certainly implies that Charles's ultimate intent was already determined: to restore episcopacy. Finally, Middleton and the others besought Charles not to forbid the commissioner to set the restoration of episcopacy before parliament at its first meeting, just in case 'he should find the parliament most inclined to do that now, which every body confessed necessary to be done at some time', lest his not accepting 'their good-will, but hinder[ing] them from pursuing it', be misunderstood as 'a greater countenance to, and confirmation of,

⁶⁵Edward [Hyde], Earl of Clarendon, *The Life of Edward Earl of Clarendon, Lord High Chancellor of England, and Chancellor of the University of Oxford: In Which is Included a Continuation of His History of the Grand Rebellion*, new ed., 3 vols. (Oxford, 1827), 1:433-41. Clarendon favoured the restoration of episcopacy in Scotland not only because of his own preference but also because 'he was quick to realize the political importance of uniformity of government between the Church of England and the Church of Scotland. His aim was to fuse both with the State, and to place Church and State alike under the King's control'. In the English bishops 'he possessed helpers of uncommon ability, who supported his view that a Presbyterian Scotland would be an ill consort for an Episcopalian England. And the Duke of Ormonde used the same argument as bearing upon Episcopacy in Ireland. Thus the measures taken in 1661 for establishing Episcopacy in England and Scotland were complementary, though their co-ordination was not explicitly avowed'. MacKenzie, *Maitland*, 229-30.

the covenant, than it had ever yet perceived, and a greater wound to episcopacy'. 'And that', Clarendon concludes, 'was consented to by all. And thereupon the king resolved to put nothing like restraint upon his commissioner from effecting that he [Middleton? more likely Charles] wished might be done to-morrow if it could be, but to leave it entirely to his prudence to judge of the conjuncture, with caution "not to permit it to be attempted, if he saw it would be attended with any ill consequence or hazard to his service"'.⁶⁶ In sum, what Charles actually determined at that meeting was not to wait and see whether to restore episcopacy, as Buckroyd's argument about the August letter requires, but to move less suddenly for its restoration, contrary to the urging of Middleton but in keeping with Lauderdale's advice, so as not to hazard not only that project but also, possibly, even the elimination of Argyll. Even Lauderdale's advice during that meeting was in favour not of retaining presbytery but of restoring episcopacy, though slowly.

Lauderdale's attitudes toward presbytery and episcopacy during the first few years after the restoration are debatable, but it seems likely that by the time of this meeting he genuinely favoured the restoration of episcopacy. Kirkton wrote that Lauderdale 'opposed it stiffly',⁶⁷ but according to Clarendon, Lauderdale 'inveighed against the covenant; called it a wicked, traitorous combination of rebels against their lawful sovereign, and expressly against the laws of their own country; protested his own hearty repentance for the part he had acted in the promotion thereof'; insisted 'that no man there had a greater reverence for the government by bishops than he himself had; and that he was most confident, that the kingdom of Scotland could never be happy in itself, nor ever be reduced to a perfect submission and obedience to the king, till the episcopal government was again established there'; advised refraining from pressing for the restoration of episcopacy in the first parliament but addressing it in the second (by which time Argyll would be out of

⁶⁶Clarendon, *Life*, 1:438-40. (Lauderdale had suggested that if the same parliament were pressed both to convict Argyll and to overturn presbytery, it might dig in its heels and do neither.)

⁶⁷James Kirkton, *The Secret and True History of the Church of Scotland from the Restoration to the Year 1678*. (c. 1690?), reprint edition, ed. Charles Kirkpatrick Sharpe (Edinburgh, 1817), 133.

the way); and repeated that ‘the king could not be secure, nor the kingdom happy, till the episcopal government could be restored’. It is true that Clarendon, who saw Lauderdale as a challenge, adds that ‘Middleton, and most of the Scots lords, . . . easily discerned that his affected raillery and railing against the covenant, and his magnifying episcopal government, were but varnish to cover the rottenness of his intentions, till he might more securely and efficaciously manifest his affection to the one, and his malignity to the other’.⁶⁸ But another contemporary who probably knew him at least as well as Clarendon, wrote that Lauderdale ‘knew not what it was to dissemble’. The lords’ questionable ability to peer into Lauderdale’s motives and read them as opposite to his profession—supposing that Clarendon accurately reported their judgment—is hardly equal as historical evidence to Lauderdale’s own assertions, and there is reason to think that during his years as a prisoner of the Commonwealth Lauderdale had abandoned his earlier commitment not only to the covenants but also to presbytery. His twentieth-century biographer cited, in another context, Mackenzie of Rosehaugh’s affirmation of Lauderdale’s ingenuousness but added in a footnote, ‘In political affairs, no one knew better “what it was to dissemble”’: of that there can be no question. Yet there is a bluntness of expression in Lauderdale’s letters which gives colour to Mackenzie’s statement, if regarded as a tendency of character. Certainly he could use a mode of speech which left nothing to be desired in directness’.⁶⁹ Lauderdale *was* dissembling toward *someone* in these early years after the restoration—either toward Charles in his statements of support for episcopacy, or toward the Presbyterians in Scotland in his assurances that he was doing all he could to protect their cause. Yet although this biographer asserted that, at the December 1660 meeting, the continuation of presbytery ‘was precisely what Lauderdale wanted’,⁷⁰ he presented no good evidence supporting that judgment, and one can, by reading MacKenzie, *Maitland*, 158-227, trace the growing change of

⁶⁸Clarendon, *Life*, 1:434-6, 439.

⁶⁹MacKenzie, *Maitland*, 182, 353n.

⁷⁰MacKenzie, *Maitland*, 226.

ecclesiastical allegiance in Lauderdale, beginning with his exclusion in the Act of Classes (23 January 1649) and parliament's ordering him in 1650 to leave the country 'as being not well affected to the cause'.⁷¹ It is difficult to avoid the sense, as one reads him, that MacKenzie tried valiantly but unsuccessfully to portray Lauderdale as faithful to presbytery until its overthrow had become a *fait accompli*, when he became a reluctant but faithful servant of the king's policy. Lauderdale's real commitment, like Middleton's,⁷² was to royal supremacy; he made his ecclesiology serve that cause.

Third, since Charles believed that as king he had supreme authority over all persons in all causes civil and ecclesiastical, it is difficult to explain why he would think it necessary to assure his subjects that he was going to preserve the church 'as it is settled by law', regardless whether his intentions were to preserve presbytery or to restore episcopacy, for the appeal to law was a hollow sham in either case. That is, granted his view of royal supremacy, the only reason to appeal to previously settled law was not to bind himself (which no law could do) but to pacify his subjects. Add to this (a) his knowing that Presbyterianism remained in favour among at least a sizable minority and probably a majority of his subjects, (b) the fact that the recipients of the letter constituted the *presbytery* of Edinburgh, and (c) the certainty that he favoured episcopacy as more consistent than presbytery with monarchy—at least as he understood monarchy—and the likelihood that the letter was not intended to pacify the *presbytery* through deceit diminishes considerably.⁷³ Kirkton was right: 'As it is certain the king was in his heart for bishops, so no doubt the design of settling them in Scotland was projected immediately upon his return

⁷¹ *APS* 6 [2]: 594, cited in MacKenzie, *Maitland*, 159n.

⁷² 'Cer[tainly] [Middleton's] great design and business was to make the king absolute'. J. Nicholl, *Diary of Public Transactions and Other Occurrences, Chiefly in Scotland, from January 1650 to June 1667*, ed. D. Laing (Edinburgh, 1836), cited in Young, *Scottish Parliament*, 309.

⁷³ The problems of interpreting Charles II's intentions regarding the restoration of episcopacy at this point are strikingly similar to those of interpreting James VI's in the 1680s through 1690s. Mullan (*Episcopacy*, 87-8) has expressed well the reasons for thinking that James's intention all along, despite apparent statements to the contrary, had been to restore episcopacy. The same sorts of considerations support the interpretation above of Charles's intention.

. . . ,⁷⁴

The Act Rescissory on 28 March 1661, ‘which appears . . . to have been used as a device by Hyde to facilitate the restoration of episcopacy by the back door, because all legislation of the 1640s guaranteeing the presbyterian nature of the Kirk had now also been repealed’,⁷⁵ made it clear, as Charles would proclaim on 10 June concerning church affairs,⁷⁶ that he looked upon all laws in Scotland since 1633 as no laws. There appears to be no reason to think he had looked upon them any more favourably before then. The accompanying Act concerning Religion and Church Government, adopted the same day, ‘hinted at’ the restoration of episcopacy.⁷⁷ Consequently, it is most likely that while Charles intended the Presbyterians in Scotland to interpret the letter of 10 August 1660, as guaranteeing protection of Presbyterianism, and thus to buy their cooperation for a time, he himself meant it to pave the way for his restoring—i.e., in light of the impending rescission of all the laws establishing Presbyterianism from 1638 to 1660, preserving—episcopacy. The letter had its intended effect among Resolutioners, but many Protestors, like

⁷⁴Kirkton, *History*, 133.

⁷⁵Young, *Scottish Parliament*, 316.

⁷⁶Text in Wodrow, *History*, 1:151-2n. Charles made his intentions clear, even if his language was oblique:

And as to the government of the church, that we will make it our care to settle and secure the same in such a frame as shall be most agreeable to the word of God, most suitable to monarchical government, and most complying with the public peace and quiet of the kingdom: and in the meantime, that we do allow the present administration by sessions, presbyteries and synods (they keeping within bounds, and behaving themselves as said is) and that notwithstanding of the act passed [28 Mar. 1661], rescissory of all pretended parliaments since the year 1633. . . . And . . . we do purpose, after mature deliberation, with such as we shall call, to employ our royal authority, for settling and securing the government and the administration thereof, in such a way as may best conduce to the glory of God, to the good of religion, to unity, order, and to the public peace and satisfaction of our kingdom: and in the meantime, we will and command all our loving subjects, ministers and others, as they will answer at their peril, to abstain from meddling with what may concern the public government of that our church. . . .

Can any historian well acquainted with Charles’s general attitudes toward presbyterianism and the actions he actually carried out in time seriously think that he had anything different in mind, when he wrote of a church government ‘most suitable to monarchical government’, from what his grandfather had in mind when he had proclaimed, ‘No bishop, no king!’? The exclusion of general assemblies from the list of church courts permitted to meet is significant, for it was they that had exercised the authority exercised by bishops in the episcopalianism of James VI and Charles I (Donaldson, *Scotland*, 363); the king’s royalist Erastianism is obvious in his assertion of authority to settle the matter; and the prohibition of public debate of the church settlement calls into question the sincerity of his promise to settle the matter ‘to the . . . satisfaction of our kingdom’, for, as Wodrow observed, ‘One must think the king had no great mind to know what was satisfying to his subjects, when he so peremptorily discharges all application to him; certainly he was already determined what to do, whatever side his subjects’ inclination ran’ (Wodrow, *History*, 1:229).

⁷⁷Young, *Scottish Parliament*, 316.

Kirkton, suspected the deceit from the start and consequently were unsurprised when their fears were realised.

On 23 August 1660, the committee of estates, nominated by parliament in 1651, before the interregnum, met in Edinburgh. The same day, ten ministers and two ruling elders met in a private house near Parliament House to draw up a supplication to the king pleading for the preservation of presbytery and faithfulness to the Covenants, to which the king had sworn allegiance as a condition of his acceptance by the Scottish nation. All but one (Andrew Hay of Craignethan, who escaped) were arrested and imprisoned in the Castle of Edinburgh.⁷⁸ The next day the committee issued ‘the first of the endless proclamations that were to follow against “all unlawful and unwarrantable meetings and conventicles... [sic] without his Majesty’s special authority”’.⁷⁹ Enforcement of such proclamations was to be one of the most constant activities of the privy council and to lead to enormous persecution of Covenanters in Scotland over the next twenty-eight years; resistance to them was to become a hallmark of covenanting; and moral and legal defense of that resistance was to be central to Stewart’s literary endeavors.

On 19 September, a proclamation was issued against Rutherford’s *Lex Rex* and [Guthrie’s] *The Causes of God’s Wrath*, declaring their authors, printers, and sellers ‘rebellious and seditious’ and those who, after 15 October, owned copies ‘enemies to the King’ and to ‘be punished accordingly’.⁸⁰ As always, the signals from the government were mixed. Alongside the efforts to suppress covenanting came assurances of rapport. On 23 October, Lauderdale wrote to Robert Douglas assuring him that Charles II intended no change in government of the Church of Scotland⁸¹—an assurance that was to be destroyed less than a year later.

⁷⁸Wodrow, *History*, 1:66-71; Young, *Scottish Parliament*, 308. Wodrow gives the full text of the supplication, with a list of those involved. He also records the full text of the ‘Declaration of Dunfermline’, issued by Charles II 16 Aug. 1650, assuring his Scottish subjects of his fidelity to the *National Covenant* and the *Solemn League and Covenant* and his commitment to Presbyterianism and the self-government of the church, a declaration of which the supplicating ministers reminded the king ten years and a week later. See also Crichton, *Blackader*, 58.

⁷⁹Brown, *History*, 2:301.

⁸⁰James Reid, *Memoirs of the Westminster Divines* (1811; Edinburgh, 1982), 355-6.

⁸¹NLS, Wodrow Collection, Wod.Mss.Fol.XXVI. No. 69, f. 133. The letter included a promise

The very busy Scottish parliament that first sat on 1 January 1661 was carefully selected under royal supervision to ensure loyalty. Some parts of the country—particularly the strongly Covenanter southwest—had difficulty finding any representatives acceptable to the crown.⁸² One of the earliest acts of what was to earn the epithet ‘drunken Parliament’⁸³ was to revive the Lords of the Articles, a small committee practically hand picked by the king with almost absolute power to decide what bills would come before parliament.⁸⁴ Another was to propound an oath of allegiance that no Covenanter of conscience could possibly swear:

I . . . declare, by this my solemn oath, That I acknowledge my said Sovereign only supreme Governor of this Kingdom, over all persons, and in all causes. . . . And shall never decline his Majesty’s Power and Jurisdiction; as I shall answer to God.⁸⁵

Mackenzie wrote, ‘This oath was immediatly [sic] taken by all the members of Parliament, the Earl of Cassillis only excepted, who (refusing to own his Majesty’s supremacy in ecclesiastick matters, which was imply’d in this oath) deserted the Parliament’.⁸⁶ Six years later Stewart, applying constitutionalist political theory, was to condemn this oath of supremacy as taken

without respect to it’s [sic] due limitation contained in the 114. *Act. Ia. 6. Parl. 12. 1592.* then standing unrepealed; and exalting the Kings prerogative, upon the alleaged Warrant of the *Word of God and Laws of the Land* (but in effect directly contrary to both) above all Offices, Parliaments, Laws, Leagues, Conventions, Peace and War; and likewise upon meer assertions & alleagances in place of declaring upon known and certain grounds (which is all that any Parliament can lawfully do) directly

to call a general assembly that Charles never fulfilled.

⁸²Kirkton, *History*, 88.

⁸³Burnet, *Own Time*, 1:207; Wodrow, *History*, 1:282.

⁸⁴Mackenzie, *Memoirs*, 20.

⁸⁵The wording here is that in Mackenzie’s *Memoirs*, 22; slight, inconsequential differences appear in the text as reproduced by Wodrow in *History*, 1:92.

⁸⁶Mackenzie, *Memoirs*, 23.

Innovating the Fundamental Law & Constitution of the Kingdom, & thereby making the Kings Throne, the foundation of all the succeeding Perjury and Apostacy. . . .⁸⁷

Consonant with the royal absolutism expressed in the oath of allegiance—‘and really of supremacy’⁸⁸—was the power parliament acknowledged, in an act asserting royal prerogative, in the king alone to raise armies, assemble and dissolve parliaments and other public conventions, and make war and peace.⁸⁹

On 25 January parliament passed two acts with great consequences for religious affairs in Scotland. One, an ‘Act anent the Disposall of Vacand Stipends’, assigned all vacant churches to ‘such ministers or their families as had incurred sufferings and losses for their loyalty during the years that followed the revolt against Charles I’.⁹⁰ This in effect would prevent many Protestors and even some moderate Covenanters from occupying vacant pulpits. The other was an ‘Act concerning the League and Covenant, discharging the renewing thereof without His Majesty’s warrant and approbation’, declaring that the Covenant and all acts relative to it ‘were no longer obligatory on the kingdom or lieges who were henceforth forbidden to interpose by arms or in any seditious way in religious or secular affairs . . . or to renew any Covenant or Oath without royal warrant’. The act implicitly gave the king authority to abolish any religion in his kingdom and to establish any other in its place—something inconsistent not only with Presbyterianism but also with episcopacy. Ironically—since it invalidated earlier oaths—it also required every officer of trust to swear an oath in recognition of it. Robert MacWard (d. 1681), minister in Glasgow, was among the first to refuse, for which he was banished in July 1661. Settling in Rotterdam, he and other Scots exiles ‘founded a presbytery and indulged in dialectical sniping at the Stuart dynasty’.⁹¹ James Stewart

⁸⁷*Naphtali*, 86-7.

⁸⁸Wodrow, *History*, 1:93.

⁸⁹Mackenzie, *Memoirs*, 21-2.

⁹⁰*RPC*, Third Series, 1:xxi.

⁹¹Douglas, *Light*, 92-3. MacWard had been a favourite student of Rutherford at St. Andrews and, in Holland, edited Rutherford’s *Letters* (1664) and *Examen Arminianismi* (Utrecht, 1668).

eventually was to join those exiles and contribute to their literary endeavors against royal absolutism. By asserting such unrestricted powers in church and state, Charles II ‘violated one of the three great tenets of the Covenanters: that of the headship of Christ in the State’, wrote J. D. Douglas. ‘He was soon to violate the others: His headship over the individual Christian, and in the Church of God’.⁹²

Developments in England reflected those in Scotland: the broadening and intensifying of royal control over life, particularly in religion, despite some signals of liberalisation. In October, 1660, Charles issued a proclamation in England affirming liberty of conscience that engendered confidence among Puritan-leaning subjects. Some London ministers replied in a letter:

The liberty of our consciences, and the free exercise of our ministry in the work of our great Lord and Master, for the conversion of souls, ought to be, and are, more dear to us than all the profits and preferments of this world; and therefore your majesty’s tenderness, manifest in these so high concernments, doth wonderfully affect us, and raise up our hearts to a high pitch of gratitude.⁹³

But whatever it was in Charles’s mind, liberty of conscience, as we have seen, did not equate with liberty of expression, particularly in print. In the next year, the anti-clerical newspaper *Mercurius Caledonius* was to be closed down because Charles II thought it would alienate moderate Presbyterians and its ironic style offended leading politicians.⁹⁴

English parliamentary elections in 1661 yielded a Parliament ‘hostile to Puritans of all types, for it was a Parliament of Anglican and royalist interests’. It gave the king ‘supreme control over all the armed forces of land and sea’, ‘extraordinary power in a new treason law’, and ‘extensive power over authors and printers’ exercised through the newly created Surveyor of Imprimery. This last enabled him

⁹²Douglas, *Light*, 92-3.

⁹³Van Til, *Liberty of Conscience*, 111, citing from George Gould, *Documents Relating to the Settlement of the Church of England by the Act of Uniformity of 1662* (London, 1862), 1-3.

⁹⁴Brown, *Kingdom*, 64.

to severely curtail citizens' efforts to petition him. The Corporations Act meant that only Anglicans and loyal royalists could be members of corporations.⁹⁵ The capstone was the Act of Uniformity, which forced conformity in churches, schools, universities, and similar institutions to the *Book of Common Prayer*, requiring all ministers, teachers, and the like to 'be bound to say and use the Morning Prayer, Evening Prayer, celebration and administration of both the Sacraments, and all other the public and common prayer in such order and form as is mentioned in the said Book. . .'. It required all incumbents in such positions to read, 'openly, publicly and solemnly' on some sabbath day before the Feast of St. Bartholomew (24 August), 1662, 'the Morning and Evening Prayer appointed to be read by and according to the said Book of Common Prayer at the times thereby appointed, and after such reading thereof [to] . . . declare his unfeigned assent and consent to the use of all things in the said Book contained and prescribed. . .'. All who neglected or refused were to be deprived of office and prohibited thenceforth to lead religious exercises. Furthermore, it required every minister and educator in the realm to swear before the same date:

I, A.B., do declare that it is not lawful upon any pretence whatsoever to take arms against the king, and that I do abhor that traitorous position of taking arms by his authority against his person or against those that are commissioned by him, and that I will conform to the liturgy of the Church of England as it is now by law established. *And I do declare that I do hold there lies no obligation upon me or on any other person from the oath commonly called the Solemn League and Covenant to endeavour any change or alteration of government either in Church or state. And that the same was in itself an unlawful oath and imposed upon the subjects of this realm against the known laws and liberties of this kingdom.*⁹⁶

⁹⁵Van Til, *Liberty of Conscience*, 112-13.

⁹⁶14 Car. II, c. 4: An Act for the uniformity of public prayers and administration of sacraments and other rites and ceremonies (The Uniformity Act); in Kenyon, ed., *Stuart Constitution*, 353-6. See Van Til, *Liberty of Conscience*, 112-13.

In March the Scottish Presbyterians' fears were confirmed. The privy council issued a proclamation that Charles intended to restore episcopacy in his northern kingdom, though for the time being he was willing to continue the 'present administration by sessions, presbyteries and synods'.⁹⁷ In the same month parliament summoned Samuel Rutherford on a charge of treason, but that hero of the Covenanters, at his home in St. Andrews, where he was professor of divinity, lay on his death bed. 'Tell them I have got a summons already before a superior Judge and judicatory', he is said to have answered, 'and I behove to answer my first summons, and ere your day come I will be where few kings and great folks come'. On receiving the answer, parliament voted to dismiss him from his post. 'Ye have voted that honest man out of the college', Lord Burleigh is said to have replied, 'but ye cannot vote him out of heaven'. He died on 27 March.⁹⁸

The next day parliament passed two more momentous acts. The first, an Act Concerning Religion and Church Government, promised 'to maintaine the true reformed protestant Religion in its purity of doctrine and worship as it was established within this kingdome, during the reign of his Royall father and Grandfather of blessed memorie'—ambiguous words since several forms of church government had prevailed during the period specified. What meant more was the act's promise that 'his Maiestie will make it his care to satle and secure the same in such a frame as shall be most agreeable to the word of God, most suteable to monarchical Government, and most complying with the publict peace and quyet of the Kingdome'. Charles's understanding of monarchy, like his royal grandfather's, was irreconcilable with Presbyterianism; it was perfectly consistent with a thoroughly Erastian Episcopalianism.⁹⁹ The second, an Act Rescissory, which Burnet said was offered by Primrose 'half in jest' and passed by the Lords of the

⁹⁷Douglas, *Light*, 91.

⁹⁸Reid, *Westminster Divines*, 2:236; Douglas, *Light*, 93.

⁹⁹Buckroyd is mistaken in thinking that 'such phrases meant nothing and committed the king to nothing' (Buckroyd, *Sharp*, 69). They clearly meant the impending overthrow of presbyterian church government.

Articles only after members were quite drunk, rescinded and annulled ‘the pretendit Parliaments kept in the years 1640, 1641, 1644, 1645, 1646, 1647 and 1648 and all acts and deids past and done in them and declare[d] the same to be henceforth voyd and null . . .’¹⁰⁰ It also granted the king’s

full assureance and indemnity to all persones that acted in, or by vertew of the said pretendit Parliaments and other meittings flowing from the same to be unquestioned in their lives or fortunes for any deid or deids done by them in thair said usurpation or be vertew of any pretendit Authority deriyed therfrom; Excepting alwayes such as shall be excepted in a generall act of indemnity to be past be his Majestie in this Parliament’.¹⁰¹

The ground of nullifying the parliaments was twofold: that they lacked royal authority and participation by the ecclesiastical establishment. Yet Charles I had confirmed a triennial act of the parliament of 1641, and it could be argued on that basis that the remaining parliaments had royal authority, and if lack of ecclesiastical representation invalidated a Parliament, the parliament of 1661 likewise must be invalid.¹⁰² Opponents decried the act ‘as an unwarrantable stretch of the commissioner’s authority, a dangerous precedent, eversive of all government, by empowering one parliament . . . to revoke or invalidate another. By this act the people could have no security in any constitution, and the prince could be bound by no ties human or divine’.¹⁰³

The Presbyterians could see the handwriting on the wall, and they countered it with some writing of their own. In April and May the synods of Glasgow and Ayr, of Fife, Dumfries, and Galloway all overwhelmingly adopted declarations against the impending restoration of episcopacy. A few other synods split almost evenly on the question. Some others—mostly north of the Tay—weighed in for episcopacy, but

¹⁰⁰Burnet, *Own Time*, 1:213-14.

¹⁰¹*APS*, 8:86-7; excerpted in Gordon Donaldson, ed., *Scottish Historical Documents* (Edinburgh and London, 1970), 225-6.

¹⁰²Mackenzie, *Memoirs*, 28; Brown, *Kingdom*, 362; compare Burnet, *Own Time*, 1:213-14.

¹⁰³Crichton, *Blackader*, 60.

they achieved unanimity only by expelling some representatives.¹⁰⁴ The protests were to no avail. By 21 May Sharp could write in a letter of his hope that ‘all opposing designs [to episcopacy] are dashed’.¹⁰⁵

Four days later Parliament sentenced to death the Covenanter hero Argyll—summoned for treason on 31 January—for his compliance with the Cromwellian government, particularly for his part in putting down the Glencairn Rising in favour of Charles II in 1653-1654. In April, in one of his speeches in Argyll’s defense, Mackenzie of Rosehaugh had argued that if the standard applied to Argyll were applied consistently, no one in Scotland could escape.¹⁰⁶ Argyll’s trial became the pattern of many to come throughout the Restoration period. Normal principles of law were set aside for the sake of compliance with the king’s wishes. The legal improprieties of the case were such that the modern historian Keith M. Brown can say simply that Argyll was ‘judicially murdered’.¹⁰⁷ His three advocates—Robert Sinclair, John Cunningham, and Mackenzie—sought immunity in representing him before Parliament, pointing out clear legal precedent. Wrote Mackenzie:

. . . we were told by the Chancellor [Glencairn] that the Parliament would not admit that protestation, lest we might allow ourselves upon that pretext the liberty of speaking things prejudicial to his Majesty’s government; and therefore desir’d us to speak upon our hazard.

Argyll through his advocates requested that his case, being intricate, be tried by the Justice Court rather than by the whole parliament, who after all were also not his peers; instead parliament took offense at the slight and retained jurisdiction. Although for political reasons Lauderdale offered some assistance to Argyll, his

¹⁰⁴Cowan, *Covenanters*, 43-4. Wodrow, *History*, 1:109-30, presents a more thorough description of ‘the efforts made by presbyterian ministers, for the preservation of the church during the sitting of the parliament; with some account of the violent treatment of synods, April and May, this year 1661’ reproducing several texts of their supplications, petitions, and declarations.

¹⁰⁵Cowan, *Covenanters*, 45.

¹⁰⁶John MacPherson Pinkerton, ed., *The Minute Book of the Faculty of Advocates*, vol. 1, 1661-1712 (Edinburgh, 1976), vi.

¹⁰⁷Brown, *Kingdom*, 148.

rival, Middleton, sent two of Argyll's most dedicated enemies—Glencairn and Rothes—as a commission to the king, an act Argyll rightly thought fatal to his cause. Despite his counsel's having carried a motion to restrict the prosecution to his acts after 1651 (when Charles I had granted an indemnity for prior acts), Parliament voted to condemn him to execution, his head to be 'placed on the tolbooth where Montrose's head had formerly stood'.¹⁰⁸ Sentence was carried out on 27 May after Argyll delivered one of the most famous of the scaffold testimonies that would become the persecuted Covenanters' trademark:

I could die like a Roman, but choose rather to die like a Christian. . . . I was real and cordial in my desires to bring the King home, and in my endeavours for him when he was at home. I had no . . . accession to his late Majesty's murder. . . . I shall not speak much to these things for which I am condemn'd, lest I seem to condemn others. . . . But whatever they think, God hath laid engagements on Scotland, we are tyed by covenants to religion and reformation; those who were then unborn are engaged to it . . . and it passeth the power of all Magistrates under heaven to absolve a man from the oath of God . . . it's the duty of every Christian to be loyal; yet . . . religion must not be the cock-boat; it must be the ship: God must have his, as well as Caesar what is his, and those are the best subjects that are the best Christians.¹⁰⁹

The day after the execution, Lady Margaret (Kennedy) Burnet wrote to Lauderdale, 'your Diurnalls basely calumniates my Lord Argyle; he hath died most gallantly, to the admiration and envy of his enemies'.¹¹⁰ Popular esteem for Argyll grew to enormous proportions, and he became something of a patron saint to later Covenanters. Too many such victories over its enemies would cost the government

¹⁰⁸Mackenzie, *Memoirs*, 36, 38-46; see also Wodrow, *History*, 1:130-58.

¹⁰⁹As excerpted in Douglas, *Light*, 85. Argyll's speech was printed many times, among which see Mackenzie, *Memoirs*, 41-6; Wodrow, *History*, 1:155-7n; *Naphtali*, 193-9.

¹¹⁰Lady Margaret Burnet, *Letters from Lady Margaret [Kennedy] Burnet, to John, Duke of Lauderdale, 1661-1669* (Edinburgh, 1828), 2.

dearly.

But Argyll was not alone, even in the near term. On 1 June the Covenanter minister James Guthrie, author of *The Causes of the Lord's Wrath* and arrested among the ministers who met 23 August 1660 to petition the government on behalf of presbyterial government, was executed for treason.¹¹¹ Others followed. The early Church Father Tertullian once wrote, 'The oftener we are mown down by you, the more in number we grow; the blood of Christians is seed'.¹¹² Charles II's government was to sow a great deal of seed in the next twenty-four years.

Six leading Presbyterian ministers wrote to Lauderdale from Edinburgh on 4 June 1660 expressing their 'sense of the feared change of our religious employments'. Acknowledging that they had received repeated assurances (such as his letter of 23 October 1660) that no such change was envisioned, nonetheless they reported that they were 'daylie informed that [there] is a reall purpose of change', that they doubted not that Lauderdale had heard of such himself, and that if the church's judicatures (presbyteries, synods, and general assembly) were permitted (as they were not) to meet to state their corporate convictions on the matter they were certain that the conclusion would be against restoring episcopacy.¹¹³

On June 10, Charles issued a proclamation, through Lauderdale, commanding all our loving subjects, ministers and others, as they will answer at their peril, to abstain from meddling with what may concern the public government of that our church, either by preaching, remonstrances,

¹¹¹Cowan, *Covenanters*, 40-41; Burnet, *Own Time*, 1:228-30. For the full story of Guthrie's trial, with reflections on his earlier career, see Wodrow, *History*, 1:159-96.

¹¹²Tertullian, *Apology*, 50, in Alexander Roberts and James Donaldson, ed., *The Ante-Nicene Fathers: Translations of the Writings of the Fathers down to A.D. 325*, 14 volumes, revised by A. Cleveland Coxe (Grand Rapids: Eerdmans, 1975 reprint), 3:55. One of the covenanters' most severe contemporary critics, John Corbet, argued against Christians' resisting tyrants, saying, 'resisting brings ruine to a Church, suffering causeth it to flourish; the blood of the Saints is the seed of the Church' ([John Corbet], *The ungirding of the Scottish armour* [Dublin, 1639], 21, cited in Mullan, *Puritanism*, 317). But the same proverb could be used to encourage those who resisted and suffered for it. Wodrow, in considering the rising hopes of Presbyterians in 1669, wrote, 'This is not the first, and will not be the last instance of the truth of the primitive Christian observation and experience, "that the blood of the saints is the seed of the church"' (Wodrow, *History*, 2:120).

¹¹³Letter from David Dickson, Robert Douglas, James Hamilton, John Smith, Thomas Garvine, and George Hutchison to Lauderdale, 4 June 1660, in NLS, Wodrow Collection, Wod.Mss.Fol. XXVI, no. 60.

warnings, declarations, acts, or petitions of church judicatories, or any other way; and to compose themselves to that quietness and inoffensive deportment, which their duty to us, and the peace of the church doth require.¹¹⁴

It is difficult to imagine a statement assuming a more thoroughly Erastian foundation, and it was not only episcopacy but also Erastianism that the Scots Presbyterians both loathed and feared. What many also were persuaded was that for Charles Erastianism and episcopacy came hand in hand. Their fears were confirmed when on 14 August Charles wrote to the privy council a letter that at last removed all doubt and exposed the legal legerdemain the king had intended from the first in assuring his subjects that he would maintain the church as by law established at the time of his restoration. The letter made it clear that in his mind ‘established by law at the time of his restoration’ meant established ‘by law before the late troubles’ of the last twenty-three years, ‘during the reigns of our royal father and grandfather,’ thus before the National Confession, and so ‘declared . . . our firm resolution to interpose our royal authority for restoring of that church to its right government by bishops. . .’¹¹⁵ The letter both embodied Erastianism and committed the government to episcopacy. The privy council received it on 5 September and the following day ordered the imprisonment of all nonconformists. As the vast majority of Scots at the time clearly preferred Presbyterianism,¹¹⁶ it was inevitable that this unilateral act of royal prerogative would engender great conflict.

The burning of Rutherford’s *Lex, Rex* and Guthrie’s *Causes of the Lord’s Wrath* on 17 October was but one small step in that conflict. On 7 November, the privy council ordered *Lex, Rex* and other books and pamphlets sympathetic to Covenanters seized from two printers and booksellers in Edinburgh, while they and all other printers in Edinburgh were to be discharged ‘from printing any more

¹¹⁴Wodrow, *History*, 1:152n; the full text of the proclamation appears at 151-2n.

¹¹⁵Wodrow, *History*, 1:230; *RPC*, Third Series, 1:xix, 28-9.

¹¹⁶Cowan, *Covenanters*, 45.

papers or books while they have warrant for that effect from the King, Parliament or Council'. A week later Sharp, by now commonly thought a Judas by the Covenanters, was nominated to the vacant archbishopric of St. Andrews.¹¹⁷

Thus matters stood in Scotland when James Stewart was admitted to the bar on 28 November 1661. On 15 December, in Westminster Abbey, four Scots were consecrated bishops—Sharp as Archbishop of St. Andrews and primate of Scotland, Andrew Fairfoul Archbishop of Glasgow, Robert Leighton Bishop of Dunblane, and James Hamilton Bishop of Galloway.¹¹⁸ At the end of 1661, then, all the machinery was in place to impose Charles II's will on the religious life of Scotland. From then until William of Orange displaced James VII in 1688-9, the government was, because intent on forcing on the Scots a form of religion overwhelmingly rejected, to be occupied more by religious troubles than by any other aspect of governing. The Scottish episcopate of the Restoration was not, despite Honyman's insistence otherwise, simply that 'moderate Episcopacy'¹¹⁹ that had prevailed under James VI/I and Charles I; it was sterner, more powerful, less accountable, no longer limited by a general assembly (which did not meet between 1653 and 1689).¹²⁰ Paul Henderson Scott sums up the situation well:

It was the blackest time in Scottish history because it was the only period in which the State used . . . a totalitarianism of the worst kind. It was also, to use Hume Brown's word, the sublimest, because it revealed the endurance, courage and dignity of ordinary people under intense pressure, even if the sufferings of some drove them to fanaticism and excess.¹²¹

The government's efforts to suppress Presbyterianism and enforce Episcopalianism continued throughout 1662. One tactic was, as Scott noted, to

¹¹⁷*RPC*, Third Series, 1:73; Cowan, *Covenanters*, 47.

¹¹⁸Burnet, *Own Time*, 1:240-43, cf. 258-60.

¹¹⁹Honyman, *Survey*, II.112.

¹²⁰'The prelates of James and Charles I. were mere dwarfs and sucklings compared with those of the Restoration'. Crichton, *Blackader*, 67-8.

¹²¹Paul Henderson Scott, *Andrew Fletcher and the Treaty of Union* (Edinburgh, [1992] 1994), 28.

impose arbitrary fines on nonconformists. On 5 September Charles II announced some 700 persons excluded from a general indemnity granted earlier in the year; among those excluded was Kirkfield, who was ordered to pay a fine of £6,000 Scots.¹²² (It was not only religious compulsion but also personal aggrandizement on the part of Middleton that led to many of the fines; much of the money went into his pockets. The scheme proved his undoing, however, for he tried to target Lauderdale, who turned out too big a fish. Lauderdale used his influence with the king not only to defeat Middleton's exclusion bill but also to have him removed from office in March 1663.¹²³) Early in the same month, Hugh McKail, chaplain in Kirkfield's home, preached a sermon in Edinburgh that expressed the sentiments of many Covenanters and so offended the government. The 'Church and People of God had been persecuted, both by a Pharaoh upon the Throne, a Haman in the State, and a Iudas in the Church', he said, alluding to the king, either Lauderdale or Middleton, and Archbishop Sharp. A few days later the government attempted to arrest him, but he escaped and remained a fugitive for the next four years.

On 10 September the privy council proclaimed that all ministers must attend the bishops' diocesan meetings and prohibited their holding other assemblies without the bishops' consent, threatening that those who refused either requirement would 'be holden as contemnners of his Majesties authority, and incurr the censures provydit in such cases . . . with certification that all such meitinges shall be holden hencefurth as seditious'.¹²⁴ Despite the warning, attendance at diocesan meetings was sparse, showing 'the deep division in the church'.¹²⁵ How complete was the government's preoccupation with the attempt to enforce religious conformity is illustrated by the fact that on 16 September the privy council took three steps in that regard. In one, it ordered a number of ministers who had refused to take the oath of allegiance and so been deprived of their charges to leave Edinburgh. In another, it

¹²²APS 7:422.

¹²³Cowan, *Covenanters*, 55.

¹²⁴RPC, Third Series, 1:260-61.

¹²⁵Cowan, *Covenanters*, 50-51.

ordered ministers at Hamilton and elsewhere who had similarly refused the oath to 'leave the bounds of their presbyteries, and not to reside in Edinburgh and Glasgow'. In a third, it ordered all ventners, innkeepers, and others who housed visitors overnight to report such persons to the council, threatening penalties on those who failed to comply.¹²⁶ Such orders were to be frequent in the coming decades.

On 1 October, the privy council issued a proclamation against ministers who had not yet sought presentation by patrons and collation by their bishops—that is, who chose rather to remain in their charges based on their congregations' calls, in accord with Presbyterian polity.¹²⁷ The proclamation forbade them to receive, and their parishioners to pay, their stipends; forbade all to attend their preaching on pain of being charged with conventicling; and commanded the ministers to remove themselves from their parishes and presbyteries by 1 November. Four days later the council announced that all ministers must submit to bishops by 1 November or face banishment.¹²⁸ When the deadline came, between 250 and 400 of the nation's 950 ministers, to Middleton and Sharp's dismay, refused to comply.¹²⁹ Removing these ministers from their parishes and providing replacements was to become one of the great thorns in the council's side and to provoke much popular resistance.

Stewarts Among the Persecuted

On 6 November 1662, the council ordered Kirkfield and his second son, Walter, to appear before it to answer charges that, although they knew that the family

¹²⁶RPC, Third Series, 1:263-4.

¹²⁷To yield obedience to the statute, was to acknowledge themselves intruders and unlawful possessors, to deny and annul the validity of presbyterial ordination, and to admit an Erastian supremacy in the crown, as they were required to swear the oath of allegiance before getting presentation'. Crichton, *Blackader*, 83.

¹²⁸RPC, Third Series, 1:xx, 269-70; Crichton, *Blackader*, 83-4.

¹²⁹Thomas M'Crie, *Sketches of Scottish Church History: Embracing the Period from the Reformation to the Revolution* (Edinburgh, 1841), 401-2; Douglas, *Light*, 99-100: 'Law Mathieson . . . , after carefully working through Scot's *Fasti*, puts the total number of deprived ministers at a maximum of 271, but this seems to be the lowest of the more responsible estimates. Wodrow quotes the figure as just under 400, Burnet as 350' (100n). In England, as many as 2,000 non-conformists were similarly deprived; Crichton, *Blackader*, 93.

chaplain, Hugh McKail, had preached a sermon critical of king and government and that the council had forbidden anyone to succor him, they nonetheless had sheltered the fugitive in their home, and Walter had himself spoken ill of the king.¹³⁰ The same day, John Brown (1610-1679), minister of Wamphray, appeared before the council, charged with having called some ministers who attended the synod called by the Archbishop of Glasgow ‘perjured knaves and villanes’. Brown explained that he had said so because they had promised him they would not comply with the new episcopal government but by attending had done so. The council ordered him detained in the tolbooth of Edinburgh.¹³¹ On 11 December he was freed on condition of banishment and ordered to depart from the king’s domains.¹³² He moved to Holland, where he remained until his death, writing theological and political treatises, among which was *An Apologeticall Relation Of the particular sufferings of the faithfull Ministers & professours of the Church of Scotland, since 1660*, in which he expanded on the principles of the relationship of church and state developed by Rutherford¹³³ and Gillespie.¹³⁴

Kirkfield and Walter Stewart appeared before the council 11 November. The council was informed by some of its own members that Kirkfield could answer successfully for himself; it appointed the Earl of Morton and Lord Tarbet to examine him and report. Walter denied having made the speeches attributed to him, but several witnesses vouched that he had, and the council ordered him confined to the tolbooth until further notice. Two days later the council received a supplication

¹³⁰RPC, Third Series, 1:277; compare Wodrow, *History*, 1:304.

¹³¹RPC, Third Series, 1:278; compare Wodrow, *History*, 1:304.

¹³²RPC, Third Series, 1:303.

¹³³Most importantly, *Lex, Rex, or The Law and the Prince; a Dispute for the Just Prerogative of King and People: containing the Reasons and Causes of the Most Necessary Defensive Wars of the Kingdom of Scotland* (Edinburgh and London, 1644); also *The Divine Right of Church Government and Excommunication* (London, 1646) and *The Due Right of Presbyteries or, A Peaceable Plea for the Government of the Church of Scotland* (London, 1644).

¹³⁴Most importantly, *Aaron’s Rod Blossoming* (London, 1646); also *A Dispute against The English-Popish Ceremonies, Obtruded Upon the Church of Scotland* (1637); *Nihil Respondes . . .* (London, 1645), *Male Audis . . .* (London, 1646), both against Erastianism; the posthumous *A Treatise of Miscellany Questions . . .* (Edinburgh, 1649), and others. Several of Gillespie’s works (*A Dispute . . .*, *An Assertion of the Government of the Church of Scotland* [1644], and *CXI Propositions Concerning the Ministry and Government of the Church* [1644] were reprinted in volume 1 of *The Presbyterian’s Armoury*, 3 volumes [Edinburgh, 1845], which in turn is available in modern reprint by Still Waters Revival Books, Edmonton, AB, Canada.

from him insisting that he had

. . . alwayes asserted his Majesties just right and royall prerogative as it is now by law established, as is notour to all he hath conversed with, and doeth detest all disobedience, insurrection or rebellion against his Majesty on whatsoever accompt; lyk as he is firmly resolved to adhere to these principalls and constantly to evidence the same in all deuty, submission and humility.

In response to his obsequious request, the council ordered him set at liberty.¹³⁵

For years to come the privy council was to be much occupied in attempting to force conformity on resistant ministers and laymen of the Church of Scotland.

By 1663 the government had deprived of their livings 268 ministers, around twenty-five per cent of the total (compared to ten per cent in England). A disproportionate concentration was in the south, especially in the west where Galloway lost thirty-four of its thirty-seven ministers.¹³⁶

Over the long haul, about a third of all ministers in Scotland accepted deposition rather than conform. North of the Tay, most conformed; in the south, roughly half refused; in the central belt, about a third refused.¹³⁷ To fill the vacant parishes, the government began appointing curates of dubious qualification. Burnet was to write of them,

They were the worst preachers I ever heard: they were ignorant to a reproach: and many of them were openly vicious. They were a disgrace to their orders, and the sacred functions; and were indeed the dreg and refuse of the northern parts.¹³⁸

Parishioners, accustomed to better, resented the curates and absented themselves in droves; many attended outdoor conventicles at which the extruded ministers preached. The government's attempts to suppress the conventicles led to increasing

¹³⁵RPC, Third Series, 1:282, 291.

¹³⁶Brown, *Kingdom*, 151; the number of deprived ministers might have been closer to 400.

¹³⁷Cowan, *Covenanters*, 53-5.

¹³⁸Burnet, *Own Time*, 1:284; compare Crichton, *Blackader*, 100-102; Wodrow, *History*, 1:331-5.

conflict, sometimes armed, as Scotsmen more devoted to Christ than to their king began to defend themselves against what they considered an unlawful assertion of secular power in the sacred realm.

Against what he saw as the combination of religious and civil tyranny in Scotland, James Stewart, son of Kirkfield, was to employ himself in litigation, in writing, in collaboration in insurrections, and, after the Glorious Revolution, in legislation aimed at settling religious affairs in Scotland along lines more consistent with Presbyterian understandings of the relationship of church and state. This work was to begin with his defense of his father, Kirkfield.¹³⁹

Kirkfield's second imprisonment was ordered in late September 1665, initially on charges that he continued hostile to the bishops' authority.¹⁴⁰ We know of only a few events in his ordeal until his release in 1670. On 21 November 1667, Charles issued an order to the privy council to transfer Kirkfield from the Castle at Edinburgh to the tolbooth of Dundee. On the 26th, the council issued orders implementing the king's command. On 11 December, the council forwarded to Lauderdale a petition from Kirkfield asking permission for visits from friends. (On the same day, the council ordered *Naphthali*, published earlier in the year, 'publicly burned'.) On 4 August 1668 the council issued orders for Sir John Chiesely, heretofore imprisoned with Kirkfield in Dundee, to be transferred to the prison at St. Johnstone (Perth); the same order also required that Kirkfield be kept at Dundee. The next day the council received a supplication by Sir James Murray of Skirling that figured into Kirkfield's legal troubles. According to Murray, 'vast sums of money' had 'been exacted and uplifted'

be way of fyne, borrowing or out of forfaulted estates be Sir James Stewart
of Kirkfeild and James Hamiltoun of Dalzell be themselves or their deputts

¹³⁹Story, *Carstares*, 39. Handling such interesting cases was not Stewart's sole activity during his early years as an advocate. In the summer of 1663, for instance, he defended before the Justiciary Court of Edinburgh the M'kenzies of Suddie and several others against charges of assault and stealing peat fuel from their neighbor Donald Whyte in Mullochie; he was partially successful (Scott-Moncrieff, *Records . . . Justiciary Court*, 64-5).

¹⁴⁰Nicoll, *Diary*, 439.

since the second of February, 1646, within the shrefdomes of Lanerik, Air, Dumfreice, Ranfrew and Galloway, whereof no accompt was made to the public. . . .

The council ordered an investigation

to enquire after and take tryeall what fynes, borrowed moneyes or rent out of forfaulted estates hes bein intrometted with be the said Sir James Stewart, and to report ane accompt of their diligence to the commissioners appoynted by his Majestie for examining the said Sir James his accompts betwixt and the first of October nixt.

On 3 September, Robert and Alexander Hamilton, sons of the deceased Hamilton, supplicated the council ‘anent two papers in their said father’s charter-chest, which tend to exonerate Hamilton and Sir James Stewart of Kirkfield of charges of misappropriation of funds’.¹⁴¹ It appears that at some time Kirkfield was transferred to the prison at St. Johnstone as well,¹⁴² for in 1669 (probably early in the year) the Rev. John Blackadder (1615-1686), a covenanting field preacher deprived of his parish for refusing to comply with the Act Rescissory in 1662, sought ‘to visit two of his old and intimate friends, then in prison at St. Johnstone, Sir James Stewart and Sir John Chiesly’, but was detained in Fife by Lady Balcanquhal, who prevailed on him to preach in her house.¹⁴³ Whether Blackadder ever managed to see his old friends, his *Memoirs* do not say, but Kirkfield—if we assume that Blackadder was right in thinking him to have been at St. Johnstone—must have been transferred back to Dundee sometime later, for the next known fact about him is that he was released from there on 14 January 1670. A year later, Charles granted him remission.¹⁴⁴

The Pentland Rising

¹⁴¹*RPC*, Third Series, 2:366-7; 368-9; 379; 375-6; 507; 516; 538-40; Wodrow, *History*, 2:100.

¹⁴²Unless Blackadder was mistaken in thinking that Kirkfield was in the same prison with Chiesely.

¹⁴³Crichton, *Blackader*, 140.

¹⁴⁴*Coltness Collections*, 339-41.

Slightly over three years earlier, in November 1666, an event had occurred that was to have enormous impact on the younger James Stewart's career. Known as the Pentland Rising, it was an armed uprising by Covenanters of the southwest that Stewart and the Rev. James Stirling, minister at Paisley, were to defend in an anonymously released and clandestinely printed book, *Naphtali, Or The Wrestlings of the Church of Scotland For the Kingdom of Christ*.¹⁴⁵

Over the last few years, the government had outlawed all gatherings for religious worship and preaching except those in the established churches and led by conforming ministers, who had submitted to episcopacy, and had made preaching at conventicles punishable by death and attending them punishable by fines, imprisonment, banishment, forfeiture, or death. Faithful Presbyterians, however, refusing to conform, still gathered frequently in private conventicles, sometimes in homes, sometimes outdoors. The inevitable result was that more and more ministers and their hearers were arrested, and as the conventicling continued and even spread, the government responded with ever sterner measures. It brought militias into the southwest, where the resistance was strongest, and gave commanding officers great discretion, to the point of arbitrary fiat, in their treatment of the people.¹⁴⁶ At Sharp's proposal, a standing army of about 3,000 foot and eight troops of horse, commanded by General Thomas Dalrymple of Binns, was brought into the southwest to enforce religious conformity.¹⁴⁷ Finally, on 11 October 1666, the privy council issued yet another proclamation intended to enforce conformity, this time charging

¹⁴⁵ A good modern history of the episode is C. S. Terry's *The Pentland Rising and Rullion Green* (Glasgow, 1905). See also *Naphtali*, 136-46; Wodrow, *History*, 2:17-61; Hewison, *Covenanters*, 2:190-209; Dodds, *Struggle*, 138-79; Douglas, *Light*, 111-16; and Cowan, *Covenanters*, 64-72. Numerous references to it are to be found in *RPC*.

¹⁴⁶ Wodrow, *History*, 2:8-9; compare Crichton, *Blackader*, 107-10.

¹⁴⁷ A particularly poignant picture of such soldiers' treatment of their targets appears in the testimony of the son of John Blackadder, printed in Crichton, *Blackader*, 114-16. One small part deserves quoting here. After breaking furniture, casting it in the fire, and terrorizing Blackadder's wife and children, 'they went to search the house for my father [who was away in Edinburgh seeking a place to which to move his family secretly], running their swords down throw the beds and bedclothes; and among the rest they came where my sister was, then a child, and as yet fast asleep, and with their swords stabbed down throw the bed where she was lying, crying, "Come out, rebell dog." Afterward they continued the search, destroying or confiscating books, food, and livestock and leaving the family destitute.

all masters of families that they cause their domestick servants, greives, chalmerlanes and others intertained by them to give obedience to our lawes forsaid and acts of Councill, and particularly that they frequent the publick worship and ordinances at their oune paroch churches and participat of the sacraments and abstaine from all conventicles and privat meitinges, and that they retaine none in their service bot such as they will be ansuerable for, and, in case of their disobedience, that they remove them out of their service immediatly after intimation hereof by the minister of the paroch; as also that all heretours, landslords and lyfrenters who have granted any tacks or rentalls to their tenents which are yet standing unexpyred cause their tenents and rentallers give sufficient band and surty for obeying the saids acts of Parliament and Councill, and specially for frequenting publick worship and ordinances, as said is, and abstaining from privat meitinges, and, if neid be is, that they raise letters under the signet of our Privy Councill and charge them for that effect upon sex dayes and, in case of disobedience, to denunce them to our horn and registrat the same. . . .

Magistrates, too, were required to ensure the same conformity among all citizens of the towns and cities.¹⁴⁸ The effect was to drive the common people of the southwest to bitter desperation and the conviction that they were the victims of tyranny.

Under such conditions the Pentland Rising took place. Although some of its participants were linked to broader efforts at insurrection throughout the British isles, at least in its timing and start it was anything but a planned rebellion or 'part of a radical scheme' reaching beyond Scotland.¹⁴⁹ Rather, it began with what historians who scoff at providence would call a chance encounter but Covenanters

¹⁴⁸RPC, Third Series, 2:xviii, 202-4; Wodrow, *History*, 2:15-16n.

¹⁴⁹Richard L. Greaves, *Enemies Under His Feet: Radicals and Nonconformists in Britain, 1664-1677* (Stanford, 1990), 64-84, 243. 'Their rising', wrote a historian of the covenanters in the late nineteenth and early twentieth centuries, 'for which they were unprepared, was accidental' (Fleming, *Notes*, 15).

of the time could only interpret as a divine appointment. On Tuesday, 13 November 1666¹⁵⁰ four of them came upon a group of soldiers forcing peasants to winnow the grain of another to sell to pay his ‘church fines’. Troubled but unwilling to intervene, they went on their way. Shortly, however, they received a report that the soldiers ‘had seized the poor old man, brought him to his house, and were going to strip him naked, and set him upon a red hot gridiron upon which bread used to be baked, and were using unheard of torture and barbarities toward him’. The four hurried to the spot and, probably brandishing weapons, begged the soldiers to stop. Two soldiers attacked with swords, but one of the Covenanters fired a pistol, ‘loaden . . . with tobacco-pipe, all the ball they had, and hurt one of the soldiers’. The others yielded, ‘and the poor old man is happily delivered’.¹⁵¹

Realizing that, having gone thus far, they must be considered rebels, the countrymen and others sympathetic to their cause sought to raise an armed force. That they intended to overthrow the government, let alone thought themselves able, is highly improbable;¹⁵² their numbers probably never exceeded 3,000, perhaps not 2,000,¹⁵³ few of whom had any weapons, and even fewer any military training, let alone command experience. Half their number abandoned them during an overnight march from Lanark to Bathgate 26-27 November during which ‘they looked rather

¹⁵⁰Not, as Blackadder thought, the previous day; Crichton, *Blackader*, 121.

¹⁵¹Wodrow, *History*, 2:17-18. Burnet, *Own Time*, 1:428-9, objects that ‘this was a story made only to beget compassion: for, after the insurrection was quashed, the privy council sent some round the country, to examine the violences that had been committed, particularly in the parish where it was given out that this was done. I read the report they made to the council, and all the depositions that the people of the country made before them: but this was not mentioned in any one of them’. But his argument from silence—indeed, a predictable silence, granted the government’s actions over the past two or three years—comes up against the earlier, more credible report of John Blackadder, who was intimate with the Pentland insurgents; Crichton, *Blackader*, 121. See also Kirkton, *History*, 229-31. It is instructive regarding the differences of perspective among faithful Covenanters, by the way, that Blackadder, though one of the most sought-after field preachers and held in high regard even by the most radical, though indeed at the time of the Pentland Rising he had been in Edinburgh and had intended to join the insurgents, and though he ‘hindered none from appearing in arms [at Bothwell Bridge, 22 June 1679] that were clear and in capacity to assist’, nonetheless even at that later time, when the Covenanters were under even more severe persecution than they had suffered prior to the Pentland Rising, ‘was much jumbled in his own mind anent that particular, and used to say, both before and after [Bothwell Bridge], he did not see a call for rising so clear as he could like. Though he alwayes revered the providence of the Rising, and approved honest designs; yet his opinion was, that the Lord called for a testimony by suffering rather than outward deliverance’ (Crichton, *Blackader*, 128, 220, cf. 213).

¹⁵²Pace Honyman, *Survey*, I.2.120.

¹⁵³Crichton, *Blackader*, 124.

like dying men than soldiers going to a battle. . . . weary, faint, half-drowned, half-starved'. They sought to approach Edinburgh to petition the privy council for relief of the southwest from oppression, but the council had directed General Dalrymple to engage them with his army of some 3,000 well-equipped men under experienced command. When the two forces finally met at Rullion Green in the Pentland Hills about seven miles from Edinburgh on Wednesday, 28 November (the eighth anniversary of Stewart's admission to the bar), the rebels' force had dwindled to no more than 'nine hundred weary, spent men',¹⁵⁴ perhaps indeed only about seven hundred.¹⁵⁵ The rebels were routed, some fifty killed and eighty captured,¹⁵⁶ while very few government troops were killed and only several wounded.¹⁵⁷

In the aftermath, the privy council, under Sharp's leadership, assured the king in a letter dated 29 November that it would deal with all the captives as traitors and promised that because

those principles which are pretended as the ground of this rebellion, are so rooted in many several places through the kingdom, and there be such just grounds of apprehensions of dangers, from persons disaffected to your majesty's government, as it is now established by law, as will require more vigorous application, for such an extirpation of it as may secure the peace of the kingdom, and due obedience to the laws: . . . we shall not be wanting in any thing in our power; and your majesty's commands shall be obeyed.¹⁵⁸

The first trial of the captives took place on 4 December; ten were condemned to forfeiture and death by hanging, their heads and right arms then to be severed and disposed of as the lords of privy council saw fit, the sentence carried out three days later. On 10 December, five more were tried, convicted, and received like sentence,

¹⁵⁴Wodrow, *History*, 2:28, 34, 30.

¹⁵⁵Stewart, *Jus Populi*, [6].

¹⁵⁶Terry, *Pentland Rising*, 85n, argues persuasively that these are the most likely estimates given by conflicting sources.

¹⁵⁷The last two paragraphs follow most closely Wodrow's. Compare *Naphtali*, 137-46; *Jus Populi*, [4-8]; Burnet, *Own Time*, 1:427-32; Kirkton, *History*, 229-45.

¹⁵⁸Cited in Wodrow, *History*, 2:34-5.

carried out four days later. Four more met the same fate 19 December, and six more 22 December.¹⁵⁹ Among the last was Hugh McKail, chaplain in the Kirkfield household and tutor to Thomas Stewart's sons James and David,¹⁶⁰ previously sought by authorities, as we have seen, for a sermon in which he likened the king to Pharaoh, the secretary to Haman, and Archbishop Sharp to Judas.

The younger James Stewart was a remote accessory to the Pentland Rising. On 26 November, the rebel forces at Lanark, having renewed the National Covenant and the Solemn League and Covenant, were debating whether to march on toward Edinburgh or to remain where they had some natural advantages. At this crucial juncture a letter arrived from Stewart to two covenanting ministers who accompanied the rebels, John Welsh and Gabriel Sample, advising the rebels 'to come as near Edinburgh as possible, where they would get assistance both of men and other necessaries'. On this mistaken advice the rebels determined to march immediately toward Bathgate and thence to Colinton on the way to Edinburgh. The next day, the rebels sent William Veitch to see Stewart in Edinburgh in hopes of learning more precisely what aid might be available from within the city, but tight security measures there kept Veitch from him, and Veitch eventually rejoined the rebels just before the battle at Rullion Green.¹⁶¹ Neither the content of the letter nor what Stewart might have told Veitch had he reached him can be known; what the incident does indicate is that Stewart had already gained enough reputation among the Covenanters—no doubt assisted by his father's high esteem among them—that the advice in his letter was taken seriously.

That he genuinely embraced the rebels' cause is evidenced by his co-authorship

¹⁵⁹Wodrow, *History*, 2:48-53.

¹⁶⁰*Coltness Collections*, 41.

¹⁶¹Kenneth W. H. Howard, ed., *Marion Veitch: The Memoirs, Life & Times of a Scots Covenanting Family (1639-1732) in Scotland, England and the Americas* (Osssett, W. Yorks, 1992), 73-9; Thomas M'Crie, ed., *Memoirs of Mr. William Veitch, and George Brysson, Written By Themselves* (Edinburgh and London, 1825), 29-30; Mark Napier, *Memorials and Letters Illustrative of the Life and Times of John Graham of Claverhouse, Viscount Dundee*, 3 vols. (Edinburgh and London, 1859), 157-9; Gordon Donaldson, *Scotland: James V-James VII* (Edinburgh, 1994), 374n. Wodrow's *Analecta*, 2:327, includes an ambiguous reference to this letter and other aspects of Stewart's involvement in the affair.

of *Naphtali*, '[o]ne of the most explosive Scottish works of the period'. Though the book was published anonymously,¹⁶² his part in it later became known; it was a passionate defense of the rebels against the charge of treason.¹⁶³ In the summer¹⁶⁴ of that year Bishop Andrew Honyman of Orkney published the first part of his *A Survey of of the insolent and infamous libel, entituled, Naphtali*, a rebuttal, in Edinburgh; the second part, *Survey of Naphtali*, was published in 1669. Stewart would reply to Honyman in *Jus Populi Vindicatum* in 1669, a book that earned Archbishop Sharp's condemnation as 'pestiferous' because it cast 'a greater reproach upon our religion and nation, than any in print' and of which the Earl of Kincardine complained that it was 'a most wicked piece as ever yet has come out, farre beyond Neptali itself'.¹⁶⁵

In light of the apparent failure of the severe tactics to which some Covenanters responded with the Pentland Rising, the government, led by Lauderdale, tried a more conciliatory policy. The principal element was offering indulgence to some dissenting ministers who would meet certain conditions. In June of 1669, the government announced a first indulgence, permitting outed ministers who had lived 'peaceably and orderly' to occupy vacant parishes on condition that they first take an oath to obey the law. Only forty-two out of as many as four hundred Presbyterian ministers accepted the indulgence and were restored to parishes. But the effect on the nearly 90 percent who refused was to harden their resolve. It was also to make clearer in their minds the fundamental contest: whether Christ or the king was to

¹⁶²As late as February, 1671, Sharp thought John Brown of Wamphray had written both *Naphtali* and *Jus Populi*. Sharp, letter to Lauderdale, 2 Feb. 1671, in Osmund Airy, ed., *The Lauderdale Papers*, 3 vols. (Westminster, 1885), 2:213-14, at 213. Omond, *Lord Advocates*, 1:247, citing Steven, *History of the Scottish Church in Rotterdam*, 73, and *Catalogues of Scottish Writers* (Edinburgh, 1833), 41, wrote that Robert MacWard was originally thought to be *Naphtali*'s author. Even Bishop Andrew Honyman of Orkney, who wrote an extensive rebuttal, thought Brown was its author; *Survey*, 1.1:17, 1.2:11, 25.

¹⁶³Stewart would reassert the justice of the Pentland Rising as an act of self-defence in the *Declaration* that he would write, in 1685, justifying the invasion of Scotland by the Earl of Argyll; see the text in Wodrow, *History*, 4:286-90.

¹⁶⁴A. Von Doren Honeyman, *The Honeyman Family in Scotland and America* (Plainfield, NJ: 1909), 20-43, cited in Robert v. Friedeburg, 'From Collective Representation to the Right to Individual Defence: James Steuart's *Jus Populi Vindicatum* and the Use of Johannes Althusius' *Politica* in Restoration Scotland', *History of European Ideas* 24(1) (1998), 19-42, at 19.

¹⁶⁵*Lauderdale Papers*, 2:213-14, at 213; Greaves, *Enemies*, 187.

rule in ecclesiastical affairs. The indulgence was, in the words of Law Mathieson, ‘the introduction of a wedge of Erastian Presbyterianism into the heart of an Episcopal Church’. Robert MacWard and James Renwick both recognized the policy as ‘*divide et impera*’.¹⁶⁶ The history of the ensuing conflict will occupy us, though briefly, in chapter six, but first we must turn our attention to Stewart’s first two literary endeavours, *Naphtali* and *Jus Populi*.

¹⁶⁶Douglas, *Light*, 128; Donaldson, *Scotland*, 369.

Chapter 3

Political Philosophy with a Covenantal Theological Foundation: Justification of Resistance in *Naphtali*

Stewart and Stirling's anonymously published *Naphtali, Or The Wrestlings of the Church of Scotland For the Kingdom of Christ* was an unsophisticated yet highly effective and inflammatory telling of what the radical Covenanters considered the tyrannical persecution of faithful Presbyterians in the first six years of the Restoration. More importantly, it included a defence, grounded in Scripture, history, and natural law, of the Pentland Rising.

The original edition, in 386 pages, bore the date 1667 on its title page but listed neither publisher nor place of publication. It probably was published in the Netherlands (where Stewart seems to have been living,¹ probably having fled Scotland under suspicion of his part in the Rising), and if there probably in Rotterdam.² In 1668 it was translated into Dutch by James Borstius and published

¹Douglas, *Light*, 120.

²H. G. Aldis, *A List of Books Printed in Scotland Before 1700 Including those Printed Furth of the Realm for Scottish Booksellers*, 2d ed. (Edinburgh, 1970), Nos. 1838.1 and 2206.7, lists *Naphtali*'s 1667 and 1680 editions, respectively, both as [Holland?], and Alastair J. Mann, *The Scottish Book Trade 1500-1720: Print Commerce and Print Control in Early Modern Scotland: An historiographical survey of the early modern book in Scotland* (East Linton, 2000) 85, 172, 181, and 255 suggests Rotterdam, but neither offers hard evidence. (I am grateful to Roger Mason for these

at Rotterdam under the title *Historie der Kerken Van Schotland tot het jaar 1667*.³

On 10 December 1667 Sir Robert Murray wrote to Lauderdale:

There is a Damned book come hither from beyond sea called Naphtali, or the Wrestlings of the Church of Scotland, &c. nameless. A copy came to my hands, & I have given it to the prim. [Sharp] to look over. I mean to send it to you in the next Blackbox. . . . I think I shall speak of it next council day to have it damned, &c. Yet I will preserve my copy to send if I can. It hath all the Traytors speeches on the scaffold here, & in a word all that a Toung set on fire by hell can say of things & persones hereaway.⁴

The next day the ‘militant work’⁵ was condemned as seditious and ordered burned.⁶

On 21 July 1683 the University of Oxford, in a decree starkly contrasting the doctrine of passive submission to absolute royal authority then dominant among the Anglican hierarchy with twenty-seven enumerated propositions variously embraced by resistance theorists. It declared *Naphtali*, along with George Buchanan’s *De Jure Regni*,⁷ Knox’s *History*, David Calderwood’s *Altare Damascenum*,⁸ Rutherford’s *Lex, Rex*, Brown’s *Apologeticall Relation and History of the Indulgence*,⁹ and the

two references.) Greaves, *Enemies*, 186, cites in favour of a Netherlands imprint, in addition to *Lauderdale Papers*, 2:88 (which only asserts that the book came ‘from beyond sea’), ‘British Library, Additional Manuscripts, 23,128, fol. 217r’, which I have not been able to consult. Although its printing in Edinburgh is unlikely, some authorities (e.g., D. C. Lachman, ‘Stewart, James’, in *DSCHT*, 794) favor that. The *National Union Catalog of Pre-1956 Imprints*, under [Steuart, Sir James, 1635-1715], indicates that the copy in the William Andrews Clark Memorial Library at the University of California at Los Angeles is catalogued as published in [Edinburgh], and a copy in the Hay Fleming Reference Library had ‘Edinburgh’ handwritten (by Fleming?) on the title page. I have found no compelling evidence about the place of publication, but Rotterdam is more likely than Edinburgh.

³Story, *Carstares*, 24; Mann, *Book Trade*, 85. It was reprinted in English in 1680 and 1693, apparently in Edinburgh; in Glasgow and Crawford in 1721; and in Dumfries in 1845; *National Union Catalog* under [Steuart, Sir James, 1635-1715].

⁴*Lauderdale Papers*, 2:86-88, at 88.

⁵Greaves, *Enemies*, 187.

⁶*RPC*, Third Series, 2:375-6; cf. Greaves, *Enemies*, 187; Mann, *Book Trade*, 255.

⁷George Buchanan, *De Jure Regni apud Scotos* (Edinburgh, 1579), trans. Robert MacFarlan, 1799, reprint ed., bound with Rutherford’s *Lex, Rex* (Harrisonburg, VA, 1982).

⁸David Calderwood, *The Altar of Damascus or the Pattern of the English Hierarchie, And Church-Policie Obruded upon the Church of Scotland* (n.p., 1621); enlarged Latin edition under pseudonym Didoclavius, *Altare Damascenum* (Amsterdam, 1623; reissued under Calderwood’s name, Leiden, 1708).

⁹[Brown, John, of Wamphray], *The History of the Indulgence Shewing its Rise, Conveyance, Progress and Acceptance: Together with a Demonstration of the Unlawfulness thereof, And an Answer to contrary Objections: As also a Vindication of such, as scruple to hear the Indulged* (n.p., 1678; [Rotterdam], 1680).

Solemne League and Covenant itself (among others) ‘contrary to scripture, councils, fathers, &c.’. It forbade its teachers and scholars to read them, ordered the books ‘burned, and appoint[ed] all [the university’s] readers, tutors, fellows, &c. to teach the “doctrine of absolute submission to the king”’.¹⁰

Such books were to plague the Restoration government. One defender of episcopacy wrote, ‘*Naphtali* and *Jus Populi Vindicatum* were, in King Charles II. his time the Presbyterian pocket-books; and it was then observed that the common people read them, especially the former, as much or more than the Bible’.¹¹ D. Hay Fleming reports that

A learned English author (Dr. Hicks) of those times tells us, “That he knew an officer of his Majesty’s forces, who, meeting with a country fellow going to a field-conventicle, examined and searched him, and in one pocket found *Naphtali*, and in the other a pocket pistol charged with two bullets: the doctrine (as the gentleman ingeniously said) in one pocket, and the use or application in the other.” The author adds, “That as he was credibly informed, that pernicious book was found in the pockets of most of those who were killed or taken at Bothwel Bridge”.¹²

C. K. Sharpe, editor of Kirkton’s *History* and, as his notes reveal, a vicious critic of the Covenanters, opined that ‘*Naphtali*, *Jus Populi Vindicatum*, and . . . *Hind let Loose* . . . were in almost as much esteem with the presbyterians as their Bibles’.¹³

Naphtali’s main title is the name of one of the twelve patriarchs of Israel, and, though the editor of the *Coltness Collections* thought it absurd,¹⁴ the whole title rests upon Biblical allusions creatively applied to Scotland’s Covenanters. The

¹⁰Wodrow, *History*, 3:505-7 (text and note).

¹¹J. F. S. Gordon, ed., *Ecclesiastical Chronicle for Scotland*, 4 vols.; vols. I/II: *Scotchchronicon*, vol. III: *Monasticon*, vol. IV: *Journal & Appendix* (London, 1875), 2:21, cited in Fleming, *Notes*, 42 as ‘Gordon’s *Scotchchronicon*, vol. 2, p. 21’.

¹²Fleming, *Notes*, 42.

¹³Kirkton, *History*, 450n.

¹⁴James Dennistoun, ‘editor of *The Coltness Collections*, but no admirer of the Second Reformation’ (Fleming, *Notes*, 32), questioning whether Stewart was a co-author (see footnote 21 below), called it ‘one of those virulent diatribes, in which cant and insubordination were glossed over by palpable falsehood, and reiterated with feeble prolixity. Under the absurd title of *Naphtali* . . . This dull book . . .’ (*Coltness Collections*, 366).

name in Hebrew means ‘my wrestling’, and when Rachel, Jacob’s favoured wife, gave birth to Naphtali, she said, ‘With great wrestlings I have wrestled with my sister [his other wife], and I have prevailed’ (Genesis 30:8)—hence *The Wrestlings of the Church of Scotland*. Later, when Jacob pronounced blessings on his sons before he died, he called Naphtali ‘a hind let loose:¹⁵ he giveth goodly words’ (Genesis 49:21)—such as Stewart and Stirling intended to give in their book. Still later, when Moses pronounced blessings upon the twelve tribes, he said, ‘O Naphtali, satisfied with favour, and full with the blessing of the LORD: possess thou the west and the south’ (Deuteronomy 33:23)—the parts of Scotland most faithful to the covenants and involved in the Pentland Rising. In the time of the judges Naphtali was consistently among the faithful and courageous tribes in subduing its enemies (Judges 5:18; 6:35; 7:23)—and so the Covenanters, particularly at Pentland, thought themselves faithful to the Lord despite the apostasy of their neighbours. Thus the title reflects the Covenanters’ love for and intimate familiarity with the Old Testament. Answering a charge that *Naphtali* gave not ‘goodly words’ but ‘evil treasures of wickedness’, Stewart wrote, ‘The Book answered its name: for it was *a hinde let loose and gave goodly words*, for God, his Cause, and People; and it is not to give goodly words, to flatter Princes or Prelates’.¹⁶

Structure of *Naphtali*

Naphtali comprised three principal parts: (a) an eighty-page introduction including an epistle to the reader and copies of several documents important to Covenanter history; (b) a 191-page history, separately titled *A True and short Deduction Of the Wrestlings of the Church of Scotland*, of the government’s persecution of Scottish Presbyterians since the Restoration, focusing on and

¹⁵Alexander Shields [and James Renwick?] picked up this phrase for *A Hind Let Loose, Or An Historical Representation of the Testimonies, Of the Church of Scotland, for the Interest of Christ* (1687), a work that continued in *Naphtali*’s tradition of combining history, hagiography, and political argument to justified resistance to the Restoration Stuart regimes.

¹⁶*Jus Populi*, 448.

including a legal and ethical justification of the Pentland Rising; and (c) 105 pages of the scaffold testimonies of men executed for their parts in the Rising, plus particular accounts of the death of Hugh McKail and of the oppressions suffered in Galloway and Nithsdale, followed by an eight-page postscript.

Authorship of *Naphtali*

Dennistoun, curiously enough, though he did not directly deny that Stewart wrote any part of *Naphtali*, wrote, ‘This dull book, which in 1667 was publicly burned, has been attributed in part to Mr Steuart, but is generally supposed to have been written by Mr James Stirling, minister at Paisley’. But he offered no evidence, and he made two unwarranted assumptions. First, he seems to have thought *Naphtali* much inferior to *Jus Populi* and therefore supposed that the two could not have had the same author. Second, he seems to have desired to paint Stewart in a less radical light than Stewart’s full history warrants.¹⁷ There seems, then, no good reason to credit Dennistoun’s opinion on the authorship of *Naphtali*. David M. Walker, perhaps following Dennistoun, mistakenly attributes the whole of *Naphtali* to Stirling but rightly says that Stewart wrote *Jus Populi*.¹⁸ *A Review of a Paper lately written against the Covenants* (1727) attributed *Naphtali* to Robert MacWard.¹⁹ Honyman mistakenly thought all of *Naphtali* had been written by John Brown of Wamphray, apparently simply because it espoused views so similar to Brown’s in *Apologeticall Relation*, but there is no evidence for that.

According to Wodrow, who knew Stewart personally, Stewart wrote ‘the reasoning part’, while Stirling²⁰ wrote ‘the historical part’.²¹ It is unclear precisely what this entailed in Wodrow’s mind. It might be thought to imply that Stewart

¹⁷*Coltness Collections*, 365-6.

¹⁸Walker, *Scottish Jurists*, 182.

¹⁹Fleming, *Notes*, 16n.

²⁰On Stirling’s life, see Fleming, *Notes*, 16, 30; Wodrow, *Analecta*, 3:23-4.

²¹Wodrow, *History*, 2:100. Other sources also assert Stewart’s co-authorship of *Naphtali*: Wodrow, *History*, 4:232n (a footnote provided by editor Robert Burns); Napier, *Graham of Claverhouse*, 1:244, 3:476n; Donaldson, *Scotland*, 374n; Douglas, *Light*, 120; Peter Brown, *Historical Sketches of Cambusnethan*, 137, cited in Fleming, *Notes*, 19n.

wrote nothing more than the justification of the Pentland Rising (147-56). But stylistic similarity between the rest of the *True and short Deduction* and *Jus Populi*, which though published anonymously is known to have been by Stewart, in addition to the considerations below, makes that interpretation unlikely.

David Hay Fleming asserted in a review that “‘Naphtali’ proper was written by . . . Stirling, and the lengthy preface was by Stewart’.²² He wrote elsewhere that Stirling ‘wrote *Naphtali* proper, or “A True and Short Deduction . . .” extending from page 79 to page 243’ [of the 1680 edition he used] and that Stewart ‘wrote the preface . . ., occupying from the 3rd to the 46th page’, and in footnotes he cited (p. 16, note 2) ‘Wodrow’s *History* [1828-1829 ed.], vol. 2, p. 100; Scott’s *Fasti.*, vol. 2, p. 200; and *Analecta*, vol. 3, pp. 23, 24’ and (p. 19, note 3) ‘Wodrow’s *History*, vol. 2, p. 100; and *Analecta*, vol. 3, pp. 23, 24’.²³ However, Scott’s *Fasti*²⁴ neither is a primary source nor provides significant evidence for the claim, and what Fleming cites from Wodrow not only fails to support but appears instead to directly contradict Fleming, the younger Stirling’s testimony being that his uncle ‘penned the first part of Nephthali [sic] He wrote the Church part of it, and Mr James [Stewart]. . . the Lau part of it’.²⁵

Another interpretation of Wodrow’s ambiguous words seems more likely: that Stirling wrote the epistle to the reader, the explanations of the significance of both the *Solemn Acknowledgement* and Wood’s testimony, and (perhaps) the postscript, and probably also gathered the scaffold testimonies and wrote the accounts of McKail’s execution and the oppression of Galloway and Nithsdale, while Stewart wrote the whole of the *True and short Deduction*, in which legal argument figures more prominently than elsewhere. Some other evidence of which Wodrow was

²²Fleming, ‘Archbishop Leighton’, a review of D. Butler, *The Life and Letters of Robert Leighton, Restoration Bishop of Dunblane and Archbishop of Glasgow* (London: Hodder & Stoughton, 1903), in Fleming, *Reviews*, 375-8, at 377. MacPherson, *Covenanters*, 45, 130, similarly said that Stewart wrote the ‘introduction’ to *Naphtali*, but he offered no evidence.

²³Fleming, *Notes*, 16, 19.

²⁴Hew Scott, *et al.*, ed., *Fasti Ecclesiae Scoticae* (Edinburgh, 1866-).

²⁵Wodrow, *Analecta*, 3:23. Despite his mistaken theory of authorship, Fleming does provide a succinct summary of the contents of *Naphtali* (*Notes*, 16-17).

aware points in this direction. Stirling's nephew's statement that his uncle wrote 'the first part', i.e., 'the Church part', and Stewart 'the Lau part'²⁶ naturally reflects the two men's vocations and so implies the division just proposed. Neither man, of course, could take credit for the covenants and other historical documents or the scaffold testimonies. The comment on authorship by Thomson in *Cloud of Witnesses*, of which *Naphtali* was the precursor, supports this: 'Its first part was from the pen of . . . Stewart It is written with a fiery eloquence, and is remarkable for its happy use of Scripture, and the ability with which it shows the unscriptural nature of Prelacy, and defines the respective provinces of Church and State. The second part is the larger portion of the volume, and is mainly narrative. It was written, says Wodrow, by . . . Stirling'.²⁷ Here it is clear, from the description of its contents, that (ignoring the preface) 'first part' designates the *True and short Deduction*, which Stirling's nephew called 'the Lau part', while 'second part' designates the speeches and testimonies that conclude the work.

One other argument for this division arises from how Stewart, in *Jus Populi*, responded to Bishop Andrew Honyman, *Naphtali*'s critic in the anonymously published *Survey of Naphtali*. Stewart devoted nearly the whole of his roughly 500 pages to rebutting the *Survey*'s interaction with the *True and short Deduction* and almost none to the rest. Further, occasional comments seem to imply that he wrote that portion. Thus, for example, in discussing Honyman's misrepresentations of *Naphtali* (more precisely, the *True and short Deduction*), he argued,

May not a man disallow that any part of the people . . . may take up armes against the Supreame, and violently resist him, whensoever they think that the lawes are unjust, or the punishment executed unjust (*as I verily think the Author of Naphtali will* [emphasis added]) and yet say, That when strong and inevitable necessity urgeth, in order to necessary and just ends, people

²⁶Wodrow, *Analecta*, 3:23.

²⁷John Henderson Thomson, *A Cloud of Witnesses* (n.p., 1714; new ed., 1871) 243.

may . . . be guilty of the breach of no standing law against the same, seeing
all know that *salus populi est suprema lex . . .*.²⁸

Reading the parenthetical assertion in the larger context, it is difficult to resist the sense that Stewart knew what the author of *Naphtali*—more precisely, of the *True and short Deduction*, the portion then under discussion—will disallow (not what he *did* disallow in the already published work) precisely because Stewart was that author. Similarly, Stewart called *Naphtali*'s (again, more precisely, the *True and short Deduction*'s) discussion of Phineas an 'obiter cast in, rather to prevent an objection' than as a main part of the argument.²⁹ How did he know that? (If the judgment below that his discussion of Phineas is actually an important part of his argument is correct, it would not appear that he inferred it from reading *Naphtali*.) Perhaps he was just guessing. More likely he wrote it. More explicitly, in arguing that Honyman had built a straw man, attributed it to *Naphtali*, and attacked it, Stewart wrote, 'one would think that he behoved to have some clear ground to walk upon in asserting this of *us*'³⁰ (emphasis added). Similarly, Stewart accused Honyman of erecting a straw man and wrote, 'And this particular will abundantly discover to such as look the place [in *Naphtali*, p. 21 of the *True and short Deduction*] and consider what *we* [emphasis added] have said'.³¹ While it is possible that by *us* and *we* he meant a party, the context in both instances makes it more natural to take them as editorial plurals denoting himself as the author of that part of *Naphtali*. Finally, it is hard to resist the impression that Stewart envisioned the impact of *Jus Populi* on Honyman when he responded to a personal attack in the preface to Honyman's *Survey*:

Yea [Honyman] sayes, 'There is a greater difficulty in dealing with this Man
of no forehead (or if he have any, it is of the hardest mettall) of little

²⁸ *Jus Populi*, 17-18.

²⁹ *Jus Populi*, 409.

³⁰ *Jus Populi*, 366.

³¹ *Jus Populi*, 461. Thirteen more times on the same page, and three times on the next, he uses *we* or *us* or *our* in a like manner.

conscience, but of infinite loquacity, and of a most unbridled tongue, which is a treasure of all revileing language.’ Yet he finds him *and will possibly yet more finde him* [emphasis added], a man whose fore head is of harder mettall, (though not in impudency & shamelesse audacity) then he is able to stand against; and a man of more conscience then to contradict himself either in words or deeds, (as this *vertumnus*, a man of a debauched conscience, doth) a man . . . of more solid reason, and nervous succinct expressions, then he was able to comprehend: And who so shall compare the two together shall finde he hath put the saddle on the wrong horse.³²

The implication is that the author of *Naphtali* is ready to publish his answer to Honyman, and he anticipates a comparison not only between the *Survey* and *Naphtali* but also between the *Survey* and its answer. In short, *Jus Populi* reads as if written to defend not simply principles its author holds in common with someone else but to defend *himself*.³³

The present work assumes this division, tentative as it is. Because our focus is on Stewart’s political thought, this means dealing only with the *True and short Deduction*. Not only is this suitable to the focus on Stewart, but also it is justifiable because this part carries the weight of *Naphtali*’s argument.

***Naphtali*’s Fundamental Arguments:**

The Duty of Covenant and the Right of Self-Defence

The *True and short Deduction* constitutes the heart—indeed almost the whole—of the legal/political argument of *Naphtali*. It displays little awareness of the published British and continental debates over political philosophy and is of only fair literary quality, though *Naphtali* is, as Fleming called it, ‘a work of great vigour and

³²*Jus Populi*, 455 (misnumbered 255).

³³The present writer, at least, repeatedly gets the strong impression while reading *Jus Populi*’s discussion of *Naphtali* (i.e., specifically, the *True and short Deduction*) that Stewart is writing about his own previous words. Two other good examples occur on pp. 173-4, 207.

ability'.³⁴ One criticism by Honyman was that it evidenced no awareness of continental Calvinist thought on the subject—a slight exaggeration. The nearly two hundred pages of the *True and short Deduction* contain very few references or even allusions to any writings aside from the Bible, the acts of the Scottish parliament, Buchanan's *De Jure Regni*, Rutherford's *Lex, Rex*, Brown's *Apologeticall Relation*, and the documents reproduced in the opening pages of *Naphtali*—and even to these, aside from the first two and the last, references are infrequent. It seems likely that these characteristics arose not because of what Friedeburg calls 'utter disregard for learning'³⁵ but because, unlike *Jus Populi*, the work was composed rapidly and with a popular rather than scholarly audience in mind.

The argument is, by comparison with many similar tracts of the time, relatively simple. It rests in part on an appeal to Scotland's covenantal obligations to God as understood in light of Scripture and history, and in part on the biblical, natural-law, and civil-law principle of self-defence.

First, Scotland had covenanted with God for the defence of Presbyterianism against prelacy and popery. This covenant was embodied at least in the 1560 Confession of Faith; ten less prominent bands, the first of them unwritten, stretching between 1556 and 1572,³⁶ several of which, as we shall see below, Stewart himself discussed in *Naphtali*; the '1581 band, known variously as the Second Confession of Faith, the King's Confession, and the Negative Confession', which was 'the major link between the older covenanting or banding tradition and the National Covenant of 1638, of which document it formed the first section';³⁷ and a series of bands sworn at the general assembly and at several provincial, presbyterial, and even parochial meetings in 1596.³⁸

³⁴Fleming, *Notes*, 17.

³⁵Friedeburg, 'Collective Representation', 25.

³⁶Richard L. Greaves, *Theology and Revolution in the Scottish Reformation: Studies in the Thought of John Knox* (Grand Rapids, 1980), 121.

³⁷David George Mullan, *Scottish Puritanism 1590-1638* (Oxford: 2000), 181.

³⁸Mullan, *Puritanism*, 189-92; James Melville, *The Autobiography and Diary of Mr. James Melville*, ed. Robert Pitcairn (Edinburgh, 1842), 346-67. See James B. Torrance, 'The Covenant Concept in Scottish Theology and Politics', in Daniel J. Elazar and John Kincaid, ed., *The Covenant Connection: From Federal Theology to Modern Federalism* (Lanham, MD, 2000), 143-62

This covenant obligated all Scots, including the monarch. Its obligations could not be set aside at human whim but continued for all time. The continuing obligation of the National Covenant and the Solemn League and Covenant, despite their repudiation by later generations, was, in the Scottish Presbyterians' minds, an implication of their covenant (federal) theology, which reflected Biblical teaching on the transgenerational nature of divine covenants. Indeed, the three primordial covenants endured from creation on—the covenants of works (between God and man, promising life on condition of perfect obedience, and expressed in all civil compacts),³⁹ of grace (between God and the human race, promising salvation on the sole condition of faith), and of redemption (in which God the Father promised the Son a people for His inheritance on condition that the Son would pay the penalty for their sins by His death).⁴⁰ Scottish precursors to the great national covenants, complete with the notion of their binding forever all who took them, can be seen in bonds of maintenance and manrent, 'almost all made for life or in perpetuity'.⁴¹

It followed that 'all Ranks . . . from the King even to the meanest . . . are still bound and devoted to . . . Our Covenanted God', despite the fact that the nation, especially its leaders, had 'Rebelled against God, by breaking the Holy Covenant'.⁴² Similarly, as Coffey points out with reference to Rutherford,

By arguing for the permanent validity of Israel's national covenant, Rutherford [in *Lex, Rex,*] committed the magistrate to preserving true religion (that is, Reformed Protestantism) in all its purity. The slightest pollution of it was intolerable apostasy to be corrected by Old Testament-style revolts and purges.⁴³

at 144-5; John Brims, 'The Covenanting Tradition and Scottish Radicalism in the 1790s', in Terry Brotherstone, ed., *Covenant, Charter, and Party: Traditions of Revolt and Protest in Modern Scottish History* (Aberdeen, 1989), 50-62.

³⁹See Leonard J. Trinterud, 'The Origins of Puritanism', *Church History* 20 [1951]: 48, cited in Mullan, *Puritanism*, 185.

⁴⁰Mullan, *Puritanism*, 186-7.

⁴¹Jenny Wormald, *Court, Kirk, and Community: Scotland 1470-1625* (Edinburgh, 1981), 30.

⁴²*Naphtali*, 1-2.

⁴³Coffey, *Rutherford*, 157. See also John D. Ford, 'Lex, rex iusto posita: Samuel Rutherford on the Origins of Government', in Roger A. Mason, ed., *Scots and Britons: Scottish Political Thought and the Union of 1603* (Cambridge, 1994), 262-90, and Ian Michael Smart, 'The Political Ideas of

Scots who acted to restore fidelity to the covenant, therefore, were fulfilling their duty to God, even if that required resisting rebellious kings.

Second, the tyrannous oppression of faithful Scots by the king's servants justified resort to armed resistance in defence of life and limb.⁴⁴ But this relatively simple argument was complicated by, among lesser things, the interweaving of appeals to history, constitutional and statutory law, providence, religious loyalty, and—from time to time—pity for those who suffered grave injury to life, limb, liberty, or property.

A Covenanter's Historical Perspective

Stewart began the *True and short Deduction* by surveying, in a manner heavily influenced by what might be called the Melvillian view,⁴⁵ the history of the church in Scotland,⁴⁶ mining it for examples of the actions he sought to justify. They were not difficult to find. Using a historical survey as a starting point for theoretical argument was the common methodology of leading French constitutional writers like Estienne Pasquier (1529-1615), Bernard de Girard du Haillan (c. 1535-1610), and, most important, the early Jean Bodin (1529/30-1596) a century before. Such writers, according to Skinner, 'repudiated the immediate relevance of Roman law, and turned instead to studying the history of the ancient customs and constitutions of France'.⁴⁷ Stewart's tactic also had precedent in the writings of some of the

the Scottish Covenanters. 1638-88', *History of Political Thought* 1(2) (June, 1980): 167-93, at 167-75.

⁴⁴Wodrow's *History* and the thousands of references in the *Records of the Privy Council* remain the most thorough sources for documentation of the widespread oppression of Scottish Presbyterians during the Stuart Restoration period of the 1660s through 1680s.

⁴⁵The Melvillian view was promoted especially by James Melville, nephew of a leading architect of Presbyterian polity, Andrew Melville, in his *Autobiography*, and by such early seventeenth-century church histories as David Calderwood's *The True History of the Church of Scotland*, 8 vols., ed. T. Thomson (Edinburgh: Wodrow Society, 1842-1849). The view emphasized—probably exaggerated, although by how much is open to debate—the Scottish Reformers' support for ministerial parity and opposition to state control over the church. For further on it, see Roger A. Mason, 'George Buchanan, James VI and the presbyterians' (henceforth 'Buchanan . . . and the presbyterians'), in Mason, *Scots and Britons*, 112-37; Alan R. MacDonald, *The Jacobean Kirk, 1567-1625: Sovereignty, Polity and Liturgy* (Aldershot, 1998); Mullan, *Episcopacy*.

⁴⁶*Naphtali*, 6-45.

⁴⁷Quentin Skinner, *The Foundations of Modern Political Thought*, 2 vols. (Cambridge, 1978), 2:270, 284, 297-8n.

Huguenots, like François Hotman (1524-1590), who in *Francogallia*, originally composed in the late 1560s though not published until 1573, sought to show ‘how a humanist investigation of the French ancient constitution could be turned into a revolutionary ideology in the service of the Huguenot cause’.⁴⁸ As Stewart and most Presbyterians⁴⁹ then saw it, the church had suffered centuries of darkness under Roman Catholic domination before God in His mercy had reformed it, beginning in the late-fifteenth century and climaxing under the leadership of John Knox (c. 1514-1572) in the mid-sixteenth. Before that Reformation, ‘the Popes usurped Tyranny, and the Prid, Idleness and Domination of the wicked Prelates, were cheefly the Authors and Maintainers’ of ‘the Corruptions, Errors, Idolatry, and Superstitions of Popery’ in Scotland (6-7). The connection of prelacy, or hierarchy, to popery was so automatic among early seventeenth-century Presbyterian ministers that the modern historian of Scottish episcopacy Mullan can write of ‘Popish (was there any other kind in the presbyterian view of the world?) hierarchy . . .’.⁵⁰ This unvarying association, in the Presbyterians’ minds, of prelacy and popery is probably an important underpinning of the impossibility of Presbyterianism’s compromising with prelacy.⁵¹ Honyman, *Naphtali*’s chief critic, was to exemplify this point, arguing that prelatic episcopacy and presbytery could coexist⁵²—a view reasonable from his perspective as a bishop but not from that of his Presbyterian contemporaries, for whom Presbyterianism meant specifically presbyterial parity.

Stewart’s immediate reference to and blaming of the prelates was no accident. Presbyterians believed prelacy was inherently more susceptible to corruption than clerical parity, not only because it tempted to pride and (often at the expense of lower clergy)⁵³ self-aggrandizement but also because, where appointment was by

⁴⁸Skinner, *Foundations*, 2:304, 310.

⁴⁹The Presbyterians were not alone in this judgment. Even Honyman agreed (*Survey*, 1.2:118-19).

⁵⁰Mullan, *Episcopacy*, 106.

⁵¹Mullan, *Puritanism*, 79-80.

⁵²Honyman, *Survey*, 2:133, 192-4, 207.

⁵³Donaldson, *Scotland*, 150-1; James Kirk, *Patterns of Reform: Continuity and Change in the Reformation Kirk* (Edinburgh, 1989), 168-73.

royal prerogative, it necessarily politicized the church. (Stewart was to argue thus in a colourful *ad hominem* attack on the anonymous Honyman in *Jus Populi*: ‘Tyranny is . . . the chief poynt of his Religion. . . . But many know at whose girdle his faith and his Religion hangs’.⁵⁴) Calderwood’s estimate was widely shared by Presbyterians throughout Scotland: ‘That this transcendent Hierarchie of Lordly and lording Prelates, brought in upon the Kirk of Christ without precept or examples from himselfe, would proue at last the ruine of Religion’.⁵⁵ Honyman would complain against *Naphtali*’s characterization of the episcopate as politicized, writing, ‘Which of the principles whereupon Episcopacy stands, leads to prophanity, let him tell us if he can’ and ‘What meddling or influence have the Bishops upon the Kings Government?’⁵⁶ The latter question amazes anyone familiar with Archbishop Sharp’s career on the privy council and the Court of High Commission. The former might be answered in part by reference to James VI’s attitude, who ‘saw clearly that crown supremacy could most readily be exercised through the bishops; thus crown supremacy and episcopal government stood on one side, against parity, the General Assembly and ecclesiastical independence (which might mean domination) on the other’.⁵⁷ Mullan summarizes the political advantages of episcopacy to the crown neatly: appointment of bishops ‘expanded the power of patrons by which they controlled the hierarchical social structure of Scotland’; bishops in parliament became ‘compliant . . . servants of their secular lords’; they ‘would reward their patrons with generous pensions and tacks’; and a church under ‘crown-appointed bishops . . . might well . . . be thoroughly obsequious’.⁵⁸ Each of these political advantages to secular powers was a spiritual disadvantage to the church. As Mullan wrote, citing George Gledstanes, bishop of

⁵⁴ *Jus Populi*, 313.

⁵⁵ David Calderwood, *The Pastor and the Prelate, or Reformation and Conformitie shortly Compared by the Word of God, By Antiquitie and the Proceedings of the Ancient Kirk . . .*, n.p., 1628; facsimile edition on CD-ROM in *The Puritan Bookshelf*, vol. 4), 3. See also Alexander Leighton, *An Appeal To the Parliament; or Sions Plea against Prelacie* (Amsterdame, 1628).

⁵⁶ Honyman, *Survey*, II.228-9.

⁵⁷ *Source Book*, 3:19

⁵⁸ Mullan, *Episcopacy*, 34-5.

Caithness and later archbishop of St. Andrews, James ‘could depend on [the bishops] because . . . “there is none whose standing is so slipperie”. If they fell from royal favour there was no safety net to catch them’. Indeed, ‘James wanted his bishops . . . utterly dependent upon his own pleasure’.⁵⁹ It is telling that the best Honyman could write against the charge that Erastian episcopacy made bishops political dependents of the crown was, ‘they do no more depend so much upon him then all Bishops and Ministers should upon a christian Prince’.⁶⁰ It was also commonly accepted—and is widely affirmed by modern historians—that the clergy, on the eve of the Reformation, had in general been dreadfully corrupt.⁶¹

The prelates, even had they wished to reform the morals of the clergy, could hardly have succeeded because their own worldly entanglements so distracted them. But they were perceived as not only incapable but also unwilling to reform the church, themselves equally corrupt with the generality of the clergy.⁶² Hence the leaders of Scotland’s Reformation, especially John Knox and Andrew Melville, had insisted that there be ‘no Officer in God’s House, Superior to a Preaching Minister’ (7).⁶³ This claim was important to Stewart’s argument that the restoration of episcopacy violated Scotland’s covenants. It remains a topic of some debate, and various modern writers have argued that the office of superintendent was nearly that of bishop under another name. However, their arguments highlight and exaggerate likenesses and ignore distinctions. Stewart’s claim probably was true, and certainly almost all Presbyterians in the mid- to late-seventeenth century believed it.⁶⁴ Like

⁵⁹Mullan, *Episcopacy*, 123, 117.

⁶⁰Honyman, *Survey*, 2:230. See footnote 153.

⁶¹P. Hume Brown, *Scotland Before 1700 from Contemporary Documents* (Edinburgh, 1893), 113-83 at 174. See also Mullan, *Episcopacy*, 2-6; Gordon Donaldson, *The Scottish Reformation* (Cambridge, 1960), chapter 1, and *Scotland: Church and Nation Through Sixteen Centuries*, 2d ed. (Edinburgh, 1972), 38-40, 47-48; Thomas M’Crie, *The Life of John Knox*, 2d ed., 2 vols. (Edinburgh, 1813), 1:14-19; Thomas McCrie, *The Story of the Scottish Church from the Reformation to the Disruption* (n.p., 1874; rep. ed., Glasgow, n.d.), 4, 6; J. Kirk, ‘Reformation, Scottish’, in *DSCHT*, 693-9, at 696. While there is little defence of the morals of the Scottish bishops at the Reformation, it would be wrong to transfer that judgment to the bishops of the early seventeenth century, who, despite their failings and the attacks on them by presbyterian writers, were mostly of a considerably better moral fibre. See Mullan, *Episcopacy*, chapter 7, esp. 134.

⁶²Mullan, *Episcopacy*, 4-10; M. H. B. Sanderson, ‘Beaton, David’, in *DSCHT*, 65-6 at 66.

⁶³Mullan, *Scottish Puritanism*, 79-80.

⁶⁴For the modern debate, see, e.g., Donaldson, *Church & Nation*, 57-9; Mullan, *Episcopacy*, chapter 2, ‘The Superintendency’; Kirk, *Patterns*, 154-231, *Second Book*, especially 74-83, 145-52

Stewart, Brown of Wamphray, in a work published two years before *Naphtali*, had called the bishops ‘a popish prelaticall & malignant party’ as if those words necessarily went together, and he had in doing so only voiced the common view of Scottish presbyterians in his day.⁶⁵ Stewart capitalized on this widespread antipathy toward prelates throughout his part of *Naphtali* and would do so again in *Jus Populi* two years later.

In addition to the prejudice against prelacy, Stewart’s historical survey also quickly incorporated the principle of self-defence, acted upon, he argued, by Scotland’s reformers from the beginning. Thus, as when called to suffer ‘they loved not their lives unto Death that they might witness a good confession; so when they attained to any Probability of *Acting*, they thought themselves indispensibly obliged . . . to defend the Gospel . . . and to suppress all Superstition and Idolatry’. In such circumstances, ‘the Necessity of Convocations and Combinations’, whether approved by authorities or not, ‘did sufficiently warrand them befor God and all men, from the breach of any Law or Act then standing against the same, wherewith they might have been charged’ (7-8). He offered five examples of such.

The first example (8-9) occurred in July 1558.⁶⁶ Protestant preachers had multiplied in Edinburgh, Leith, Dundee, Angus, and the Mearns, and the destruction of images by their hearers had begun. The bishops, alarmed, had gone to the Queen Regent, Mary of Guise, and persuaded her to summon the preachers for discipline, ‘wherent the Protestants neither offended, neither yet thereof effrayed’, Knox reported, kept the day of summons—apparently accompanied by a sizable body of supporters. But the bishops, not having anticipated so bold a showing, resorted to trickery to get the supporters forced out of town. They ‘procured a proclamation . . . “That all men that were come to the town without commandment of the authority,⁶⁷

(I wish to thank my friend Rev. David Hall for calling my attention to this reference.), and ‘Leith, Convention of’ and ‘Superintendent’ in *DSCHT*, 479-80 and 807; MacDonald, *Jacobean Kirk*, 8.

⁶⁵Brown, *Relation*, [4].

⁶⁶Stewart mistakenly dates it in 1555. See Dickinson in Knox, *History*, 1:126, n. 1; Jenny Wormald, *Mary Queen of Scots: A Study in Failure* (London, 1991), 90.

⁶⁷This perhaps implies the supporters but not the preachers.

should with all diligence repair to the Borders, and there remain xv days”’. The preachers’ response was unexpected. Backed by a band of westland troops just returned from the border, they objected to their treatment. One of the supporters, James Chalmers of Gadgirth, challenged the regent:

Madam, we know that this is the malice and device of those jefwells⁶⁸ and of that bastard (meaning the Bishop of Saint Andrews) that stand by you: We avow to God we shall make a day of it. They oppress us and our tenants for feeding of their idle bellies: they trouble our preachers, and would murder them and us. Shall we suffer this any longer? No, Madam. It shall not be.

‘And therewith’, Knox recounts, ‘every man put on his steel bonnet’.⁶⁹ The regent cannily discharged the summons, denied prior knowledge of it, and besought the bishops and their foes to mutual Christian love, thus averting armed conflict; but the threat of violent resistance to authority was unmistakable, and Stewart rightly claimed the event as an example of Scotland’s early reformers’ willingness to use force if necessary to resist unjust authority.

The second example (9-10) occurred eight months earlier, on 3 December 1557, when five nobles, with ‘many others’, subscribed what became known as the ‘First Band of the Lords of the Congregation of Christ’ in what Wormald calls ‘a step of great courage’.⁷⁰ The signators declared that they ‘ought, according to our bounden duty, to strive in our Master’s cause, even unto the death’, and promised to ‘continually apply our whole power, substance, and our very lives, to maintain, set forward, and establish the most blessed word of God and his Congregation; and shall labour at our possibility to have faithful Ministers purely and truly to minister

⁶⁸ *low-down rascals, or knaves*; Dickinson’s note in Knox, *History*, 1:126, n. 3.

⁶⁹ Knox, *History*, 1:126.

⁷⁰ Knox, *History*, 1:137; Wormald, *Mary*, 88. Although this is commonly known as the ‘First Band’, M’Crie, in *Life of John Knox*, 1:181, suggested that an earlier such bond, taken among Knox, Erskine of Dun, and others in 1556 (cf. Knox, *History*, 1:122), was ‘the first of those religious bonds or covenants, by which the confederation of the protestants in Scotland was so frequently ratified’. But the weight of modern scholarship disagrees (Mullan, *Puritanism*, 177). The precise contents of the 1556 band are unknown, so it could as easily have been an equivalent band as not, but Knox’s cursory treatment of it, as compared with the later bands, justifies the modern view.

Christ's Evangel and Sacraments to his people', to 'maintain them, nourish them, and defend them, the whole Congregation of Christ, and every member thereof, at our whole powers and waring⁷¹ of our lives, against Sathan, and all wicked power that does intend tyranny or trouble against the foresaid Congregation'.⁷²

The third example (10-11) occurred on 31 May 1559, when at Perth some of the same nobles, joined by others, subscribed a new band of mutual defence, promising 'to destroy, and away put, all things that do dishonour to [God's] name' and to put their lives and goods at risk to act in mutual defence.⁷³ The fourth (11-12) was a band among some of the same on 1 August 1559, 'to the effect that in so just and holy a cause, they might never by force or fraud be thereafter fainted or divided' (11).⁷⁴ The fifth and last (11-12) was yet another band, what Knox describes as 'The Last Band at Leith', executed 27 April 1560, in which forty-eight nobles and others promised that 'with the Queen of England's army, presently come in for our deliverance', they would 'join together . . . for expulsion of the . . . oppressors of our liberty, forth of this realm, and recovery of our ancient freedoms and liberties', adding that 'he that is enemy to the causes foresaid, shall be enemy to us all'.⁷⁵

After rehearsing these events, Stewart argued 'that both the Occasion, Actors, Aime, and End of the first Action, and especially the observable Providence of God, that without all contrivance of man did over-rule⁷⁶ it, do clearly purge it of any intended Rebellion or other wickedness' and that therefore 'Certainly to affirm that all these things were nevertheless acted in, & by a Rebellious Spirit, must be a sinn'. The Covenanters' 'present cause' stood on 'the same principles and grounds', and 'the end of their undertaking, was not only their own just and necessary Defence . . . but above all things, the Maintainance & Defence of that blessed Evangel' (12).

⁷¹*expense*

⁷²Knox, *History*, 1:136-7 at 136.

⁷³Knox, *History*, 1:178-9 at 178.

⁷⁴Knox, *History*, 1:206-7.

⁷⁵Knox, *History*, 1:314-16 at 314-15.

⁷⁶i.e., superintend.

His tactic here was shrewd, for, like Sharp (13), even most opponents of the Covenanters of his time (excluding papists and the most high-church Episcopalians) paid at least lip service to the righteousness of the cause of Scotland's reformers in these events.⁷⁷ If the reformers' actions were justified, Stewart argued, so also were those that he defended.

The Right of Self-Defence

Ironically, Stewart's providential argument here—success indicated God's blessing on the means—implied a contrary providential argument against the Pentland Rising he sought to defend—failure indicated God's condemnation of the means. But Stewart's argument did not stop at success. Example alone, even coupled with providential success, was not sufficient to justify self-defence. Stewart argued from principles and merely illustrated by events. He would have agreed with Rutherford that 'God's providence, as providence without precept or promise, can conclude a thing is done, or may be done, but cannot conclude a thing is lawfully and warrantably done, else you might say the selling of Joseph, the crucifying of Christ, the spoiling of Job, were lawfully done'.⁷⁸ Long before, Knox had nuanced the matter in a way more conducive to a Biblical philosophy of history: 'when the facts [i.e., deeds] of men agree with the law of God, and are rewarded according to God's own promise, expressed in his law, I say, that the prosperity succeeding the fact is most infallible assurance that God has approved that fact'.⁷⁹ In *Jus Populi* Stewart would reject arguments from success alone, though not from success coupled with divine command.⁸⁰ Thus his next task was to set forth the moral basis

⁷⁷Compare James VI and I, *Basilicon Doron: Or His Maiesties Instructions to His Dearest Sonne, Henry The Prince* (1599), in *King James VI and I: Political Writings*, ed. Johann P. Sommerville (Cambridge, 1994), 25.

⁷⁸*Lex, Rex*, Q.VIII, 32; Q.XII.Assert.3.Arg.7, 49.

⁷⁹Knox, *History*, 2:126, cited in *Jus Populi*, 59. Likewise Theodore Beza, *Right of Magistrates* (1574), in *Constitutionalism and Resistance in the Sixteenth Century: Three Treatises by Hotman, Beza, & Mornay*, trans. and ed. Julian H. Franklin (New York, 1969), 101-35, at 106; James VI and I. *The Trew Law of Free Monarchies: Or The Reciproock and Mutuall Duetie Betwixt a Free King, and His naturall Subiects* (1598), in *King James VI and I: Political Writings*, ed. Johann P. Sommerville (Cambridge, 1994), 80.

⁸⁰ '[T]he generation of the prelatieall Malignant faction, (judicially hardened by this dispensation

of the right of self-defence. This he began in four points.

First, 'the right & Priviledge of Self-defence is not only founded in, but is the very first instinct of pure Nature, and spring of all motion and action'. The principle was ancient. It had been codified in Mosaic law (Exodus 22:2). Among lawyers, the standard reference was to Justinian's *Digest*, 43.16.1.27, '*Vim vi repellere licere Cassius scribit idque ius natura comparatur: apparet autem, inquit, ex eo arma armis repellere licet*'.⁸¹ Ecclesiastics and lawyers alike could refer to William of Ockham's (1285?-1348?) *Dialogus*, 1.7.45, '*Item, absque auctoritate principis seu iudicis licitum est cuilibet vim vi repellere (dis. 1 Ius naturale)*'.⁸² Early Protestant uses of this common argument include Gregory Brück (ca. 1483-1547), the Lutheran chancellor to Philip of Hesse⁸³ and Philipp Melanchthon (1497-1547), who wrote of 'the natural instinct of self-preservation implanted by God' in beasts as well as men, through which 'they are moved to repulsion of unjust violence' and that 'nature allows force to be repelled with force'.⁸⁴ Among Covenanters, Rutherford wrote that 'from natural affections, there resulteth an act of self-love for self-preservation', that 'government, even by rulers, hath its ground in a secondary law of nature . . . that is this, *Licet vim vi repellere*, It is lawful to repel violence by violence', and even, 'I doubt if it be not, by the law of nature, lawful even to the ill-doer, who hath deserved death by God's law, to fly from the sword of the lawful

[i.e., the outcome of the rising]], because as so many carnal sensualists, if they believe at all that there is a God, they measure him and his ways by their own yard, and judge of his approving or disproving of actions by outward dispensations, to whom I shall say no more, but *Cereat successibus opto, quisquis ab eventu facta notanda putet* . . .' (*Jus Populi*, [9]; cf. 351-2).

⁸¹Cassius writes that it is permissible to repel force by force, and this right is conferred by nature. From this it appears, he says, that arms may be repelled by arms'. Compare Alan Watson, trans. and ed., *The Digest of Justinian*, 2 vols., rev. ed. (Philadelphia, 1998), 4.2.12.1.

⁸²*Dialogus contra Johannem XXII pro Imperatore Ludovico IV*, 1.7.45: 'Again, it is permitted to anyone to resist force with force without the authority of a ruler or judge (*dis. 1 Ius naturale*)'. Ockham had gone on to write, 'But sometimes force cannot be resisted unless the attacker is killed, therefore in that case it is permitted to wage at least a private war without the ruler's authority. Again, a people is duty bound to defend its country against those wishing to kill the people and devastate the country no less than a private person is bound to defend himself and his private possessions. But a private person is allowed to defend himself and his private possessions without the ruler's authority, and to kill lest he be killed. Therefore all the more is it permitted to the whole people to defend itself against enemies when the ruler is absent, and to wage a public war lest it be killed and the country ravaged'. Translation by George Knysh at <http://www.britac.ac.uk/pubs/dialogus/t1d742.html> as of 22 Aug. 2002, modified.

⁸³Skinner, *Foundations*, 2:200.

⁸⁴*Prolegomena to Cicero's Treatise on Moral Obligation* [1530], 573-4, cited in Skinner, *Foundations*, 2:203-4.

magistrate'.⁸⁵ Even William Barclay (1546-1608), in a rebuttal to Buchanan's *De Jure Regni*, acknowledged, as J. H. Burns points out, that 'human beings had an ineradicable right, rooted in natural law, to self-defence' that 'must pertain to a people suffering intolerable oppression by a tyrannical ruler: such a ruler may therefore be resisted', though not punished'.⁸⁶

Second, Stewart argued that the right of self-defence 'was competent to, and exercised by every individual, before that either Society or Government were known', and therefore that it had priority over them. Rutherford, too, had seen the people's powers as the ground of the king's: 'God hath transferred the scattered authorities that are in all the people, in one mass; and, by virtue of his own ordinance, hath placed them in one man, who is king'.⁸⁷

Third, this right 'was so far from being surrendred [sic] or suppressed by the erecting of [society and government], that it was & is the great End & motive, for which all voluntary Societies and Policies were introduced and are continued'. Again his argument followed Rutherford's, who had written in *Lex, Rex*, : 'Individual persons, in creating a magistrate, doth [sic] not properly surrender their right'; 'the community keepeth to themselves a power to resist tyranny, and to coerce it'; and though 'the people are to suffer much before they resume their power', still they may do so.⁸⁸

Fourth,

it is a principal rule of Righteousness, whereunto that great command of love to our neightbour [sic], by the Law of God & by our Lord himself is resolved, & whereby it is interpreted; so it doth infallibly follow, that the

⁸⁵Rutherford, *Lex, Rex*, Q.II, 3; Q.XXVI, 127; compare Q.IV, 6.

⁸⁶Barclay, *De regno et regali potestate adversus Buchananum, Brutum, Boucherium et reliquos monarchomachos, libri sex* (Paris, 1600), cited in J. H. Burns, 'George Buchanan and the Anti-monarchomachs', in Mason, ed., *Scots and Britons*, 138-58, at 156.

⁸⁷Rutherford, *Lex, Rex*, Q.VII, 26; cf. Q.XIX, 79-80.

⁸⁸Rutherford, *Lex, Rex*, Q.VII, 25; Q.IX, 35; Q.IX, 36. See also Q.XXIV, 117; Q.XXV, 123; Q.XXVIII, 143; Q.XXXIV, 178. Smart, 'Political Ideas', 176, writes that 'This theory of the mediate ordination of civil authority, asserted first in Christopher Goodman's *How Superior Powers ought to be Obeyed* (1558) and the Genevan Lambert Daneau's *Politices Christianae Libri Septem* (1596) was accepted by all presbyterians in the seventeenth century'.

same right and Priviledge is yet competent to all men, whither Separatly or Jointly; and needeth no other prerequisite, but that of intollerable and inevitable injury; (which for a man to suffer under pretext of the good of the Common-wealth, would be, for the delusion of an emptie name, only for the lust of others, really to deprive himself of his whole share and interest therein) and is compleated for exercise by such a Probable Capacity, as may encourage the Asserters thereof to undertake it’.

This view, that self-defence was ‘a principal rule of Righteousness’, Honyman would attack, ‘for, there may be cases . . . wherein a man is bound to prefer the preservation of others, to the preservation or defence of his own natural life; and yet in so doing, a man doth truly love himself more then others, in doing his duty to others, although with the loss of his own life and surceasing the defence of it’. He found support in Ames, who wrote, ‘*Quamvis vita mea sit mihi magis conservanda quam alterius vita per se non tamen quam alterius vita & mea virtus*’—i.e., one ought not preserve his life at the expense of his moral reputation.⁸⁹ However, Stewart was not alone in his belief that self-defence was not only a right but also a duty. The Westminster divines had affirmed the same in catechisms officially adopted by both church and parliament of Scotland.⁹⁰

Though Stewart drew upon no authorities in this context, his arguments resembled some found in earlier constitutionalist defenses of resistance. Both Beza and the *Vindiciae* had argued similarly.⁹¹ Before them Luther, Melanchthon, Ponet, and Goodman had argued the case from within the constitutional tradition of the Holy Roman Empire.⁹² Still earlier Mair, though not adopting the private law

⁸⁹Honyman, *Survey*, 1.2:19, citing Ames, *De Conscientia*, V.7.15, which translates, ‘For although my life, by it selfe taken [i.e., considered in isolation], ought to bee conserved by me, rather then the life of another, yet it ought not to be conserved rather then anothers life, and my credit’; translation from William Ames, *Conscience, with the Power and Cases thereof*, trans. (London: 1643), in *The Works of the Reverend and Faithfull Minister of Christ William Ames* (London, 1643), 131.

⁹⁰*Westminster Larger Catechism*, Q. 135; *Shorter Catechism*, Q. 68.

⁹¹Beza, *Right*, 102-29 (IV-VI); *Vindiciae*, 35-66 (2d Q.).

⁹²Skinner, *Foundations*, 197-204, 223-4; Jane E. A. Dawson, ‘The Two John Knoxes: England, Scotand and the 1558 Tracts’, *Journal of Ecclesiastical History* 41(4) (October 1991): 555-76, at 572.

understanding of self-defence, had written, ‘a king who incorrigibly squanders and subverts the well-being of the commonwealth must be deposed by the community which he leads’, and ‘a free people is superior to the king in specific cases, that is, in a case of a king’s converting kingship into tyranny, and even [being] incorrigible, he can be deposed by the people as if by a superior power’.⁹³

The Defence of Religion, Conscience, and Constitutionalism

This general argument Stewart bolstered by more specific arguments designed to justify the use of force in self-defence, including defence of religion (15-25). ‘Religion’, he wrote, ‘is the most important, dear and precious of all interests’. Thus ‘to be violented in this . . . is the most wicked and insupportable of all injuries’, and therefore repelling ‘by force of such injuries was the justest cause and quarrell, that men in their Primaevae Liberty could be engaged in’ (15). Similarly embracing the idea that religion was an even more worthy cause than life, liberty, or property to defend militarily, covenanting minister Andrew Ramsay (1574-1659) was reported, albeit by a hostile witness, to have said that ‘it was Gods will that the Primitive Church should confirme the truth by suffering and that now the truth being confirmed, its his will that we defend the truth by action, in resisting Tyrants; and what war is better then that which is for Religion’.⁹⁴ ‘Governours’, Stewart said, had been appointed chiefly ‘for the security of this Interest, and no wayes to make an absolut surrender thereof to the arbitrimt of any’. Since ‘Powers appointed for Preservation, cannot warrantably endeavour Subversion’ and ‘every man is bound to obey God rather then [sic] man’, violence by governors to religion ‘destroyeth both the Commonwelath [sic] of the people, & more specially, the Glory of God, which are the only ends of Governments’ and thus ‘maketh . . . the End, the Means

⁹³John Mair, *Disputation on Pope and Council*, trans. Thomas Izbicki, in *Conciliarism and Papalism*, edd. J. H. Burns and Thomas M. Izbicki. (Cambridge, 1997), 285-311, at 292, 307 (bracketed text is in the translation).

⁹⁴Mullan, *Puritanism*, 303, citing [John Corbet], *The epistle congratulatorie of Lysimachus Nicanor of the Societie of Jesus, to the covenanters in Scotland* [Dublin], 1640], 7).

of Government and Authority, and the injured person's Obligation thereunto, to cease' (16). Here he reflected Mornay, who had written, 'So it is lawful for Israel⁹⁵ to resist, if the king is overturning the law or the church of God; and not only this, but unless Israel does so, it will be liable for the same crime and will pay the same penalty. If it is attacked with words, it will resist with words; if with force, with force—by diplomacy, I say, and warfare, and even by virtuous guile if guile is used against it', and, 'although the church is not enlarged by arms, yet it can be justly defended by arms'.⁹⁶

This tied the argument from the inviolability of conscience⁹⁷ ('every man is bound to obey God rather than [sic] man') to a constitutionalist argument for resistance from the implicit premises (a) that government rests on a covenant, or contract, between rulers and subjects in which rulers promise to protect subjects' lives, liberties, properties, and, especially, religion, and subjects promise to obey rulers so long as the rulers fulfill their promise, and (b) that if rulers break their promise and threaten to destroy the very things they are pledged to protect, the covenant is dissolved and the subjects are free to act in their own defence. (In arguing thus, Stewart was straddling the fence between covenantalism and contractualism, the latter characterised by mutual pursuit of common interests and the former by a mutual sense of being 'linked as partners under heaven for some larger purpose'.⁹⁸ In fact he oscillated back and forth between these two concepts frequently in both *Naphtali* and *Jus Populi*.) Such a case was a commonplace of

⁹⁵Which *Vindiciae* equates with the church, 1st Q., 25; compare the translation in Franklin, *Constitutionalism*, 144.

⁹⁶*Vindiciae*, 45 and 65 (2d Q.); likewise Beza, *Right*, 134-5.

⁹⁷'One of the qualities of the puritan world-view was that absolute authority cannot be attributed to any human being'. This principle, tied to the principle that ministers must be free to preach as they believed the Spirit, operating through the Word of God in Scripture, moved them, led to the Presbyterians' 'readiness to assume the stance of nonconformity'. Puritan theology—English and Scottish alike—'and its accompanying piety simply had no room for notions of absolute power in the human sphere, and so limitation of power appeared as a pervasive theme in political divinity. . . . Reformed theology, particularly in the hands of presbyterians, had no place for absolutism'. Mullan, *Puritanism*, 72, 73, 250, 251.

⁹⁸Daniel J. Elazar, *Covenant and Commonwealth: From Christian Separation through the Protestant Reformation*, vol. 2 of *The Covenant Tradition in Politics* (New Brunswick, NJ: 1996), 64.

Calvinist and other constitutionalist arguments. Beza, for instance, had argued that in all agreements based solely on the consent of the contracting parties, the obligation may be broken by those who made it for sufficient cause—from which it follows that they who have the power to create a king also have the power to depose him. Second, if there is any just occasion to dissolve a contract or agreement—an occasion, that is, when the obligation nullifies itself—it is when there has been a flagrant violation of the essential condition in consideration of which the obligation was contracted.⁹⁹

Buchanan had argued similarly: ‘B[uchanan].—A mutual compact then subsists between a king and his subjects? M[aitland].—So it should appear. B.—Does not he then, who deviates from conventions, and acts in opposition to compacts, dissolve those compacts and conventions? M.—He does. B.—Upon the dissolution then of the tie which connected the king with his people, whatever right belonged by agreement to him who dissolves the compact, is, I presume, forfeited? M.—It is. B.—He also, with whom the agreement was made, becomes as free as he was before the stipulation’.¹⁰⁰ Likewise Rutherford, to greater extent:

That power which is obliged to command and rule justly and religiously for the good of the subjects, and is only set over the people on these conditions, and not absolutely, cannot tie the people to subjection without resistance, when the power is abused to the destruction of laws, religion, and the subjects. But all power of the law is thus obliged (Rom. xiii. 4; Deut. xvii. 18-20 . . .) and hath, and may be, abused by kings, to the destruction of laws, religion, and subjects. . . .

. . . That power which is contrary to law, and is evil and tyrannical, can tie none to subjection, but is a mere tyrannical power and unlawful; and if it tie not to subjection, it may lawfully be resisted. . . .

⁹⁹Beza, *Right*, 124.

¹⁰⁰Buchanan, *De Jure Regni*, 280; cf. John Ponet, *A Short Treatise of Politic Power* (1556; facsimile reprint, Yorkshire: 1970), [105].

. . . If the estates of a kingdom give the power to a king, it is their own power in the fountain; and if they give it for their own good, they have power to judge when it is used against themselves, and for their evil, and so power to limit and resist the power that they gave.¹⁰¹

The right of self-defence, or even defence of religion, said Stewart, need not always be exercised; subjects, whether injured in person, property, or religion, might estimate themselves incapable of acting effectively and would then with no dishonor ‘by Suffering . . . with all patience, . . . give unto God the Glory’ (16). Similarly Buchanan, after relentlessly pursuing the conclusion of his argument that private resistance to, and even killing of, tyrants was lawful, at last qualified his case: ‘I here explain . . . how far our power and duty extend by law, but do not advise the enforcement of either. Of the former, a distinct knowledge and clear explanation are sufficient; of the latter, the plan requires wisdom, the attempt prudence, and the execution valour’.¹⁰² But, Stewart continued, ‘having opportunity . . . whither to their own Defence, or the Assisting of their Brethren¹⁰³ . . ., they ought therein valiantly to acquit themselves’ (16). Stewart did not at this point mention a third option, flight. But other Calvinist political thinkers, like Ponet, Beza, and Rutherford, explicitly set it forth as an option.¹⁰⁴

Conspiracy in Defensive Resistance

Even if a right of self-defence were admitted, was it permissible for subjects to conspire together against authorities? Yes, Stewart said, for the right to cooperate in self-defence against authorities that had become destructive of the ends for which

¹⁰¹Rutherford, *Lex, Rex*, Q.XXVIII, pp. 139-43, particularly at 141, 143; see also Q.XIV, pp. 54-62, and (that the king is under law and therefore accountable for transgressing it) Q.XXVI, pp. 125-36.

¹⁰²Buchanan, *De Jure Regni*, 281-2; cf. Beza, *Right*, 135, cf. 130..

¹⁰³This expansion of self-defence to the defence of brethren was important as a step in justifying the Pentland Rising, which began with the intervention of Covenanters to stop the unjust punishment of one of their brethren.

¹⁰⁴Ponet, *Politic Power*, [72-3]; Beza, *Right*, 108; Rutherford, *Lex, Rex*, Q.XXX, Assert. 5, 159. See also Q.XXX, 153, flight ‘is to royalists lawful, to us a special point of resistance’; Q.XXXI, 160-61.

they had been appointed 'is founded upon . . . that Primaevae Right and Priviledge, which at first gave Being and Rise to all Societies', and 'so the duty of mutual Assistance, is not only warranted by that principle of Humanity and common Stipulation' from which societies and governments first arose, 'But also, first, by that . . . principle of Christian and brotherly Affection in the Lord; upon the indispensable force and obligation whereof, the very great and last judgement seemeth to be founded' (Matthew 25:31-46) and second, by concern for 'God's Glory, to which the interests of all Powers & Common-wealth's [sic] must certainly stoop and cede'—as is demonstrated by God's punishing peoples who failed to act accordingly (Jeremiah 26:15) (16-17). That is, if people could conspire together to form governments to defend their lives and liberties in the first place, they could on the same principles conspire to resist, reform, or replace governments that had become tyrannous and so threatened the ends for which they had been formed. This point was a mainstay of Calvinist (and other) constitutionalist arguments. Calvin had declared, in his commentary on Daniel 6:22, that 'earthly princes lay aside all their power when they rise up against God, and are unworthy of being reckoned in the number of mankind. We ought rather utterly to defy than to obey them whenever they are so restive and wish to spoil God of his rights, and, as it were, to seize upon his throne and draw him down from heaven'.¹⁰⁵ Beza had argued that the king was created by the people, was employed conditionally, and therefore could be deposed if he violated the conditions.¹⁰⁶ Rutherford argued likewise,¹⁰⁷ and George Gillespie wrote, 'the Magistrate abusing his power unto tyranny, and making havock of all, tis lawfull to resist him by some extraordinary ways and means, which are not ordinarily to be allowed'.¹⁰⁸ Archbishop Spottiswood, typical

¹⁰⁵John Calvin, *Commentaries on the Book of the Prophet Daniel*, 2 volumes (1561), trans. Thomas Myers, in *Calvin's Commentaries*, 22 volumes, volumes 12, part two, through 13, part one (Grand Rapids, 1984), 1:382.

¹⁰⁶Beza, *Right*, VI, at 111-12; Franklin, *Constitutionalism*, 33.

¹⁰⁷Rutherford, *Lex, Rex*, Q.IX, 33-9.

¹⁰⁸[George Gillespie], *CXI Propositions Concerning The Ministerie and Government of the Church* (Edinburgh, 1647), 33 (prop. 84), cited in Mullan, *Puritanism*, 303. But contrast 38, (prop. 97).

of Episcopalian thinkers, stated the opposing view compactly: 'it is no where permitted to subjects to call their Princes in question or to make insurrections against them, God having reserved the punishment of Princes to himselfe'.¹⁰⁹

The view that the people's power to frame government initially implied their power also to resist and replace it if it ran afoul of its (their) ends found support in such Calvinist political writers as Beza, Hotman, Mornay, Ponet, Goodman,¹¹⁰ and Buchanan (perhaps more humanist than Calvinist) and in such Covenanter authors as Brown of Wamphray, Rutherford, and Guthrie. But it contrasted strongly with much pre-1638 Scottish divinity, and of course it flew in the face of James VI's insistence that 'a king cannot be imagined to be so unruly and tyrannous, but the commonwealth will be kept in better order, notwithstanding thereof, by him, then it can be by his way-taking'.¹¹¹ Many Scottish divines before 1638, sounding much like James,¹¹² had rejected resistance to tyranny, holding that 'If wicked princes discomfited the faithful, all must be left in God's hands' and that 'prayer, not rebellion, was the Christian's weapon against tyranny, even when religion was under attack'.

That defence of religion and not only of person or property was a legitimate ground for resistance to authority required separate justification (17-24). Stewart believed that 'none will question' that 'Reforming Power is committed to the Magistrat'. Indeed, 'maintenance of Truth and the true Worship of God, were and are the principal ends and motives of contracting of Societies and erecting of Governments', and the contracts involved both God and the rulers and people, the

¹⁰⁹Mullan, *Episcopacy*, 147, citing John Spottiswood, *History of the Church of Scotland* (London, 1655), 137.

¹¹⁰On Ponet and Goodman, see David H. Wollman, 'The Biblical Justification for Resistance to Authority in Ponet's and Goodman's Polemics', *Sixteenth Century Journal* XIII(4) (1982): 29-41.

¹¹¹*Trew Law*, 79; cited in Mullan, *Puritanism*, 255.

¹¹²... the duetie, and alleageance of the people to their lawfull king, their obedience, I say, ought to be to him, as to Gods Lieutenant in earth, obeying his commands in all things, except directly against God . . . , acknowledging him a Iudge set by GOD ouer them, hauing power to iudge them, but to be iudged onely by GOD . . . ; . . . praying for him as their protectour; for his continuance, if he be good; for his amendement, if he be wicked; following and obeying his lawfull commands, eschewing and flying his fury in his vnlawfull, *without resistance, but by sobbes and teares to GOD . . .*. *Trew Law*, 72; cf. 66-7, 79-80.

latter—both rulers and people—‘not only separately . . . but jointly obliged for the publick advancement & establishment thereof’. But if king and lesser magistrates ‘turn the principal perverters, and chief Patrons of’ religious ‘abominations’ and seek to force the people to the like sins, then, since (as previously argued) the covenant between rulers and people was thereby made void, the people ‘may lawfully Defend themselves, and are mutually bound to assist and deliver one another’ (18). Stewart’s argument, that not only self-defence but also defence of other innocents who were threatened unlawfully by magistrates, reflected a common notion of duty among Christian thinkers rooted as deeply as Genesis 4 and the negative answer implicitly demanded to Cain’s question ‘Am I my brother’s keeper?’. Rutherford put the point forcefully: ‘he that is wanting to his brother, (if a robber unjustly invade his brother,) and helpeth him not, is a murderer of his brother so far, God’s spiritual law requiring both conservation of [life] in our person, and preservation in others’.¹¹³ ‘There must be a Superior and Antecedent obligation to that of Submission’, Stewart argued: promoting true doctrine and worship. This was true whether the covenants between God, rulers, and people were explicit or not, since ‘all Constitutions of Societies and Governments, do virtually suppose and imply the same and are founded thereon’ (18-19).¹¹⁴

Covenantal Basis for Government

Such covenantal thinking had deep roots in Scottish civil and ecclesiastical society. The general concept of covenant theology, rooted in the writings of John Calvin (1509-1564),¹¹⁵ Heinrich Bullinger (1504-1575), and Zacharias Ursinus (1608-1667), was a mainstay of Reformed theology by the early seventeenth

¹¹³Rutherford, *Lex, Rex*, XXXI, 163, corrected by reference to 1644 ed., 332. See also John Calvin, *Institutes of the Christian Religion*, 1559 ed., 2 vols., trans. Ford Lewis Battles, ed. John T. McNeill (Philadelphia, 1960), IV.xx.31, 1518-19, cited below.

¹¹⁴Stewart here cited Deuteronomy 13:12-15 (A city in Israel that has been drawn to worship other gods should be put to the sword.), Joshua 22:17-19 (The eastern tribes must not sin by setting up an altar to another God, and they would implicate the other tribes if they did.), and Judges 22 [sic; should be 20-21] (Eleven tribes unite to punish Benjamin for the great sin of rape and murder of a Levite’s concubine.).

¹¹⁵Calvin, *Institutes*, II.ix-xi.

century, with fully developed treatments by Dutch thinkers like Johannes Cocceius (1603-1669)¹¹⁶ and Stewart's contemporary Herman Witsius (1636-1708).¹¹⁷ Daniel J. Elazar argues that the Reformed movement following Calvin 'was both a separation and a return—a separation from the organic and hierarchical dimensions of medieval Catholic Christendom and a return to the covenantal thinking of biblical Israel'.¹¹⁸ English Calvinists used the covenant as 'an architectonic principle for the systematizing of Christian truth',¹¹⁹ as did the Westminster Assembly of 1643-1648. Robert Rollock's (1555-1598) *Quaestiones et Responsiones aliquot de Foedere Dei*¹²⁰ and *Tractatus De Vocatione Efficaci*¹²¹ laid the groundwork for the specifically Scottish brand of federalism, which many later authors developed.¹²² Federal theology was so fundamental to post-Reformation Scottish theology that James Walker later wrote, 'The old theology of Scotland might be emphatically described as a covenant theology'.¹²³ Elazar writes, 'Scotland, a great covenant country and community . . . transformed its culture into a complete example of covenantalism by embracing and redefining Reformed Protestantism, to build a strong covenantal basis under the influence of John Knox. After its union with England, Scots carried covenant theory and practice throughout the world'. Particularly in North America and the South Pacific, Scottish covenantalism heavily influenced the shaping of new political orders in the eighteenth and nineteenth centuries.¹²⁴ Covenanting was important not only to Scottish ecclesiology and

¹¹⁶*Summa Doctrinae de Foedere et Testamento Dei Explicata* (Amsterdam, 1648).

¹¹⁷*Do Oeconomia Foederum Dei cum Hominibus* (Leeuwarden, 1677; English translation, 3 vols., London, 1763, 2 volumes, 1837).

¹¹⁸Elazar, *Covenant and Commonwealth*, 44.

¹¹⁹D. Macleod, 'Covenant Theology', in *DSCHT*, 214-18, at 214.

¹²⁰Edinburgh, 1596.

¹²¹Edinburgh, 1597; English translation, *A Treatise of God's Effectual Calling* (London, 1603).

¹²²See, e.g., *The Sum of Saving Knowledge* (Edinburgh 1650), probably by David Dickson (1583-1663) and James Durham (1622-1658); Dickson's *Therapeutica Sacra* (Edinburgh, 1656; English trans. 1664); Samuel Rutherford's *The Tryal & Triumph of Faith* (London, 1645; Edinburgh, 1845), sermons vii and viii, and *The Covenant of Life Opened: or, A Treatise of the Covenant of Grace* (Edinburgh, 1655); and, most extensively, Patrick Gillespie's (1617-1675) *The Ark of the Testament Opened, or, . . . a Treatise of the Covenant of Grace* (London, 1661) and *The Ark of the Covenant Opened: or, A Treatise of the Covenant of Redemption* (London, 1677).

¹²³Walker, *Theology*, 73.

¹²⁴Daniel J. Elazar, *Covenant and Civil Society: The Constitutional Matrix of Modern Democracy*, vol. 4 of *The Covenant Tradition in Politics* (New Brunswick, NJ, 1998), 318. See also Brotherstone, *Covenant*; S. A. Burrell, 'The Apocalyptic Vision of the Early Covenanters', *Scottish*

theology but also to broader Scottish social relations, with bonds of manrent and similar contractual relationships having a long history. Indeed, the First Band of the Congregation¹²⁵ marked Scotland's first religious use of the familiar practice of social and political bonds; 'subsumed into the Calvinist idea of the religious covenant, it . . . set a pattern out of which there would emerge, 80 years later, the National Covenant'.¹²⁶

Stewart's assertion of an implicit covenant as the foundation of monarchy (and any government) even in the absence of an explicit one was a common part of constitutionalist arguments. Rutherford had argued that

the general covenant of nature is presupposed in making a king, where there is no vocal or written covenant. If there be no conditions betwixt a Christian king and his people, then those things which are just and right according to the law of God, and the rule of God in moulding the first king, are understood to rule both king and people, as if they had been written; and here we produce our written covenant, Deut. xvii. 15; Josh. i. 8, 9; . . .¹²⁷

This is an important aspect of Rutherford's and Stewart's arguments, for it distinguishes them from arguments resting solely on examples, which would have to appeal to explicit covenants, or, worse, on speculative notions of the growth of government out of a state of nature, in which appeal to explicit covenants was impossible. Rather, Rutherford made it clear that his reasoning was not inductive but deductive, so that examples were not probative but illustrative. After citing

History Review xliii:135 (April 1964), 1-24, and 'The Covenanting Idea as a Revolutionary Symbol: Scotland, 1596-1637', *Church History* xxvii (1958): 338-50; Roger Schultz, 'Covenanting in America: The Political Theology of John Witherspoon', *Journal for Christian Reconstruction* 12:1 (1988): 179-289; Smart, 'Political Ideas'; James B. Torrance, 'The Covenant Concept in Scottish Theology and Politics and its Legacy', *Scottish Journal of Theology* 34 (1981): 225-43, 'Covenant or Contract? A Study of the Theological Background of Worship in Seventeenth-Century Scotland', *Scottish Journal of Theology*, 23 (1970): 51-76, and 'The Covenant Concept in Scottish Theology and Politics', in Elazar & Kincaid, *Covenant Connection*, 145-62; and John R. Young, 'Scottish Covenanting Radicalism, the Commission of the Kirk and the Establishment of the Parliamentary Radical Regime of 1648-1649', *Records of the Scottish Church History Society* XXV(3) (1995): 342-75.

¹²⁵See page 94.

¹²⁶Jenny Wormald, *Lords and Men in Scotland: Bonds of Manrent, 1442-1603* (Edinburgh, 1985), and Wormald, *Court*, 30, 111; cf. 124.

¹²⁷*Lex, Rex*, Q.XIV, 59.

Arnisaeus's objection ('*Ex particularibus non potest colligi conclusio universalis*') to the use of examples of royal covenants in Scripture to bolster the case that kings ruled conditionally, Rutherford replied, 'Yea, the covenant is (Deut. 17.) and must be a rule to all'—after which he added, for good measure, 'if so just a man as David was limited by a covenant, then all the rest also'.¹²⁸ Stewart and Rutherford before him both were arguing similarly to Alexander Henderson, who had commented on Romans 13:1-4 that 'Princes principally are for the people and defence, and not the people principally for them; the safety and good of the people is the supreme law . . . the people maketh the magistrate, but the Magistrate maketh not the people', an 'argument, based on the ends of government', Smart comments, that was 'rational and universal, in contrast to historical or antiquarian arguments of precedent both for and against absolute monarchy'.¹²⁹ Likewise and furthermore, Stewart argued, the obligation to promote true doctrine and worship endured despite apostasy from the covenant by any segment of society, whether majority or minority, rulers or people. God's punishing the whole nation of Israel for the sin of Achan (Joshua 7) illustrated collective responsibility for fidelity to Him and the covenant (17-20). Thus covenants, explicit or implicit, set limits on governments. One of those limits—mirroring the 'automatic exception, in all bonds [of maintenance and manrent], of allegiance to the king'¹³⁰—was the subject's higher obligation to God.

The 'Explosive Doctrine of Single-handed Tyrannicide'¹³¹

Stewart then (20-24) discussed whether his understanding of the rights of self-

¹²⁸*Lex Rex*, Q.XIV, 62; compare *Lex, Rex*, Q.XXVIII, 140: 'because God (Deut. xvii.) hath limited the first lawful king, the mould of all the rest, the people ought also to limit him by a voluntary covenant'.

¹²⁹[Alexander Henderson], *Some Speciall Arguments Which Warranted the Scottish Subjects lawfully to take up Armes in defence of their Religion and Liberty* (1642), 5. *Some Speciall Arguments* was Henderson's 'Instructions for Defensive Arms', written in 1639 and circulated in manuscript form until its publication under the new title three years later; Smart, 'Political Ideas', 168, 171.

¹³⁰Wormald, *Court*, 31.

¹³¹Roger A. Mason, 'People Power? George Buchanan on Resistance and the Common Man', in Robert von Friedeburg, ed., *Widerstandsrecht in der frühen Neuzeit*, in *Zeitschrift für Historische Forschung*, beiheft 26 (2001), 163-81, at 179.

defence and resistance made ‘every man to be a *Phineas*’ (20). Phineas, grandson of Moses’ brother Aaron, seeing Zimri, an Israelite prince (and thus in Stewart’s eyes a magistrate), taking a Midianite prostitute into his tent in plain sight of people and authorities, had followed them into the tent and killed them, ending a plague God had sent for widespread apostasy and whoredom (Numbers 25). This story forms an important link in Stewart’s argument. Up to this point, all that Stewart has said could be embraced by such sixteenth-century Calvinist political writers as Hotman, Beza, and the author(s) of the *Vindiciae Contra Tyrannos*. They affirmed that lesser magistrates could lead resistance against tyrannizing and apostatizing authorities—even against the king—but denied that private persons could. Peter Martyr wrote,

Those which onely are subiect and counted altogether private, ought not to arise against their Princes and Lordes, and displace them of their dignitie or degree. . . . But there be others in the Common weale, which in place and dignitie are inferiour unto Princes, and yet in verie deede doe elect the superiour power, and by certaine lawes doe gouerne the Commo[n]weale To these undoubtedly if the Prince perfourme not his covenants and promises, it is lawful to constraine and bring him into order, and by force to compell him to perfourme the conditions and covenants which he had promised, and that by warre when it cannot otherwise be done.¹³²

Even Calvin, when he wrote that ‘no command’ had ‘been given’ to persons suffering oppression by a [titled] tyrant ‘except to obey and suffer’, immediately added,

I am speaking all the while of private individuals. For if there are now any magistrates of the people, appointed to restrain the willfulness of kings . . . , if they wink at kings who violently fall upon and assault the lowly common

¹³²Peter Martyr, *The Common Places of the Most Famous and Renowned Divine Doctor Peter Martyr, divided into foure principall parts*, trans. Anthonie Marten. (n.p., 1583), IV.21.12 (p. 324).

folk, . . . they . . . betray the freedom of the people, of which . . . they have been appointed protectors by God's ordinance.¹³³

Rutherford applied that argument specifically to Scotland's constitution: 'That the kings of Scotland are obliged, before they be inaugurated, to swear and make their faithful covenant to the true kirk of God, that they shall maintain, defend, and set forward the true religion confessed and established within this realm' entails 'that the bond and contract shall be mutual and reciprocal' and consequently that the estates of parliament 'were obliged, in case of the king's breaking these treaties, to resist him therein, even by arms, and that without any breach of their allegiance, or of his prerogative'.¹³⁴

But Stewart, following Buchanan, Althusius, and Rutherford, asserted what Mason calls 'the explosive doctrine of single-handed tyrannicide': that private persons could use force in self-defence against (even titled) kings acting unlawfully.¹³⁵ Buchanan had written, 'What say you of a tyrant, that public enemy, with whom all good men are perpetually at war,—Have not *all the individuals* of the whole mass of mankind, indiscriminately, a right to exercise upon him all the severities of war?'¹³⁶ Althusius, likewise, had argued, 'if [the king] governs against the rule of law, he becomes punishable by the law, and ceases to be superior. In this unfortunate event, he begins to be under the executors of law. Whence it happens that when he exercises tyranny, he is under the united body. When he abuses his power, he ceases to be king and a public person, and becomes a private person. If in any way he proceeds and acts notoriously or wickedly, *any one may resist*

¹³³Calvin, *Institutes*, IV.xx.31; compare Althusius, *Politica*, XVIII.68, 86, 88; XXXVIII.78 (104, 107-8, 199).

¹³⁴Rutherford, *Lex, Rex*, Q.XLIII, 219-20.

¹³⁵Mason, 'People Power?', 179. The distinction between titled and untitled kings is not obvious. It seems intuitively plain: someone who comes to the throne apart from lawful process (e.g., election or hereditary succession) is without title. But for a thoroughgoing monarchist even brute conquest gave a proper title to the throne, so distinction disappeared. Yet the consequence is fatal to his insistence on royal immunity, since if conquest gave one a right to the throne, resistance could be viewed as a species of (at least attempted) conquest and so could not be condemned in principle.

¹³⁶Buchanan, *De Jure Regni*, 281, emphasis added.

him'.¹³⁷ Rutherford, like most writers on the question, agreed that 'A tyrant, *without a title* [emphasis added], may be resisted by any private man. *Quia licet vim vi repellere*, because we may repel violence by violence; yea, he may be killed'.¹³⁸ (In contrast, Martyr denied that private men could resist even untitled tyrants,¹³⁹ but Rutherford, like Buchanan, also argued that a private man could resist a tyrant *with title*:

. . . the royal dignity doth not advance a king above the common condition of men, and the throne maketh him not leave off to be a man, and a man that can do wrong; and therefore as one that doth manifest violence to the life of a man, though his subject, he may be resisted with bodily resistance, in the case of unjust and violent invasion.¹⁴⁰

(Honyman mistakenly wrote that Rutherford allowed resistance only by 'inferior Rulers and Nobles with the people'.¹⁴¹)

Stewart also believed that private people could use force to defend the religious covenant that he (and they) believed was the principal rationale for society and government. This, too, was a common Reformed belief, as Rutherford demonstrated by citing the 1612 *Confession of Faith* of the Church of Scotland (which held it a duty under the fifth commandment 'to save the lives of innocents, to repress tyranny, to defend the oppressed', 220, cf. 221) and six other Reformed confessions.¹⁴² Stewart raised Phineas as Biblically authorised precedent.

First he considered the question whether Phineas's action was justified by an 'Extraordinary' call of God or was merely 'heroical'—an action anyone in his circumstances might or should have undertaken. The distinction had arisen in Knox's debate with Lethington a century before. Knox had made it thus: 'if the

¹³⁷Althusius, *Politica*, XVIII.95 (112), emphasis added.

¹³⁸Rutherford, *Lex, Rex*, Q.XXVIII, 141, citing Justinian's *Digest*, 43.16.1.27; see above, p. 97; see Coffey, *Rutherford*, 175.

¹³⁹Martyr, *Common Places*, IV.21.13.

¹⁴⁰Rutherford, *Lex, Rex*, Q.XXXII, 169-70.

¹⁴¹Honyman, *Survey*, I.2:99. Smart, 'Political Ideas', 184, makes the same mistake.

¹⁴²Rutherford, *Lex, Rex*, Q.XLIII, pp. 216-27. In several instances, Rutherford had to infer the position from these texts, for it was not explicit in them.

example repugn to the law' it 'served to no purpose unless' the persons involved had a special divine call. 'But where the example agrees with the law, and is, as it were the execution of God's judgments expressed in the same, [it] stands to us in place of a commandment'. Then he applied the principle: 'But in his servants before us, He by his own commandment has approved that subjects have not only destroyed their kings for idolatry, but also have rooted out their whole posterity'.¹⁴³ This was an important distinction at the time, for although earlier Calvinist thinkers like Hotman, Beza, and the author(s) of the *Vindiciae*, while generally denying the right of private resistance, admitted that a private person specially called by God could resist without the cooperation of lesser magistrates, they had denied that such could resist without such an 'extraordinary', divine call. Stewart, following Rutherford,¹⁴⁴ went beyond them arguing that Phineas's deed arose not from an extraordinary call but from his 'heroical' shouldering of a responsibility anyone else might have shouldered.¹⁴⁵

Second, Stewart assumed that Phineas acted not as a magistrate but as a private person. His reasoning at this point is not terribly convincing (though he would strengthen it in *Jus Populi*). It is that Scripture merely commends Phineas for zeal (Numbers 25:13), not for any extraordinary call (22-3). Yet not only is this an argument from silence, but also Stewart¹⁴⁶ neglected that as grandson of the high priest Phineas might have been, in the language of the Calvinist political writers, a 'lesser magistrate'. Earlier Calvinist political writers, like Ulrich Zwingli (1484-1531), had written of ministers (i.e., priests) as public figures capable of acting the part of lesser magistrates in defending against tyrants.¹⁴⁷ Honyman replied to *Naphtali*'s appeal to Phineas by arguing that he was not a private person but a magistrate.¹⁴⁸ Ironically, however, his argument could have backfired. If Phineas

¹⁴³Knox, *History*, 2:124-5. Stewart would appeal to this passage in *Jus Populi*, 418-19.

¹⁴⁴Rutherford, *Lex, Rex*, Q.XL, 202-3.

¹⁴⁵Ponet disagreed; *Politic Power*, [50-51, 109-10].

¹⁴⁶Like Ponet, *Politic Power*, [50-51].

¹⁴⁷John T. McNeill in Calvin, *Institutes*, IV.20.31, 1518n.

¹⁴⁸Honyman, *Survey*, 1.2:109-10. He cited Thomas Aquinas in agreement (*Summa Theologia*,

qualified as an ‘inferior magistrate’ on the grounds that he was a priest, then certainly the ranks of ‘magistrates’ in Scotland must expand well beyond what Honyman would have preferred—they would have had to include all the clergy (including the Covenanters!), whom he considered private persons. Nonetheless, in light of Phineas’s precedent Stewart concluded that ‘the Concourse of the Nobles and *Primores Regni*, is in no wayes of *absolute necessity*’ to lawful resistance, ‘though indeed singularly couducible [sic]’ to *successful* resistance (25).

Stewart then anticipated and answered two likely objections. The first was that his views would lead to anarchic confusion¹⁴⁹ and that just such had ensued from the events he cited in Knox’s time. Stewart replied that the disorderliness then was chargeable not to the Reformers but to ‘the Persons then in Power & Authority’ who refused to do their God-given duty for Reformation (26-7). The second was that the resistance he defended amounted to treason. But that charge, he said, had been answered adequately in *Lex, Rex* and *The Apologetical Narration*¹⁵⁰ (27). What the critics called treason, Stewart called the people’s ‘most just & necessary Defence of themselves’ (28). Indeed, the absolute subjection for which his opponents argued implied ‘an illimited and Absolut Obedience’, which, he was quick to add, was known from Scripture (Acts 5:29) to be sinful (28-9). Therefore, since

neither the Ordinance and Commission of God, nor yet the Surrender of the People . . . can . . . be either produced or pleaded for vesting the Prince with that arbitrary and irresistible Power and Dominion, necessary and requisite to oblige the Subject to a stupid and brutish submission, to all possible injuries . . .; and . . . it is impossible for any rational man, to concede that Priviledge of exemption and impunity to wickedness and fury, . . . Self-Defence, and holy Reformation, [do not violate] the Ordinance of God. (29-

2a 2ae. quest. 60. Art. 6).

¹⁴⁹Honyman would make just that charge repeatedly in *Survey*, I.1:9, 18; I.2:6, 43, 44, etc.

¹⁵⁰Sic; actually, *Apologetical Relation*.

The Conflict Between Presbytery and Erastian Episcopacy

Stewart now returned to his historical review of the Scottish Reformation,¹⁵¹ beginning with the first general assembly (1560), which the church convened without royal licence but ‘in the name of the Lord Jesus Christ only, and in his sole Authority, by Direction of his Word and Spirit’ (33, 34). His insistence that the Reformed Church of Scotland at the time was independent of the crown was the standard Presbyterian view at the time. By embracing it, Stewart tied his argument for a right of resistance to tyranny (a term that fits what Charles II’s government called ‘royal supremacy’ over all persons in all causes¹⁵²) to an argument against Erastianism.¹⁵³ The assemblies at this stage of the Reformation, i.e., from 1560 through 1592, met, he insisted, ‘in perfect *Parity and Equality . . . Superintendency . . .* both only designed for an *Interim*, and in itself wholly different from *Prelacy*, and . . . at length rejected as burthensome’ (34-5). In response to the temporary imposition of ‘Mock-Bishops (called *Tulchan*)’ the assemblies of 1575-1581 eventually gained the bishops’ ‘Dimission’ and ‘condemning their Office as unwarrantable, . . . compleated their work in the exact model of Presbyterial Government’ (35-6).¹⁵⁴ In March 1581, Stewart wrote, king, court, and council ‘did swear and subscribe to the National Covenant’, i.e., ‘Second Confession of Faith’, ‘Negative Confession’, or ‘King’s Confession’¹⁵⁵ (incorporated into the National

¹⁵¹Stewart’s review reflected the general perspective of Presbyterian historiography in the seventeenth century, e.g., David Calderwood, *The true history of the church of Scotland* (Rotterdam, 1678), William Scot, *An Apologetical Narration of the State and Government of the Kirk of Scotland since the Reformation* (not published until 1846), and Melville, *Autobiography*. Archbishop John Spottiswood’s *History of the Church of Scotland* (London, 1655) exemplified the opposing Episcopalian view. See Mullan, *Episcopacy*, 141-50.

¹⁵²Such language harked back at least to James Melville’s description of the effect of James VI’s reordering of the church in the 1690s; Melville, *Autobiography*, 414.

¹⁵³That James pursued a long-term policy of restoring episcopacy for political reasons and did not merely light upon it in 1600, see Mullan, *Episcopacy*, 87. Compare Mason, ‘Buchanan . . . and the presbyterians’, 122-8.

¹⁵⁴See *Source Book*, 3:16-38.

¹⁵⁵*Source Book*, 3:32-5. Compare Mullan, *Puritanism*, 181, who points out the simultaneously religious and political nature of this band first signed on 28 Jan. 1581. See Rutherford, *Lex, Rex*, Q.XLII, 213.

Covenant of 1638), condemning popery in all its distinctive doctrines, hierarchy, and practices. In this he was correct, but by adding that ‘both *Prelacy* is by this Covenant abjured, and *Presbytery* owned and sworn to’ (36), he went beyond the text. As Dickinson and Donaldson point out, ‘The ultra-protestant opinions expressed in the Confession had no direct bearing on the presbyterian-episcopalian controversy’. Yet the general assembly, in July 1580, had declared the ‘pretendit office [of prelatical bishop] . . . unlauffull in the selfe, as haveand neither fundament, ground nor warrant within the Word of God’; in April 1581 had added that it intended ‘haillelie to condemne the [whole] estate of bischops, as they are now in Scotland, and that the same was the determinatioun and conclusion of the kirk at that tyme’; and at the same time had devised a system of presbyterial government.¹⁵⁶ The church was Presbyterian in function and conviction.¹⁵⁷ By this National Confession, subscribed by king, nobles, and people, Stewart argued, ‘the Kingdom . . . became the Lords, and we his peculiar people. . . . And this Oath and the Ordinances enjoying it . . . do yet stand to this day’ (37)—an important element of his defence of the Pentland Rising, which he portrayed as a protection of this perpetually binding covenant between God and nation. Of course, while Covenanters held the 1581 National Confession perpetually binding, others did not. ‘In his *Peaceable warning* Forbes [of Corse] denied any perpetual authority to the 1581 confession, that having expired with the death of the authorizing king, James VI.’¹⁵⁸

But, Stewart lamented, Presbyterian dominance was interrupted. In 1584, King James VI and parliament adopted the ‘Black Acts’, James VI’s ‘first attempt to stem the presbyterian tide which was threatening to engulf him’,¹⁵⁹ repudiating

¹⁵⁶*Source Book*, 36-7.

¹⁵⁷The controlling majority of those officers of the church, from session through presbytery to general assembly, who were appointees not of civil powers but of the church itself was always anti-prelatical and Presbyterian; W. M. Hetherington, *History of the Church of Scotland from the Introduction of Christianity to the Period of the Disruption in 1843*, 3d ed. (New York, 1844), 78. Thomas M’Crie, *The Life of Andrew Melville*, 2 vols. (Edinburgh, 1819), 1:143, and M’Crie, *Life of Knox*, 2:283-5.

¹⁵⁸Mullan, *Puritanism*, 313.

¹⁵⁹Mason, ‘Buchanan . . . and the presbyterians’, 125-6.

Presbyterianism, asserting the king's 'power and auctoritie over all statis alsweill spirituall as temporall', ordaining that the king and his counselors 'salbe juges competent to all personis his hienes subjectis . . ., spirituall or temporall, in all materis quhairin they or any of thame salbe apprehendit summound or chargeit', restoring the Episcopal hierarchy, prohibiting all assemblies not called by royal authority either to meet or to pronounce on matters civil or ecclesiastical, and establishing 'an ecclesiastical commission, under Archbishop Adamson', and therefore controlled by the crown, 'which effectively superseded the General Assembly'.¹⁶⁰ These acts Stewart condemned as a violation of the king's and parliament's oaths in the National Confession three years before and as giving the king the tyrannical powers of popes condemned in that Confession (38-9). Granted their actual language, it is difficult to disagree. But the ascendancy of this Erastian episcopacy was itself short lived. By 1586, the general assembly reasserted a modicum of independence,¹⁶¹ and by 1592 the National Confession was 'renewed and subscribed, by Order of the Secret Council at the Assemblies desire; and all the power that remained either in Bishops or Commissioners, by the Assembly is devolved upon the new erected Presbyteries' (42).¹⁶² In Stewart's understanding, this establishment of presbytery was, as Mullan describes it, 'a national commitment-presbytery, the only divinely sanctioned polity, was inscribed on tablets of stone and both kirk and nation were sworn to uphold it. To do less was to commit the sin of apostasy and to incur God's terrible wrath'.¹⁶³

Yet, to Stewart's sorrow, episcopacy was restored once again and prevailed until 1637 (43-6). Stewart's account oversimplifies. As Mullan points out, the episcopacy enforced on the Church of Scotland in this period, while hierarchical, was not

¹⁶⁰*Source Book*, 3:40-43; *APS*, 3:292-303; MacDonald, *Jacobean Kirk*, 26.

¹⁶¹Hetherington, *History of the Church*, 91; MacDonald, *Jacobean Kirk*, 31, 33. On the period from 1583-1592, see James Kirk, *The Second Book of Discipline* (Edinburgh, 1980), 137-51.

¹⁶²Act establishing Presbyterian Government, *Source Book*, 3:48-9; *APS*, 3:541-2 (both partial text); Melville, *Autobiography*, 294-9 (full text). Assuming that he had Act 114, Parl. 12, James VI in mind, Stewart dated it mistakenly to 1590 but accurately summarized it. This 'Golden Act' of 1592 was repealed in 1612 (Mullan, *Episcopacy*, 111).

¹⁶³Mullan, *Episcopacy*, 150.

identical to Anglican episcopacy and was tempered by the continuation of many aspects of Presbyterian polity. Presbyteries continued to meet, though with diminished independence. Nonetheless, the shift toward prelacy was unmistakable. The bishops' cooperation with the presbyteries was discretionary while the presbyteries' cooperation with the bishops was not.¹⁶⁴ The bishops', and consequently the king's, control over the church increased incrementally until 1638, which meant that Erastianism and hierarchicalism, two principles most diametrically opposed to the Presbyterian principle, were increasingly implemented. This reversal occurred through a series of measures between 1597 and 1618 (the year of the Five Articles of Perth) pressed by James VI, who 'remained firmly opposed to the presbyterian system of church government and the independence of the ministers' and 'saw in episcopacy his only hope of royal control over the Church—perhaps even over the State as well'.¹⁶⁵ Among other ways, James made his intentions clear in a set of articles he hoped to have affirmed at provincial synods in February 1606, including 'That Bisschopis sall have full jurisdiction ovir the Ministeris, undir his Majestie', 'That the Commissionaris of the Generall Assemblie be not alterit', 'That thair be no appellatioune from thame to the Generall Assemblie', and 'That the King be acknowledged suprem reuler of the Kirk undir Christ; and that from him the power of Ministeris assembling and spirituall meitingis doe lawfully flow'¹⁶⁶—taken together, an unmistakable assertion of Erastian, hierarchical prelacy. '[A]fter all', says Mullan, 'episcopacy was the king's programme, not the result of petitions by assemblies and ministers. As James himself wrote, the restitution of episcopacy "hes bene Oure owen proper motioun, not subgested or procured by importunitie or suiteing of otheris"'.¹⁶⁷

Stewart thought it 'not necessary for our design, that we should trace and

¹⁶⁴Mullan, *Episcopacy*, 119, 233 n. 62, citing *Original Letters relating to the Ecclesiastical Affairs of Scotland*, I, 274.

¹⁶⁵*Source Book*, 50.

¹⁶⁶Melville, *Autobiography*, 626-7; cited partially in Mullan, *Episcopacy*, 108.

¹⁶⁷Mullan, *Episcopacy*, 122, citing *Original Letters relating to the Ecclesiastical Affairs of Scotland*, I, 406.

recount all these sad steps and degrees, by which the Holy and Wise God thought fit' to allow that tragedy to occur.¹⁶⁸ It was 'enough for us' to affirm that they were attributable to a combination of 'fair and smooth pretensions, crafty insinuations, Court-flatteries, false calumnies and suggestions, open and gross perjuries, and violent disorders, according to the working of Sathan' (43-4). Had Stewart tried to trace that decline and explain the causes of it, he might have found that 'covenanting's political potential was allowed to wither away', being crowded out by 'the soteriological aspect' until the 1630s. Although Alexander Henderson did claim in 1638 that 'the Negative Confession had been in regular annual use in some areas of Scotland, . . . one is left to wonder about the actual extent'. It was administered as an oath sometimes to 'persons suspect of Papistrie'; to graduating students; 'at the country's universities from 1587 until 1606 or 1610 and at the University of Edinburgh until 1635 when the prelatical party set it aside in favour of a short anti-popish oath'; to screen 'travellers returned from abroad' and so exposed to popery; perhaps 'at the provincial synod of the Lothians in 1614'; and at a communion in 1636.¹⁶⁹

Government and Society

Founded on Covenant and Sacred Oath

Though he did not trace the decline of (political) covenanting in that forty-year period, Stewart must have recognized that the decline had occurred, for he wrote that in 1637 'it pleased the Lord . . . to remember His Covenant though *we had fearfully forgotten it*' (emphasis added), God using 'a few weak Women', rising up against 'the *Service-Book*' in the celebrated riot at the Cathedral of St. Giles in Edinburgh on 23 July. This traditional Presbyterian account of the riot as 'unpremeditated' or 'a rash emergent',¹⁷⁰ endorsed here by Stewart, is undermined

¹⁶⁸For surveys of this period of the church's history, see Mullan, *Episcopacy*, chapters 5-6, and MacDonald, *Jacobean Kirk*, chapters 4-7.

¹⁶⁹Mullan, *Puritanism*, 193, 203-6.

¹⁷⁰Hetherington, *History of the Church*, 146; *Epistle Congratulatorie of Lysimachus Nicanor*

by correspondence among leading Covenanters, who appear to have incited the women involved in it—a common tactic.¹⁷¹ Be that as it may, sparked by that riot and in reaction against the ‘Book of Canons’ and the ‘High Commission Court’, with its ‘subverting of all regular Government, and the confounding of all things Divine and Humane’, great numbers of Scots, high and low, renewed the National Covenant (of 1581) in an enlarged form¹⁷² beginning in 1638. In November the general assembly at Glasgow rejected ‘the five Articles of Perth, the Government of the Church by Bishops, the erecting of Prelacy therein, and all the Corruptions flowing therefrom’. The following year, ‘the Prelats routed’ stirred up Charles I to war against the Scots, who successfully defended their country, forcing the Pacification of Berwick (18 June 1639). Two months later a general assembly, with ‘the Kings Commissioner being present and assenting’, ratified the Glasgow assembly’s acts, and the commissioner and privy council subscribed the National Covenant and provided that it should be subscribed yet again throughout the land. The following year, after the Covenanters’ army had defeated their king in the second ‘Bishops’ War’, the Scottish parliament ‘fully establish Presbyterial Government; ratify the Covenant, with the Addition and Explanation of the Assembly, and all Acts made thereanent; & abrogat the Estate of Bishops, and all Acts whatsoever made in their favours’.¹⁷³ In June 1641 parliament took an oath ‘for the maintenance of Religion in purity as then established, and of the King’s Authority, and the Peoples Liberties according to the Covenant; and for endeavouring . . . Union and Peace betwixt the three Kingdomes’, this time with the

(1640), 73, cited in James King Hewison, *The Covenanters: A History of the Church in Scotland from the Reformation to the Revolution*, 2 vols. (Glasgow, 1908), 1:245; cf. Alexander S. Morton, *Galloway and the Covenanters or the Struggle for Religious Liberty in the South-west of Scotland* (Paisley, 1914), 64-6; Brown, *History*, 2:235-6; Douglas, *Light*, 23-4.

¹⁷¹Donaldson, *Scotland*, 311 and note 41; Mullan, *Episcopacy*, 176. Hewison’s account in *Covenanters*, 1:241-7 of the riot and discussion of the extent to which it was premeditated are well balanced. See also Sir Archibald Johnston of Wariston, *Diary of Sir Archibald Johnston of Wariston 1632-1639*, ed. George Morison Paul (Edinburgh, 1911), 265; Allan I. Macinnes, *Charles I and the Making of the Covenanting Movement 1625-1641* (Edinburgh, 1991), 159-60.

¹⁷²*Source Book*, 3:95-104; *APS*, 5:272-6. Stewart, the loyal Covenanter, paints a picture of unanimous or near-unanimous reception of the National Covenant. In truth response was mixed. See Mullan, *Puritanism*, chapter 9.

¹⁷³*Source Book*, 3:106-17.

king present (46-9).

Stewart's reference to the 'High Commission Court' is important to an understanding of the Covenanters' objection to Stuart policy. They saw it as a sinful mixing of civil and ecclesiastical government. The general assembly of 1638 condemned this, 'and a vote, unanimous but for two voices, sustained a prohibition on ministers holding civil office'.¹⁷⁴ Seventeen years earlier David Calderwood had written, in a document 'prepared for the 1621 parliament',¹⁷⁵ 'That one or two Archbishops, with two or three associats, Ecclesiasticall, or civill persons, . . . should judge in all Ecclesiasticall causes, and inflict both temporall and spirituall censures, and punishments, according to their pleasures, is contrarie and repugnant to the word of God. For spirituall power, neither Princes nor Parlements, may give to Ecclesiasticall, or civill persones, neither are Ecclesiasticall persons capable of the power of the Temporall Sword'.¹⁷⁶ James Guthrie, author of *Causes of the Lord's Wrath Against Scotland* (1653), asserted in his scaffold testimony on 1 June 1661 that one reason the restored Stuart government condemned him was for 'Denying to acknowledge the Civil Magistrat as the *Proper Competent Iudge in causes Ecclesiastical*'.¹⁷⁷ In 1647 George Gillespie had argued, citing numerous verses, that 'The same Lord and our Saviour Jesus Christ, the onely Head of the church hath ordained . . . Ecclesiasticall Government, distinct and differing from the Civill Government' and that 'to Ecclesiastical evils Ecclesiastical remedies are appointed and fitted, for the Church is no less then the Common-wealth, through the grace of God, sufficient to it self in reference unto her own end: and as in the Common-wealth, so in the Church, the error of inferior judgments and Assemblies, or their evil Government, is to be corrected by superior judgments and Assemblies, and so still by them of the same order, lest one order be confounded with another,

¹⁷⁴Mullan, *Puritanism*, 260.

¹⁷⁵Mullan, *Episcopacy*, 161.

¹⁷⁶David Calderwood, *Quæres Concerning The state of the Church of Scotland* (n.p., 1621; rep. 1638), 14-15.

¹⁷⁷*Naphtali*, 202.

or one Government be intermingled with another Government'.¹⁷⁸ Asserting and sustaining this distinction were, however, different matters. Later in the same work Gillespie insisted that

every lawfull Magistrate, being by God himself constituted the keeper and defender of both Tables of the Law, may and ought first and chiefly to take care of Gods glory, and . . . to preserve Religion when pure, and to restore it when decayed and corrupted: And also to provide a learned and Godly Ministry, Schools also and Synods, as likewise to restrain and punish as well Atheists, Blasphemers, Hereticks and Schismaticks, as the violaters of Justice and Civill Peace'.

But shortly he added, 'Yet the civill Power and ecclesiasticall ought not by any means to be confounded or mixed together'.¹⁷⁹ This inconsistency, inseparable from establishmentarianism, was to plague Covenanter thought well beyond the end of the seventeenth century.¹⁸⁰

Stewart's telling of the history here and elsewhere is highly tendentious and needs to be supplemented and corrected by more objective narratives,¹⁸¹ but our aim is to convey his understanding, not to correct him. What is important is how Stewart argued from his narrative that

by all the Security that either Sacred Oaths; or Acts of Lawful & Authorised Assemblies; Ordinances of King and Council; doubled and re-iterated Pacifications and Treaties; Acts of Parliament . . .; the Kings Authority and Consent being often and solemnly interposed, . . . these Wicked Prelats are cast out of this Church and Kingdom, Presbyterial Government fully established, the pure Worship of God, with His pure and powerful Ordinances and Ministry restored, and . . . the whole Land, by many Oaths

¹⁷⁸Gillespie, *Propositions*, 3, 34 (props. 6, 87).

¹⁷⁹Gillespie, *Propositions*, 18, 19 (props. 41, 43).

¹⁸⁰See footnote 206.

¹⁸¹E.g., Donaldson, *Scotland*, chapters 16-19; Brown, *Kingdom*, chapters 5-6; Mullan, *Episcopacy*, chapters 5-10, and *Puritanism*, chapters 6-9; and the whole of Walter Makey, *The Church of the Covenant 1637-1651* (Edinburgh, 1979).

& most Solemn ties, engaged unto the Lord for ever' (49-50).

As already noted, Covenanters, like Stewart, held such oaths inviolable. As MacKenzie pointed out, 'A "Covenant with God" possessed a significance and force that no national undertaking, however binding, could possibly have secured. And a "National" Covenant superadded the element of patriotism to that of religion. This explains the devotion of the Scots to their "Covenants"; the religious and national meaning inherent in them; the desperate tenacity with which the people clung to them; and the fearless intrepidity with which they died for them'.¹⁸² As Ian Smart puts it, 'Those who held to the Covenants of 1638 and 1643 considered them perpetually binding on all Scots, even those who had not actually signed them, and even all future generations'.¹⁸³ One of the recurrent themes of *Naphtali* (and later *Jus Populi*) was the sinful violation of such oaths—by Charles I, Charles II, and the Covenanters' opponents in general.

Just such perjury, in Stewart's judgment, led to the war between Charles I and the English parliament, which in 1643 occasioned the Solemn League and Covenant, committing Scotland, England, and Ireland to 'uniformity in doctrine, worship, discipline and government',¹⁸⁴ a treaty 'Holy, Just and True' and 'antecedently obliging both to King and people', the abrogation of which by Charles II after the Restoration¹⁸⁵ was therefore sinful. Stewart argued particularly that neither the Act against the Covenants (1662) nor any other could 'dissolve the Sacred Obligation of this Oath once lawfully contracted' (50-55). Hutton points up the difference in conscience between Charles II and the Covenanters: 'Had Charles been made in their mould he would have refused absolutely the tests they set him. . . . Instead, he had signed every document required while making it plain that he detested the contents. The resulting situation was a mockery of both the royalist

¹⁸²MacKenzie, *Maitland*, 30-31.

¹⁸³Smart, 'Political Ideas', 183.

¹⁸⁴*Source Book*, 3:122-5, 121.

¹⁸⁵E.g., *Source Book*, 3:156-9.

and Covenanting causes'.¹⁸⁶ The fundamental difference between them was that the Covenanters held oaths sacred, while Charles II took them lightly as to be made and broken at whim as advantage dictated. MacKenzie put the point nicely: 'to have a crown on his head, he would put his conscience in his pocket'.¹⁸⁷ In this Charles II differed from his father, who despite pressing circumstances refused to compromise his conscience by embracing the National Covenant and Solemn League and Covenant while in the hands of the Scots army at Newcastle, though later in the Engagement he bent that conscience nearly to the breaking point.¹⁸⁸

Stewart next launched a vindication of the Solemn League and Covenant that rested on both natural (e.g., self-defence) and parliamentary law (58-63). As part of the argument he replied to two counterarguments: (a) Some argued that as wives' and daughters' vows were not binding unless approved by husbands or fathers,¹⁸⁹ so the people's bonds were not binding unless approved by the king. Stewart replied that the analogy failed in 'the Persons ('only women under power'), the Things in themselves, being free, but at another's disposal, and many other Circumstances, . . . and even as to Law it self' (61). Apparently he thought it unnecessary to repeat that Charles I had endorsed those covenants (46-9) or to point out that Charles II had done so at and before his coronation.¹⁹⁰ (b) Others argued that the covenants had been 'urged and pressed, both by Church Censures and Civill Sanctions, . . . which hath been heavily complained of, as a great violence done to Conscience'. In keeping with the self-righteousness of both parties at the time he shrugged off the plea of conscience as 'only pretended'. He added that the National Covenant had been 'a standing, & binding Oath upon the whole Land' already before 1638, its renewal justified by the example of the godly king Josiah (2 Chronicles 34:32), and that the Solemn League and Covenant contained 'no other obligements, then what

¹⁸⁶Hutton, *Charles II*, 53-4.

¹⁸⁷MacKenzie, *Maitland*, 172. See further on Charles II's character Hutton, *Charles II*, 454; Fraser, *Royal Charles*, 54; and the discussion in chapter 2 above.

¹⁸⁸MacKenzie, *Maitland*, 84-7; *Source Book*, 3:134-9.

¹⁸⁹For which he might have cited Numbers 30:6-8 but did not.

¹⁹⁰Hutton, *Charles II*, 53-4, 59-60.

the National doth import' and hence was 'warranted . . . from the very bond of the National'. And he concluded, rightly, that the sanctions against non-subscribers then were relatively mild compared with those leveled against people who now remained faithful to the covenants (62-3).

Returning to his history, Stewart enumerated some advantages to Scotland and England pursuant to the covenants: (a) parliamentary adoption of the *Westminster Confession of Faith* and *Larger* and *Shorter Catechisms*, and abolition of unbiblical patronage, with its attendant evils; (b) Charles II's oath to uphold the covenants as a condition of his restoration; (c) the king's repentance, before and at his coronation, for his father's sins; and (d) ratification of these 'treaties' (the covenants and the king's coronation oath) in 1651 (at his coronation), after Charles II had turned twenty-one,¹⁹¹ making them part of the fundamental constitution of the land (65-72). Scottish parliamentary historian John R. Young points out, 'The conditions which were required to be met before the admission to royal office ensured that the future monarch would not only be a constitutional monarch, but also a covenanted monarch'. It hardly need be noted that, though *intended* to ensure these results, the conditions in fact failed to do so. During the first eleven days of the Restoration Parliament in 1661, 'In essence the Scottish constitutional settlement of 1639-41 was rescinded. . . . This constitutes a remarkable surrender of parliamentary power to the Crown'.¹⁹² That was precisely why Stewart argued as he did.

Against the complaint that requiring the king to swear to uphold the covenants was disloyal, Stewart replied that Charles had not yet been king, the oath had been among the conditions of his being offered the throne, 'there is no Voluntary Kingdom, which is not both erected, sustained, and continued by a Fundamental Contract, and no Right thereto so good . . . which is not settled and confirmed by this agreement',¹⁹³ and the condition was justified in light of 'the preceeding War with

¹⁹¹Actually, since Charles was born 29 May 1630, the coronation took place nearly six months before his twenty-first birthday.

¹⁹²Young, *Scottish Parliament*, 238, 312.

¹⁹³In justification he cited 2 Samuel 5:3 and 2 Kings 11:17. The first supported the notion of a

the last King', who had betrayed the people's trust repeatedly (67). Stewart offered two instances of Charles's public repentance for his father's sins. First was the *Declaration of Dunfermline*,¹⁹⁴ a 'Declaration so full of heart-professions, and high attestations of the Great God, that none seriously considering the present times, can reflect thereon without horror and trembling from the Holy Jealousy of the Lord, either for the then deep Dissimulation, or the present unparalleled Apostacy' (68). Second was the entire coronation ceremony, including the oath, in which also 'the King did again confirm the Covenant, and both He and his People thereby again engage themselves unto the Lord', and 'when [t]he Sword was put in his hand, he is desired to receive the same *For the Defence of the Faith of Jesus Christ, & of the true Religion ACCORDING TO THE NATIONAL & SOLEMN LEAGUE AND COVENANT, & for the Ministration of Justice*; which he accordingly accepteth'. He emphasized, not only by repetition (five times) but also by typeface, that the oaths of king and nobles and people alike were all '*ACCORDING TO THE NATIONAL & SOLEMN LEAGUE AND COVENANT*' (69-70).¹⁹⁵ James B. Torrance writes that the Covenanters' political arguments tended to weave together three lines: (1) 'the historical argument from the ancient Scottish precedent of bands and pacts and coronation oaths in the defense of liberty and national sovereignty'; (2) 'the political argument with its appeal to medieval notions of a contract of government'; and (3) 'the biblical argument with its appeal to the Old Testament conception of Israel as a covenanted nation, and of a king in covenant with God and his People in defense of the true religion', offering Douglas's sermon at Charles II's coronation as a 'vivid illustration of the confluence of these three lines of argument'.¹⁹⁶ Those three lines can be discerned here in *Naphtali* and, as we shall see, in *Jus Populi*.

Stewart's emphatic description of the *Declaration of Dunfermline* and detailed

covenant between king and people, and the second the notion of two covenants, one three-way among God, king, and people, and one two-way between king and people.

¹⁹⁴Text in Wodrow, *History*, 1:66ff; see also Hutton, *Charles II*, 52-3.

¹⁹⁵A full description of the ceremony, including the coronation sermon and oath, is in Douglas, *Coronation*. Compare Hutton, *Charles II*, 59-60.

¹⁹⁶Torrance, 'Covenant Concept', in Elazar and Kincaid, edd., *Covenant Connection*, 154, 155.

recitation of the coronation ceremony provide yet another instance of the intensely sacred character he and other Covenanters, in contrast to Charles, ascribed to such oaths. Honyman, seeking to defend Charles, surmised that his turning from them after the Restoration should be understood not as apostasy but as repentance from ungodly oaths given under ill counsel from the Covenanters at the time.¹⁹⁷ Hutton's explanation is more likely. For Charles, the whole affair was mere theatre with a bit of haranguing to be endured from a weakening church party on his way to the throne,¹⁹⁸ and on which he could turn his back the moment it became expedient. In contrast, the Covenanters earnestly believed these oaths and covenants bound king and people before God.¹⁹⁹ Thus, wrote Stewart, 'the World must acknowledge, that never King and People . . ., became so expressly [sic] and strictly obliged both unto God, one to another, & amongst themselves, as we were and are by these most Sacred Oaths of the Holy Covenants, most indissolubly engaged' (72). Ironically, it may have been their fidelity to the Solemn League and Covenant that, probably contrary to their own interests, drove the Covenanters to crown Charles II king not only of Scotland but also of England, Ireland, and France;²⁰⁰ it certainly was his infidelity to it that, after the Restoration, drove them time and again to defy his rule.

Widespread abandonment of the covenants 'provoked the Lord also to forsake us', leaving Scotland to be ruled by Cromwell from 1651 (75-6). Yet 'neither failing nor backsliding . . . nor . . . Hypocrisy and Dissimulation . . . whereby the King was brought under the bond of the Holy Covenant, doth lessen or annul His obligation thereto' (78), an obligation strengthened, as Stewart believed, by the fact that during the Cromwellian union it was those who 'were faithful and stedfast in the Covenant' who 'remained . . . faithful to the King', not those who, since the Restoration,

¹⁹⁷Honyman, *Survey*, 2:15-17; cf. Fleming, *Notes*, 46.

¹⁹⁸Hutton, *Charles II*, 60. See above, text at footnote 190.

¹⁹⁹As Mullan points out, the 1638 National Covenant had expressly said that 'all generations of Scots were "bound to keep the foresaid national Oath and subscription inviolable"', and Robert Baillie had 'recognised the power of the oath which, once taken, could not be recalled'. Mullan, *Episcopacy*, 180.

²⁰⁰MacKenzie, *Maitland*, 162-7.

‘pretend so highly for the King, in prejudice of Jesus Christ, and the Holy Covenant’ but had slavishly complied with the Commonwealth regime (80). The king’s restoration had followed his repeated assurances that he would remain true to the covenants (81-2). Yet, shortly after it, though he had written to the presbytery of Edinburgh promising ‘to protect and preserve the Government of the Church of Scotland as it is settled by law without violation, . . . the whole strain of the Letter, is such as tendeth only to divide the whole Ministry, and to abuse the greater part of them’, for it substituted parliamentary law, ‘which is but frail and moveable’, for the Word of God as the ground of his promise—a sleight of hand that wiser Presbyterians recognized as presaging the restoration of episcopacy.²⁰¹ It was not long, therefore, before ‘Nobles, Rulers, and the generality of the Land’ turned from the covenants into a ‘fearful course of Apostacy’ highlighted by the act annulling the covenants (84-5).²⁰² Anyone who examines the history, Stewart insisted, ‘must necessarily conclude, that all these Acts and Deeds of Defection were and are Gross Perjury and Wickedness, and that so long as that maxim shal hold, *that we ought rather to obey God then Man*,²⁰³ they can never be binding either in Conscience or Reason’ (85).

Resistance to the Restoration Order Justified

The sinfulness of the defection from the covenants proved the righteousness of refusing to conform to the new order despite royal authority. That sinfulness was evident from the unjust treatment of innocent men like Argyll and Guthrie;²⁰⁴ the arrest of ministers merely for preparing to petition the government, an action protected by law; and the committee of estates’ having taken, on 1 January 1661, the oath of supremacy ‘without respect to it’s [sic] due limitation contained in the

²⁰¹ See the discussion of this letter, of 10 Aug. 1660, and the controversy over Charles’s intent in it, in chapter 2 above.

²⁰² 1662; *Source Book*, 3:158-9; *APS* 7:377-8.

²⁰³ Acts 5:29.

²⁰⁴ Stewart might have mentioned his own father but did not.

114 *Act. Ia. 6. Parl. 12. 1592.* then standing unrepealed'. Parliament then repealed the Solemn League and Covenant and the National Covenant of 1638, passed the Act Rescissory (85-8), and restored episcopacy,²⁰⁵ showing the world 'how Erastian²⁰⁶ and antichristian this Woful Government is' by founding this action 'upon the *King's Supremacy, as being an inherent Right in the Crown for the disposal of the external Government of the Church*' (89). As if this were not enough, parliament also declared ministers admitted to parishes since 1649 without patronage illegitimate unless they obtained 'the Patron's presentation and Bishop's Collation' by 20 September 1662, and that even then they could enter or remain in their charges only after taking the oath of supremacy, by which provision 'the very body and strength of the Ministry of this Church were reduced to this sore *Dilemma*, either to take that Oath of Supremacy, which both by express Acts and clear Practises, was now declared and interpreted to be the very height of Papacy, and root of Prelacy, and by accepting of Collation, to acknowledge these perfidious and usurping Prelates, or to lose and be cast out of the Ministry, likeas, *de facto* 300. and upwards of the faithful Ministers, were by vertue of this Act shortly thereafter outed and violented from the Exercise of their Ministry' (96-7). Similar acts—against private assemblies, refraining from appointed worship at one's parish church, etc.—followed (97-9).²⁰⁷ All of this meant setting 'the King upon our Lord Jesus his Throne' (91), thus achieving 'al the Usurpation, that ever the Pope or Antichrist, can be charged with' (93). Compliance with such measures involved violating not only previous oaths to God to extirpate prelacy (104) but also the fundamental Presbyterian principle that no man must be forced upon a congregation as its minister but every congregation had a right to call its own pastor. Since hearing the 'curates'—the ministers forced upon the congregations in place of their called but

²⁰⁵*Source Book*, 3:153-5, 157-9; *APS*, 7:86-7, 372-4, 377-8; Wodrow, *History*, 1:151-2n.

²⁰⁶Stewart's insistence that this assertion of royal authority over the church was Erastian was in keeping with the dominant understanding among Covenanters; see Gillespie, *Propositions*, 2 (props. 4-5). See above, text associated with footnotes 174-180.

²⁰⁷*Source Book*, 3:159-60, 162-5; *APS*, 7:554, 376, 379, 455.

‘outed’ ministers—violated past oaths against prelacy, ‘not hearing becomes . . . an indispensable duty’ (106-8). The attempts by the government and prelates to enforce compliance with the newly imposed church order ‘inclined the Government unto Tyranny’ and ‘did in effect wholly corrupt and innovate the well tempered and firm constitution of our Ancient Government’ (112). The capstone of all this Erastian tyranny was the reestablishment of the Court of High Commission ‘without so much as the approbation of that Parliament’, contrary to past law requiring parliamentary approval of all newly established courts with civil jurisdiction,²⁰⁸ and ‘wherein . . . Ecclesiastick and Civil Jurisdiction are absurdly confounded’.²⁰⁹ The court uses an ‘Arbitrary form of Inquisition and summar procedour without any shaddow of Legal Process’ and ‘new invented, insolent and affronting punishments more cruell to ingenuous Spirits then death itself’ (114). All these things, Stewart concluded, had been done ‘for no other end then the support of this wicked Prelacy, and it’s cruel Bondage and Spiritual Tyranny’, and as a result the whole country was ‘reduced to the condition of a most insupportable and unnatural Conquest’, which was ‘a most just cause and provocation to all ingenuous Spirits and true Patriots, to undertake the asserting of their own Liberty’ (115-16).

After describing a variety of evil consequences²¹⁰ of all these laws and recounting the Pentland Rising (116-146), Stewart summarized his justification of the latter (147-56). It was an act of self-defence (147). It was done in recognition that by the perversion of the proper ends of government ‘the common tie of both Society, Government and Law, is . . . dissolved’ (147-8), which meant that ‘the persons . . . thus liberated therefrom, do relapse into their primeve Liberty and Priviledge’ and ‘may upon the very same principles again join and associate for

²⁰⁸ Act 131 *Parl. 8 James 6*.

²⁰⁹ Honyman, in his *Survey of Naphtali*, was to offer a dubious reply to this charge: that ‘it is not true, that secular men do in this Commission suspend or depose ministers, but only *they appoint them* to be so censured’ (cited in Fleming, *Notes*, 47).

²¹⁰ See the latter half of chapter 2 above for some description of the policies and their consequences from 1662-1666. Stewart’s descriptions are similar to those found in Wodrow’s *History* and other sources. Compare Donaldson, *Scotland*, 361-8.

their better Defence & Preservation, as they did at first enter into Societies' (150).²¹¹ Scotland's kings and parliaments had recognised 'the reveal'd Word and Will of God to be the Superior Rule of law', and therefore the laws made nullifying the covenants were 'to be interpreted with [or, Stewart did not say, flouted in] *subordination to the Law and Will of God*, and in order to these great Ends of their establishment' (149). Because of these covenants 'there lyeth upon all and every one of us an indispensible duty, by all possible means to promote the same' and endeavour 'a National Reformation' (150-51). Such sacred covenants cannot be dissolved by man (152-3, 154-5). The great blame for the troubles lies not with the king (despite Stewart's having explicitly charged him with perjury and apostasy) but with 'the malice, perjury, flattery and violence of that Antichristian spirit ruling in the apostat Prelats' (153). In fine, although risings and leagues contrary to law are treasonable if they 'are not warranded and commanded by the Superior Law and Authority of God', nonetheless 'such the late Rising was not' but 'was altogether Lawful, Righteous and Necessary' (155).

Answers to Objections

Stewart then answered two sorts of objections to his argument. First, some challenged that it was unlawful to rebel 'under the Pretence of Religion'. But that begged the question, for the Pentland Rising was not 'under Pretence of Religion' but truly, and 'for Subjects to rise in Arms really for the defence of Religion . . . is both lawful and laudable'. Second, opponents raised several scriptural arguments. Some cited 1 Samuel 15:23, which warns that 'Rebellion is as the sin of witchcraft'. But that very warning 'having been spoken by the Prophet to a King, because of his disobedience and contempt of the command of God, and not to Subjects, would sooner conclude his Accusers then himself to be a Rebell'. Further, while rising against authority is indeed rebellion, rising 'against persons *Abusing* sacred

²¹¹See this discussed further in *Jus Populi*, 366-7.

Authority and *rebellling against God* the Supream, is rather to adhere to God as our Liege Lord, and to vindicate both our selves and his abused Ordinance, from man's wickedness and Tyranny' (156-7). Others cited Matthew 26:52, in which Christ says, 'Put up again thy sword into his place: for all they that take the sword, shall perish with the sword'. But in Luke 22:36 Christ had instructed His disciples, 'he that hath no sword, let him sell his garment, and buy one', and the command in Matthew 'was given . . . only to testify his voluntary submission unto the Father's will, by laying down his life for fulfilling of the Scripture', and so addressed an extraordinary circumstance, which means that it 'doth more confirm then impugn the Lawfulness of *Defensive Arms*'. Still others cited John 18:36, in which Christ says, 'if my Kingdom were of this world, then would my servants fight, that I should not be delivered to the Iews', reasoning 'that all Arms, even in Defence of Religion, are unlawfull and prohibited'. But in the context Jesus was answering the charge that He presented a threat to the Roman rule over Judea, which He did not, and the real principle of the text is that Christ does not propagate His religion by force. But it does not follow 'that a people having received the blessing of the Gospel and Kingdom of Iesus Christ, should without Resistance suffer themselves . . . to be impiously and sacriledgiously spoiled and deprived thereof, when they are in a capacity to defend the same'. Still others cited Matthew 5:39[-42], where Christ commands his disciples to 'resist not evil' but turn the other cheek. But while these verses, Stewart replied, teach us to bear evil patiently when called inevitably to suffer, the more to condemn those who do the evil, they do not require allowing true religion and righteousness to be destroyed among a people for lack of resistance to aggression (157-9).

The remaining thirty pages of the *True and short Deduction* Stewart devoted to describing the aftermath of the Pentland Rising, with the execution (which he termed martyrdom) and torture of participants and sympathizers; the brutal enforcement by Dalziel and his troops of acts against intercommuning with rebels;

cruel and inhumane imprisonments; at least one summary execution without trial; the ‘oppressive Quartering’ of soldiers; and the general impoverishment of the land (162-76). The oath of allegiance imposed on all Scots amounted to apostasy: ‘as all Powers are subordinat to the most High, . . . [to] take any . . . Oath of Alleagiance purely and simply, purposely omitting the . . . due Restriction, . . . is in effect equivalent to an express rejecting and dis-owning of the same Limitation, and of the Sovereign Prerogative of the Great God and King over all’ (177-8). The Church of Scotland was oppressed by the government at the instigation of the bishops (178-92).

Conclusion

In sum, Stewart argued in the *True and short Deduction* that the Pentland Rising had been justified in Biblical-theological terms in light of federal theology and the covenants that expressed it, in constitutional terms because the covenants had been incorporated into the Scottish constitution, and in terms of natural law on the grounds of self-defence.

The view of the origin and ends of government underlying Stewart’s argument for the legitimacy of self-defence and resistance against tyranny is of the sort Quentin Skinner has described as ‘religious’ (and therefore premodern) as opposed to ‘secular’, i.e., ‘political’ (and therefore ‘modern’).²¹² Yet by setting up false choices Skinner exaggerates the ‘secular’ nature and tone of the later Calvinist political writers, implying a contrast between their arguments and Stewart’s that, if real, was at least less stark than Skinner would have it. The writings stand along a continuum; they do not employ exclusive kinds of arguments.²¹³ Coffey’s

²¹²Skinner, *Foundations*, 2:335, 338, 347. J. W. Allen, in *A History of Political Thought in the Sixteenth Century*, 2d ed. (London and New York, 1960), 514, defined a ‘religious rather than strictly political’ view of the state as one that is ‘concerned . . . mainly with the function of government in relation to another world than this’. Although Stewart evidenced plenty of concerns about this world, it is impossible to read *Naphthali* and *Jus Populi* without recognising that concerns about how the political order affect our prospects in another world were more important to him.

²¹³E.g., Mason interprets Buchanan’s ‘basic presupposition about man’s nature’, ‘the keystone of his political philosophy’ and the reason why the ‘king cannot be set free of the law’, that ‘within a man two most savage monsters, lust and rage (*cupiditas & iracundia*), wage perpetual war with

argument against reading a secularized understanding of, e.g., ‘natural law’ into Rutherford or other Calvinist writers applies broadly: ‘Scripture . . . may not have added much to what *ontologically* speaking was part of natural law, but it added immeasurably to what *epistemologically* speaking men could now know through natural reason. . . . Any interpretation of *Lex, Rex* which focuses on its arguments from natural reason and misses its uniquely biblical arguments is incomplete’.²¹⁴ While he recognizes movement along a continuum toward increasingly secular grounds of argument during the sixteenth and seventeenth centuries, nonetheless Skinner overstates the contrast:

With the publication of the major Huguenot treatises of the 1570s . . . the idea that the preservation of religious uniformity constitutes the sole possible grounds for legitimate resistance is finally abandoned. The result is a fully political theory of revolution, founded on a recognisably modern, secularised thesis about the natural rights and original sovereignty of the people.²¹⁵

But (a) the earlier writers had not made defense of the true religion the *sole* ground for legitimate resistance; (b) Beza and Mornay did not abandon defense of the true religion as one ground for legitimate resistance; and (c) Beza and Mornay’s ground for asserting property rights was not exclusively secular but also religious, stemming from Biblical teaching. The Calvinist constitutionalists constructed their

reason (*ratio*), as Stoic and not Calvinist. (Roger A. Mason, ‘George Buchanan, James VI and the Scottish Polity’, in John Dwyer, Roger A. Mason, and Alexander Murdoch, ed., *New Perspectives on the Politics and Culture of Early Modern Scotland* [Edinburgh, n.d.], 10-33, at 11, 16, 17, citing *De Jure Regni*, facsimile reprint of the first edition [Edinburgh, 1579], 32.) But the notion of lust and rage waging war with reason, however Stoic in form and substance, is also substantially Pauline (Romans 7:18-23), Augustinian (*Sermons*, cli. 5 [cited by McNeill in Calvin, *Institutes*, 2:1313, note 22]), and Calvinist (*The Epistles of Paul the Apostle to the Romans and to the Thessalonians*, trans. Ross Mackenzie, vol. 8 of *Calvin’s Commentaries*, 12 vols., ed. David W. Torrance and Thomas F. Torrance [Grand Rapids, 1976], 151-3; Calvin, *Institutes*, IV.xv.12; Francis Turretin, *Institutes of Elenctic Theology*, 3 vols., trans. George Musgrave Geiger, ed. James T. Dennison, Jr. [Phillipsburg, NJ, 1992-1997], IX.xi.9-10, XVII.ii.11-15.) Calvinists interpreted Romans 7:18-23 as describing Paul in his regenerate state; Arminius concluded the opposite (*Dissertation on the Epistle to the Romans*, in James Arminius, *The Writings of James Arminius*, 3 vols., trans. James Nichols and W. R. Bagnall [Grand Rapids, 1977], 2:326-8) and later Arminians concurred. This helps explain why Calvinists tended to oppose, while Arminians tended to support, royal absolutism.

²¹⁴Coffey, *Rutherford*, 154-5, 154n.

²¹⁵Skinner, *Foundations*, 2:338.

arguments on Biblical grounds right through the seventeenth century—and Locke equipped his *Two Treatises on Government* with Biblical arguments that are not mere rhetoric—but their doing so did not make their arguments less political.²¹⁶

Finally, Skinner writes that the Calvinist revolutionaries

were able . . . to make the epoch-making move from a purely religious theory of resistance, depending on the idea of a covenant to uphold the laws of God, to a genuinely political theory of revolution, based on the idea of a contract which gives rise to a moral right (and not merely a religious duty) to resist any ruler who fails in his corresponding obligation to pursue the welfare of the people in all his public acts.²¹⁷

But the writers Skinner has in mind (a) emphasized *both* the three-way covenant among God, king, and people, *and* the two-way covenant between king and people and (b) grounded the moral obligation of the latter as well as of the former in duty to God. Further, (c) there is no reason why a moral right and a religious duty must be exclusive; the latter implies the former, and (d) it is difficult to see what makes a religious duty ‘mere’ as compared with a moral right, which by implication is not—particularly when their interpretation of the first commandment committed such thinkers to the view that obedience to God trumped all other obligations.²¹⁸

Whatever might be said about the religiosity or secularity of other Calvinist political writers, however, Stewart’s argument, like Rutherford’s before it, rests on explicitly (though not exclusively) religious (primarily scriptural) grounds.²¹⁹

Naphtali did not go unnoticed by the government. In addition to its condemnation to be burned by the common hangman, it drew an anonymous rebuttal that quickly became known to have been written by Honyman, apparently

²¹⁶See Richard Ashcraft, *Revolutionary Politics & Locke’s Two Treatises of Government* (Princeton, 1986), for a thorough reassessment of Locke’s life and thought, placing him and his political philosophy more in the religious than the secular tradition.

²¹⁷Skinner, *Foundations*, 2:335.

²¹⁸E.g., the *Westminster Larger Catechism*, questions 104 and 105. I am grateful to my friend, Rev. David Hall, for discussing this matter with me in correspondence.

²¹⁹See discussion in chapter 5 and Appendix A of Stewart’s use of Scripture in *Jus Populi*.

commissioned by the government through Sharp.²²⁰ Honyman's *Survey* was published in two parts, the first in 1668 and the second the following year. To the first part Stewart replied extensively in *Jus Populi*, the second coming to his hands too late for more than brief reply in his prefaced 'Epistle to the Christian Reader'. Though he intended to write a more extensive rebuttal to the second part,²²¹ Stewart never brought such to publication. After reviewing Honyman's arguments in chapter four, chapter five will examine *Jus Populi*, in which, as we shall see, Stewart's arguments for private resistance to tyrants, while resting on the same grounds as in *Naphtali*, became considerably more sophisticated and interacted with many more political writers.

²²⁰ *Jus Populi*, 454.

²²¹ *Jus Populi*, [12].

Chapter 4

A Royalist Churchman Responds: Andrew Honyman's *Survey of Naphtali*

In the second of his *Six Books on the Commonwealth*, Jean Bodin (1529/30-1596) asserted that while it was lawful for anyone to kill a usurping tyrant (*tyrannus sine titulo*) and for magnates to act legally to remove or kill a tyrant with title so long as he was not a true sovereign (like the kings of England and Scotland), it was needless to argue with anyone who favoured resistance to a true sovereign; he should merely be subjected to the 'merited penalties of the law'.¹ Others, as we have seen, thought Bodin was wrong in claiming that the kings of England and Scotland (or any others, for that matter) were 'absolute sovereign[s]' with authority 'not shared with any of their subjects'. The triumph of their views appears in the Scottish estates' *Claim of Right* (1689), which asserted that James VII 'invaded the fundamental constitution of the Kingdom, and altered it from a legal limited Monarchy, to an arbitrary despotick Power, . . . whereby he hath forefaulted the right to the Crown, and the Throne is become vacant'.²

Not only those who disagreed with Bodin about absolute monarchy but also

¹Jean Bodin, *Six Books of the Commonwealth* (1576; first English trans. 1606), abr. and trans. M. J. Tooley (Oxford, n.d.), 64-8.

²*The Claim of Right* (1689), in *Source Book*, 3:200-207, at 203. The Scottish estates' insistence that James VII had forfeited the crown by his misdeeds differed dramatically from the claim of the English parliament that he had abdicated. Smart, 'Political Ideas', 193. By charging James with 'inverting all the ends of Government', the estates borrowed a phrase from the most radical of the post-Restoration covenanters, the Cameronians; *Informatory Vindication*, 40, cited in Donaldson, *Scotland*, 376, and Smart, 'Political Ideas', 193.

some who agreed nonetheless thought it important to argue for it. One, Bishop Andrew Honyman of Orkney (1619-1676), endeavoured to answer the *True and short Deduction in Naphtali* with the anonymously published,³ two-part *A Survey of the Insolent and Infamous Libel entitled Naphtali* (Edinburgh, 1668, 1669), in which he reworked arguments used by James VI and I in *Basilicon Doron* and *The Trew Law of Free Monarchies*. Honyman had been shot in the wrist with a poisoned bullet and seriously—probably fatally—wounded on 11 July 1668 by James Mitchell, who meant to assassinate Archbishop James Sharp.⁴ No doubt the experience added passion to the convictions expressed when he wrote in horror of those who would ‘go so far in executing justice upon all Magistrates, (*Phineas*-like) as upon *patronisers . . . of abominations*’ as to assassinate them with ‘a dag or a dagger, a pistol or poisoned poinard, a Spanish-fig, or some secret applications’ and prayed for ‘the life of our dread Sovereign’ and ‘his servants’ and against ‘the generation of men of blood and violence, who [dare] to seek patrociny for villanous assassinations from the holy Scriptures of God’.⁵ With equal passion Stewart would respond by urging Honyman

to add this Letany: from perjury, pride, profanesse, blasphemy, impenitency, atheisme, and all manner of uncleannesse, good Lord deliver us and our King. And to prevent all these fears, let his Majesty and other Magistrates, reforme their ways, and turn to the Lord, and execute judgment on [Honyman] and his complices, and all the rest, who now pretend to honour the King, and to fear God, but in effect do deifie a creature and renunce their homage to the King of Kings, and so provoke him to destroy both them and

³For Honyman’s authorship, see *Jus Populi*, 409, 414, 426, 459; W. P. L. Thomson, ‘Honyman, Andrew’, in *DSCHT*, 412-13; Aldis, *List of Books*, Nos. 1852, 1882; Mann, *Book Trade*, 181n.

⁴A. Van Doren Honeyman, *The Honeyman Family in Scotland and America* (Plainfield, NJ, 1909), 26-41, cited in Friedeburg, ‘Collective Representation’, 19, 31 n. 2. Wodrow, *History*, 2:115-16; ‘Honyman, Andrew’, in *DSCHT*, 412-13. For Honyman’s character and the likelihood that the offer of a bishopric had motivated his conversion from zealous Covenanter and defender of presbytery as late as 1660-1661 to equally zealous prelate who in 1662 published *The Seasonable Case of Submission to the Church Government Now Reestablished by Law*, see Wodrow, *History*, 2:117, and D. C. Lachman, ‘Wood, James’, in *DSCHT*, 891-2.

⁵[Honyman], *Survey*, 1.2:108-9.

their King, by their apostasy and wicked defection . . . ; and then they need not fear either dag or dagger, pistol or poysoned poinard, a spanish fig, nor any such secret applications'.⁶

As Stewart saw it, royal absolutism 'deifie[d] a creature', and those who embraced it therefore were guilty of idolatry and apostasy.

Honyman's *Survey* was published in two parts totaling 413 pages, the first (139 pages) in 1668 and the second (274 pages) early in 1669. Part I comprised two sections, the first a preface (19 pages) and the second containing four chapters arguing that: (1) *Naphtali* tended 'to overthrow Magistracy' (pages 1-12), (2) violent resistance to magistrates 'by meer private persons' was never lawful (pages 12-71), (3) supreme magistrates 'have divine exemption and priviledge of impunity from their own Subjects' (71-104), and (4) precedents for private resistance to magistrates alleged by *Naphtali* were invalid (104-20). Part II, after a three-page epistle to the reader, contained six chapters arguing that: (1) *Naphtali*'s views undercut respect for 'the King's Majesty, the Parliament, the Council, the Commission, the City of Edinburgh, and all the Judges and Nobles of the Land' (1-43), (2) the king was properly supreme in ecclesiastical and not only civil causes (43-110), (3) Scotland's covenants obligated no one against episcopacy (110-89), (4) hierarchical episcopacy was Biblically warranted (189-240), (5) the appointment of ministers to parishes by bishops was lawful and 'despising and schismatically deserting them' was sinful (240-58), and (6) *Naphtali*'s allegations of persecution and presbyterian martyrdoms were false (258-71). Much of Part II responded more to Rutherford's *Lex, Rex* and Brown of Wamphray's (c. 1610-1679) *Apologeticall Relation*⁷ than to *Naphtali* or focused more on the legitimacy of hierarchical episcopacy as a form of church government than on questions of politics and resistance and therefore will occupy little of our attention.

⁶*Jus Populi*, 414, the last clause alluding to *Survey*, 1.2:109.

⁷Honyman thought Brown had written *Naphtali*; *Survey*, 1.1:17; 2.169.

Honyman summarized in Part I, chapter 1 the disagreement between himself (representing royal absolutism) and *Naphtali* as arising over whether a government's perversion of its ends looses its bands, leaving 'private persons' 'disobliged from all tyes' to it 'and relapsed into their primaeve liberty and priviledge'. While *Naphtali* affirmed both, Honnyman warned that embracing them sets society on a slippery slope to anarchy, insisting that only parliaments, not private persons, are qualified to determine when it is necessary to disobey magistrates in order to obey God, and assuring Scots that everything Charles II had done was by law with the consent of parliament and therefore the people had not been 'spoiled of their lawful civil Liberties' (1.2:3, 43-4, 6-7, 10). In chapter 2 he conceded that public resistance—led by lesser magistrates—to the supreme magistrate might in some instances be justified (a concession he was to revoke at 1.2:100), but he insisted that private resistance never was (1.2:12). '[T]he great knot of the question anent self-defence' was 'whether meer private persons . . . when they are or think themselves unjustly afflicted, and extremely injuriously handled by the Magistrate . . . proceeding according to laws agreed to, . . . may . . . defend themselves . . . even by violent re-offending; yea, in order to their own defence, cut off the Prince or Magistrate . . . standing in their way, or when they are punishing them and afflicting them according to Law' (1.2:19; cf. 1.2:21, 24, 27). (Here twice, as often, he begged the question.) Scripture, he continued, requires submission to rulers 'even when they put us to suffer wrongfully and unjustly', allowing only 'passive submission or obedience', never resistance (1.2:27-8, 32), for

a private person, though wrongfully afflicted by the lawful Magistrate, proceeding according to Law⁸ (let it be so that it is . . . an evil Law) is bound not only to Christian patience in suffering . . . but unto a submission without repelling of violence by violence, and that in conscientious respect to the Ordinance of God, wherewith the lawful Magistrate is invested . . . and with

⁸Another begging of the question.

a tender regard to the prevention of seditions and confusions in humane Societies. [1.2:35]⁹

Honyman explicitly rejected *Lex*, *Rex*'s and *Naphtali*'s distinction, in their expositions of Romans 13:1-4 and 1 Peter 2:13-14, between authoritative office and the person holding it, for 'even when the power is abused, it remains a power ordained of God'. The magistrate, if he abused his office, would answer to God but never to the people.¹⁰ Early Christians, though able, had never resisted unjust magistrates, and permission to resist an unjust prince would put just princes at risk as well. Denying the magistrate's authority in religion, as Honyman alleged *Lex*, *Rex* and *Naphtali* did, implied the unthinkable: 'absolute toleration' (1.2:37-44, 47). (In reality, both Rutherford and Stewart affirmed that magistrates must uphold the true religion but that the church, not the magistrate, must determine what that was.¹¹) They were wrong also to argue that God punished whole communities for the sins of individuals, whether magistrates or not, and for extending to anyone but the magistrate 'the vindicative and punishing sword', a view that led to 'the worst sort of Democracy' (1.2:51-2, 57-8), for

. . . whatever may be said of the lawfulness of defensive arms, against the illegal violences and extreme oppression of a Prince, who is not *integrae Magistratis* [which Honyman would shortly define as 'an absolute Prince' (1.2:88-9)] by other Magistrates to whom with him the protection of Laws and Liberties is jointly committed, by certain pactions and conditions expressed; that will say nothing to warrand the insurrection of any party of private persons against all their Magistrates, acting according to Laws agreed upon by the Magistrates of all degrees, and the body of the Community. [1.2:67-8]

⁹Compare *Trew Law*, 72, 79-80.

¹⁰Compare *Basilicon Doron*, 33-4, 23, and *Trew Law*, 72.

¹¹Rutherford published *A Free Disputation Against pretended Liberty of Conscience Tending To Resolve Doubts moved by Mr. John Goodwin, John Baptist, Dr. Jer. Taylor, the Belgick Arminians, Socinians, and other Authors contending for lawlesse Liberty, or licentious Toleration of Sects and Heresies* (London, 1649).

The Pentland Rising, Honyman insisted, was unjustified because those involved ‘had never before that essayed supplicating those in power’ and the abuses alleged to have provoked it were not serious enough. (Yet group supplication by private subjects had been outlawed by the time of the Pentland Rising,¹² and in Honyman’s system no abuses could be serious enough to justify violent resistance.) Attributing to *Naphtali* the view ‘*That it is as (or more) irrational and unlawful, to suffer unjustly from the Magistrate (so long as there is strength enough to act against him) as it is to obey actively, his unlawful commandments*’, he countered, ‘This doctrine cannot but be a source and spring of perpetual seditions . . . : For thus, every man is made judge of his own suffering and passion, as well as of his own practice, and no man must suffer, more then he thinks he deserveth; (but counteract all Authority, if he be strong enough to do it)’ (1.2:68-9).

The sovereign’s impunity with regard to all his subjects, private or public, Honyman explained in chapter 3, was a matter of simple logic: ‘In all order, there is a necessity to arrive at something that is first, before which, or above which, there is nothing in that order’. ‘To say that in civil Societies, a person is first and chief, and hath the Majesty of the Society residing in him, and withal, that that same person hath a Superior or equal, is to speak contradictions’. None can be judged but by a superior, and as there is no superior on earth to the king, the king cannot be judged by any man or men.¹³ This did not imply that the king was not subject to God.

It is a royal thing for a King, to live by the same good Laws which are given by him to the people But, if the supreme Power should deviat, we maintain that . . . impunity (as from Subjects) necessarily attends Sovereignty and supreme Majesty; which hath this inseparable priviledge of exemption from violence by Subjects, by the Law of God, Reason and

¹²*Jus Populi*, [31]; Wodrow, *History*, 1:151-2; M’Crie, *Sketches*, 398-9; *RPC Third Series* 1:677-8).

¹³Cf. *Trew Law*, 72, 78, 81-2.

Nature¹⁴

Yet kings should fear God's judgment all the more because of their immunity to man's; God might use foreign invaders or even sinfully rebellious citizens to punish them (1.2:72-6).¹⁵ The logical necessity of recognising some power immune to punishment is apparent from the fact that *Lex, Rex*, implying 'meer democracy', made parliament or people immune instead of king. But the Covenanters' mistake was in thinking that king and people owed the same obligation to God 'touching the publick promoting of Religion' so that 'If the Magistrate be deficient, they must do it', when in truth 'there was no such joynt obligation' (1.2:81-2, 85-6).

Neither was there a mutually enforceable obligation between king and people in any covenant of government. True, 'there is a mutual obligation betwixt Magistrates and Subjects . . . but this obligation arises not from any tacite or express Covenant betwixt them, but from the Ordinance and Will of God', and the civil covenant, like that of the family, was unconditional. 'The fancy of a tacite, virtual, natural Covenant, betwixt King and people . . . overthrows the distinction that all sound Protestant Divines and Polititians make, betwixt a *limited or pactional Prince*, and' (neatly begging the question) '*an absolute Prince*, or one who is *integræ Majestatis*, who takes not his Kingdom upon conditions prescribed to him, so as in case of failing he be subject to their censure or punishment'.¹⁶ There is no such covenant in Scottish history, and no such was ordained in Scripture, especially in that crucial text on kingship, Deuteronomy 17, the only two apparent instances to the contrary (David and Jehoiada) being otherwise explained. Even if all of Israel's kings had been made so by conditional covenants enforceable by the people, that would make no difference, for 'their customs without a Law of God bearing a standing reason, cannot be obligatory on others, least we judaize too much'. The Old Testament prophets 'never taught [the people] insurrections against' wicked

¹⁴Cf. *Trew Law*, 75.

¹⁵Cf. *Trew Law*, 80, 83-4.

¹⁶Cf. *Trew Law*, 81-2.

kings.¹⁷ In this regard, *Lex, Rex* was ‘far more tolerable than *Naph[tali]*’, for it did not approve private persons acting without ‘the body of the people or of the inferior Rulers and Nobles . . . against the King’ (1.2:88-99).¹⁸

No appeal to any covenant could set aside the truth that ‘God, having set and established in one particular and political Society or Nation, his own Ordinance of Magistracy, to which every soul must be subject, and all subject to the Supreme; he hath not put the punishing Sword in any hand, but in the hand of the Magistrate¹⁹ Nor hath allowed liberty to meer private persons to manage it against the supreme Magistrate, no nor to inferior Magistrates . . . who in respect of the supreme Majesty, are but private persons’ (1.2:100)—Honyman here contradicting what he had conceded at 1.2:12. Though people may plead with God to relieve them of a tyrant, they may not punish him themselves, for ‘*Rom. 13. . . . makes the Magistrate the only Sword-bearer of God to avenge or punish*’. Breach of contract is enforceable not by the offended party but only by a proper judge standing above both parties. But the only proper judge of the supreme magistrate is God Himself. The Covenanters’ appeal to a responsibility to promote true religion when the magistrate fails to do so could not justify their taking up the sword. ‘If Magistrates be deficient, . . . private persons are sufficiently discharged, if they keep themselves pure, and do what possibly they can, for advancing Religion in their private capacities’ (1.2:100-103).

In chapter 4 Honyman rebutted *Naph[tali]*’s use of Phineas and the Scottish Reformers as precedents for private resistance to unjust magistrates. Such precedents would ‘*fasten the last insurrection upon the holy spirit of God*’, and then ‘no man [could] have security of his life, if any private persons [were] allowed under *Phineas* cloak to come and cut the throats of all, whom this man [viz.,

¹⁷Cf. *Trew Law*, 70: ‘we neuer reade, that euer the Prophets perswaded the people to rebell against the Prince, how wicked soeuer he was’.

¹⁸Actually, Rutherford did permit private persons to resist a king acting tyrannically; *Lex, Rex*, Q.XXXII, 169-70.

¹⁹Cf. *Trew Law*, 78.

Naphtali's author] will point forth as black Apostats' (1.2:104-5). The consequence would be 'no end of confusion'. What was *Naphtali*'s mistake in appealing to Phineas? Because he was one of the chief priests, he was not a private person, and even had he been, he had acted with the approval of Moses the supreme magistrate, and the evil he had punished was clear and obvious to all, unlike any alleged by *Naphtali* on the part of Scotland's king and other magistrates. Even had he been a private person acting without approval of the magistrates, his example could justify none now who could not 'shew as good warrant and approbation from God, as he could'. Rules for common action cannot be derived from extraordinary actions like his. Granted the cessation of special revelation with the completion of the New Testament canon, none in Scotland had 'Gods [sic] secret and special mandates . . . to break Gods order, by intruding into publick places and the actions of Magistrates, for preventing or remedying impiety', to do which was 'to cure one sin by another'. Though there was much to praise in the Scottish Reformation, not all its acts could be approved,²⁰ and 'we are not to live by examples, but by precepts; and if we will look to examples, we want not these of the primitive Christians', who never used violence to further religion (1.2:107-16, 118-19). And even if extraordinary measures taken then had been justified, 'How unlike was the case then to what it is now? . . . Seing . . . we contend for that same Faith and Religion, that our Predecessors stood for' (1.2:119-20).

In Part II, chapter 1, Honyman sought to defuse *Naphtali*'s accusations against Charles II and his government. Charles had not favored papists or oppressed Presbyterians. His turning against the Covenants, which he had sworn repeatedly, was not sin but holy repentance 'from religious conviction of his conscience'. The king, forced to sign the *Declaration at Dunfermline* and the other oaths, should not be held to them (2.15-16).

The Court of High Commission, which *Naphtali* held unconstitutional for

²⁰Cf. *Basilicon Doron*, 25-30.

mixing secular and ecclesiastical authority, did no such thing. Excommunication was not committed to secular men, 'For, the Commission . . . doth only empower the persons named, *to appoint disorderly Ministers to be censured, with suspension and deposition*', and the actual censures were applied by ecclesiastical authorities. Besides, 'When a Church and State are embodied together', and 'Religion and the order of it is become the Law of the Land'²¹ . . . the Magistrate . . . may . . . judge what facts are clearly contrary to the Law . . . and injoyn Church-rulers to do their duty in the immediate executing of the censure'. Neither was the court's involving churchmen 'in civil Affairs' wrong, for a prince may rightly ask the service of church officers in his government, and they may rightly agree to serve. Further, the court was innocent of the charges of injustice leveled against it. It had not oppressed civil liberties in Scotland, as charged, 'nor hath there been any drop of any mans blood shed by them; nor any thing done by them, which may not abide the test and light of Law'. Its procedures were consistent with Scottish law, and 'the honourable Court of the Commission can and will clear their own actings'. *Naphtali's* charge of tyranny by the court because it required submission to ecclesiastical laws and taking of the oath of supremacy by those charged before it was vain, for *Naphtali* gave no examples of the former, implying that it was a fiction, and the latter was lawful. Indeed, none could 'rationally suppose that the Court would venture beyond the bounds of their Commission' (2.25-7, 29-32, 34).

Honyman sought in Part II, chapter 2, to prove the king's supremacy in ecclesiastical causes. Because his argument aimed primarily at Brown's *Apologeticall Relation* rather than at *Naphtali*, our attention to it here will be brief. The magistrate was 'indeed a Church-officer . . . the *Nurse-father of the Church*' and Christ's '*Minister*'. While the king could not ordain a minister, he could 'give such a one called by Christ, commission to go *hic & nunc, at such a time*, to such

²¹Honyman employed this image of church and state coalescing in one body also at 2.66, 74, 76, and 103. The image was common to Roman Catholic and Protestant thought.

and such a place', for the 'Common-wealth and Church being one materially . . . the Supreme Governor hath an eminent power of inspection of the whole body'. He properly rules over ecclesiastical assemblies 'and should be head and leader of the great body in these great and public motions, which not only concern the Church, but consequentially do influence the state'. While there are distinctions between civil and spiritual power, 'the architectonick power, or potestative care of all civil and spiritual interests, is . . . in an eminent way comprehende[d] under' the supreme magistrate. No royalist ever asserted that the king might perform all spiritual functions; he must not preach or administer the sacraments but was excluded from 'the administrations of the *interiora Templi*' (2.60, 63-4, 66, 74, 65, 69) (although Honyman never suggested what might lawfully be done to prevent or stop the king from doing them if he tried).

Naphtali's appeal to 'national Synods *kept in Scotland without the Kings presence*' at the time of the Reformation was irrelevant, for those took place 'when our Princes were open enemies to our profession, . . . while we are speaking of the times when Princes are of our profession with us'. No Christian magistrate would 'deny his concurrence to such Church-acts, as are necessary for the profession of Christianity'. 'All Magistrates, even Pagans, have a right to voice and judge in Christian Assemblies; but they who are Pagans, are'—unlike Charles II—'under a suspension and restraint of their right . . . and cannot have the exercise of it for the benefit of Gods Church'. For the primitive church, 'it was no robbery to use what intrinsical power she had from Christ, without dependance on [the magistrates] whose own fault put them in an incapacity of exercising the superintendency Christ allowed them', but such was not the case now, for Charles II was a Christian, and 'Christianity serves to qualifie the Magistrate for his exercise of his Supremacy, as to Church-affairs'. No one should worry, for 'the Kings Supremacy, as to Church-matters, gives him not power to do what he will in them, but to regulate them according to the mind of Christ' (2.85, 95, 89, 100-102). (Not only did he commit

five more *petitii principii*,²² but also Honyman failed to suggest who had authority to keep unfaithful magistrates from exercising their ‘right to voice and judge in Christian Assemblies’.)

Honyman assured the Presbyterians, ‘we give not to the supreme Magistrate the pastoral power of Preaching, ministring Sacraments, exercising Discipline, ordaining or degrading Ministers . . . to coin new forms of Worship . . . nor to prescribe new Doctrines . . . nor to do any thing against the Word of God, either as to Faith, Worship or Government’. (Yet much of this was precisely what Charles and his government had done and what the Presbyterians denied he could do lawfully.) Rather, absolutists affirmed a power in the king only ‘to convocate Synods’ that would ‘declare Gods mind anent Gods matters’ and then ‘to put all by his Authority to do their duties, to procure the decent and orderly performance of divine Worship and Government ecclesiastical, according to the general rules of the Word’ (2.108).

Another of *Naphtali*’s charges had been that men who had turned from presbytery to episcopacy, especially who had become bishops, had perjured themselves *vis a vis* the National Covenant and the Solemn League and Covenant. Honyman sought to rebut this in Part II, chapter 3, arguing that ‘there may be much piety in not keeping of some vows and oaths’ if what is vowed is sinful or, though lawful, no longer expedient because of changed circumstances (2.110). While the Covenants might have been lawful and even expedient before, since the king had used his lawful authority to restore episcopacy they were now inexpedient (2.157-62). Further, ‘a preceeding Oath cannot bind against a subsequent Law’ because of ‘*the due subjection of every soul to the powers ordained by God*’ (2.160). As a wife’s vow could be overruled by her husband (Numbers 30:4), so subjects’ vows

²²(1) That in the 1660s the prince was not an enemy to the kirk’s profession but shared it; (2) that all magistrates have a right to voice and judge in Christian assemblies; (3) that Charles II was a Christian; (4) that being a Christian qualifies a magistrate to exercise supremacy in ecclesiastical affairs; and (5) that Charles had used, and would use, his supremacy in the church only ‘according to the mind of Christ’.

could be overruled by their lawful superiors (2.140-57, esp. 141). Anticipating the objection that Charles II had himself sworn the covenants and had no superior who could overrule his vows, Honyman answered,

the words are not to be looked upon as uttered by him in *the capacity of our Superior and King*; for, at that time he was deprived of all his Royal Priviledges, and a prisoned oppressed man, waiting for the sad fate that insued. The party were wont to distinguish between the King as a man, and as a King, whereof some use may be made here [2.149-50]

Though he recognized it, he does not appear to have been troubled by the fact that this argument assumed the very distinction between person and office that the radicals drew and he denied (1.2:37).

Further, ‘unlesse the clamourers can prove, that the *moderate Episcopacy* established in governing this Church . . . is contrary to the Word of God, . . . they will never be able to fasten the guilt of perjury upon the owners of Episcopacy’.²³ The National Covenant had not foresworn episcopacy, only ‘popish prelacy’; neither of the Covenants committed to presbytery as ministerial parity. Proponents of the National Covenant had in 1637 urged the Aberdeen Doctors to sign it despite their continued adherence to episcopacy, implying either that the covenant did not foreswear it or that its supporters were urging perjury. Even the Solemn League and Covenant did not foreswear episcopacy, since English Presbyterians had accepted it with the explanation that they remained ‘ready to submit to *the primitive Episcopacy; i.e.* to the presidency of a grave Minister in a certain precinct’ (2.112-13, 121, 127, 130). Finally, if *Naphtali*’s interpretation of them was right, then the covenants themselves ‘were neither lawfully imposed nor taken’ and therefore could not be lawfully kept, for they were sinful in four respects: (a) The second article of

²³Of course the Covenanters rejected all episcopacy, but they also would have contested Honyman’s claim that Restoration episcopacy was ‘moderate’. See Crichton, *Blackader*, 67-8, who said episcopacy after the Restoration ‘stretched its claim beyond all former precedent. The prelates of James and Charles I. were mere dwarfs and sucklings compared with those of the Restoration’ and specified contrasts.

the National Covenant implied, according to *Naphtali*, that if magistrates failed to extirpate prelacy, then '*private persons, may step forward and occupy the places which they have abused and forfeited* In which glossing he both mocks God and man'. (b) *Naphtali*'s interpretation of the covenants implicitly invalidated all or nearly all the ordinations in the church, for those who had sworn the Covenant in 1637 and 1638 included many ordained by bishops whose legitimacy *Naphtali* thought the covenant denied. (c) *Naphtali*'s interpretation of the fourth clause of the National Covenant limited subjects' duty to the king to those cases specifically in which he exercised his authority 'in defence of Religion and Liberties', which was contrary to the Biblical requirement of submission in all affairs. (d) The Covenants were sinfully ambiguous, it not being clear precisely what they abjured (2.178, 181-5).

Honyman turned in Part 2, chapter 4 to establishing the lawfulness of episcopacy, calling it 'the appointment of Jesus Christ, that there be in his Church to the end of the World an official Power, (which we call Episcopal) paramount and above any power, that can be exercised by a single Presbyter alone'. 'It is *Juris divini* and Gods will, that as Ministers should unite and associate themselves together . . . so that they should set over them one single person to be Moderator . . . to preserve due order' and 'that the Churches in their Ministerial combinations for government, should have one over them, who should have . . . a singular power for the prevention of schism and disorder'. Episcopacy is revealed in Scripture, for (a) Jesus the bishop of our souls (1 Peter 2:23) sends His disciples as His Father sent Him (John 20:21); (b) Matthew 28:20 implies that 'The Apostles had successors to themselves in that plenitude of ordinary Church power'. These successors must be either single presbyters, colleges of presbyters, or individuals with authority over single presbyters. Even Presbyterians agreed that the successors were not single presbyters, and that they were not colleges of presbyters was clear since in Scripture 'there were always superior Officers with them and over them'. Therefore they must

be superior officers over presbyters, as exemplified in the ‘angels’ of the seven churches to whom Christ directed His letters in Revelation 2-3, as implicit in Paul’s instructions to Timothy and Titus for the appointment of presbyters [2 Timothy 2:2; Titus 1:5] (2.192-5, 195-6).

Biblical arguments for ministerial parity offered by Presbyterians were not adequate. (a) Mark 10:42, Matthew 20:25-6, and Luke 22:25-6, where Christ said that leaders in the church should not lord it over those they governed, prohibited ‘not . . . all superiority or authority of any of his Ministers above others, but only such a manner . . . as Kings and Worldly Grandees use over their subjects’. If the Presbyterians’ use of these passages was correct, then neither the apostles themselves nor synods could have authority over any ministers in the church. (b) Matthew 18:17, in which Christ instructed witnesses that if someone refused to repent when confronted they should ‘tell it unto the church’, did not imply the absence of bishops because the passage applied to private offenses, not public, which should be treated differently; because what Christ here meant by ‘the church’ was not the whole congregation but its governors, as even Presbyterians agreed; and because Christ’s giving jurisdiction to the church was consistent with its being exercised by bishops, as demonstrated in Paul’s unilaterally excommunicating Hymenaeus and Alexander (1 Timothy 1:20). (c) The Presbyterians were simply wrong in claiming that the terms *bishop* and *elder* were interchangeable in Scripture, as Theodore Beza (1519-1605) acknowledged in his commentary on 1 Peter 5:1, saying ‘*that the name of Presbyter is common to all Church-officers higher and lower, in so much, that even the holy Apostles themselves have taken that stile*’.²⁴ (d) If Paul’s exhorting the church in Corinth to excommunicate one who committed incest with his step-mother implied that the congregation could do this without the concurrence of bishops, it also implied that it could do it without

²⁴Honyman misrepresented Beza; cf. Theodore Beza, *A Discourse of the True and Visible Markes of the Catholique Church* (London, n.d.), unnumbered pages 26-8 after the Epistle Dedicatory.

elders. (e) The absence of bishops from the list of officers in Ephesians 4:11 meant nothing, since Presbyterians themselves argued that presbyters were included under the name of pastors—and if presbyters, why not bishops? (f) Paul’s writing to ‘the bishops and deacons’ of Philippi (Philippians 1:1) did not, as the Presbyterians claimed, imply that there were only two sorts of church offices, bishops (synonymous with presbyters) and deacons, with a plurality of both in a single church, because the bishops (plural) mentioned might have been with Paul and Timothy, not in Philippi, or if in Philippi might have included some gathered temporarily from neighboring churches, and because even if there were several bishops in a single church this would not entail that all were of the same rank. (g) The ‘presbytery’ mentioned in 1 Timothy 4:14 was not a college of presbyters, as Presbyterians claimed, but ‘the dignity and office of a Presbytery’, as John Calvin (1509-1564) said in *Institutes* IV.3 (2.198-200, 203-7, 210-11, 213-17).²⁵

Finally, bishops are a commendable institution in church history. Many through the centuries, far from being pawns of the pope, would have begun the reformation ‘in the Pope the head, and in the Court of *Rome* But the very root and strength of the Antichristian Kingdom stands in Presbyters, in the consistory of Cardinal Presbyters the immediate supporters of the Pope’ and those of the many religious orders. (Honyman’s equation of cardinals in the Roman Catholic polity with presbyters in the Presbyterian was creative—but false.) Though *Naphtali* described the Restoration bishops ‘*as men that encline the Kings Government to tyranny*’, they actually have no ‘medling or influence . . . upon the Kings Government’ but ‘for the most part, live abstractly at their several charges, save it be one or two admitted by the King to his Council’ whose ability ‘to pervert the whole frame of

²⁵Honyman misrepresented Calvin. In *Institutes* IV.3.16 (the only mention of 1 Timothy 4:14 in IV.3), he wrote, ‘For what he says in the second letter about the laying on of hands of the presbytery [I Tim. 4:14], I do not understand as if Paul were speaking of the company of elders, but I understand by this expression the ordination itself’—i.e., he does not deny that *presbyterion* here denotes the company of elders as a collective body but rather asserts that Paul’s intent is to teach not about the company but about ‘the ordination itself’. In his commentary Calvin wrote ‘that in this passage *presbytery* is a collective term meaning the college of presbyters’. Calvin, *Timothy*, 247.

Government and turn it unto tyranny, any that hath a dramme of wit may see'. (A historian who read that after reading a few hundred or more pages of the *Register of the Privy Council of Scotland* during Sharp's tenure on it might be forgiven a rueful smile.) The bishops do not surrender 'Religion, Conscience and all sacred concernments to the King', on whom they depend 'no more . . . then all Bishops and Ministers should upon a Christian Prince'. It was surely no better for a king 'to have in the bosom of his own Kingdom swarms of Demagogues [viz., Presbyterian ministers], pretending absolute independency from him in their Church-actings, and claiming liberty without him, yea against his will, to convocate his Lieges when, and where, and in what numbers they will, to rule all church-matters by their arbitrement, and to over-rule himself also' than 'to have the Clergy of his Kingdom depending upon a *forreign Bishop*, from which discretion and his assistants, fair dealing might be expected' (2.227, 229-30). In short, both popery and presbytery undermined monarchy; episcopacy alone was consistent with it.

In Part II, chapter 5, Honyman argued for the lawfulness of calling ministers ordained by bishops and 'the sinfulness of despising and schismatically deserting them'. Complaints about the immorality and general inadequacy of the curates could not justify refusing to attend their parishes, and 'Corruptions in the manner of a Ministers entry oblige him to repentance, yet if in other things he hath the substance of the Calling, and be faithful in delivering the Lords mind, he ought not to be deserted' (not only another *petitio principii* but also an open door to those who would argue that ministers ordained after 1649 should not have been 'outed'). In chapter 6 he argued that *Naphtali's* claims of persecution and martyrdom of faithful Covenanters who rose at Pentland were exaggerated, for 'all that they can say for their rising is, that the Magistrate by moderate penalties according to Law, was pressing them to attendance upon the Ordinance of God, which is his indispensible duty'. They were the first aggressors, for as even *Naphtali* admitted, '*they first slew one of the Kings servants, wounded two, took his chief Officer Sir James Turner*

prisoner'. However lawful self-defence might have been, the Pentland Rising was not that, for its aim had been 'to pull down all Authorities in the Land for abusing their places, to vindicate . . . Religion, to force their fellow-subjects to their sense of the Covenant, or else to destroy them, to occupy and place themselves in the chair of Authority, [and] to kill whom they would as Apostates, and save whom they would alive'. Its participants had risen in rebellion, not in self-defence, 'under pretence of Religion', contrary to the clear teaching of Scripture that 'rebellion is as the sin of witchcraft' (1 Samuel 15:23), that Christ's followers must not take up the sword in His defence (Matthew 26:52), and that the Christian should 'resist not evil' (Matthew 5:39), a text that 'forbids all revenge and violent retaliation upon the Magistrate (though he abuse his power) for *in no case* admit we of the lawfulness of violence of subjects against the supreme Magistrate' (2.240, 245, 260-63, 269, emphasis added).

Honyman's view, in short, was the classic Anglican doctrine of passive obedience spelled out in a decree of the University of Oxford of 21 July 1683 that not only condemned the principles of *Naphtali* and the like literature but also pronounced 'that most necessary doctrine, which, in a manner, is the badge and character of the church of England, of submitting to every ordinance of man for the Lord's sake, [and] teaching that this submission and obedience is to be clear, absolute, and without exception of any state or order of men'.²⁶

²⁶The complete decree is in Wodrow, *History*, 3:506-7n.

Chapter 5

Jus Populi Vindicatum: A Covenanter's Response to a Critic

'In no case'—that was Honyman's view of when resistance to the supreme magistrate might be justified. To Honyman's arguments in support of it Stewart, probably in exile in Holland,¹ would reply in *Jus Populi*. The full title of the work was *Jus Populi Vindicatum, or The Peoples Right, to defend themselves and their Covenanted Religion, vindicated. wherein the Act of Defence and Vindication, which was interprised Anno 1666. is particularly justified: The lawfulness of private Persons defending their Lives, Libertyes and Religion, against manifest Oppression, Tyranny and violence, exerced by Magistrats Supream and Inferiour, contrare to Solemne Vowes, Covenants, Promises, Declarations, Professions, Subscriptions, and Solemne Engadgments, is demonstrated by many Arguments. Being a full Reply to the first part of the Survey of Naphtaly &c.* The book was published anonymously 'By a Friend to true Christian Liberty' and without naming either a publisher or a place of publication. Although D. C. Lachman favors London as the place of publication,² the late-nineteenth- and early-twentieth-century Covenanter historian D. Hay Fleming wrote a note in the reverse-title page of one of his copies of it, 'This volume was probably printed by or for Henricum Goddaeum, Bibliopolam, Roterdami', but he indicated no source or reason for that

¹Douglas, *Light*, 122.

²D. C. Lachman, 'Stewart, James', in *DSCHT*, 794.

judgment.³ A Dutch printing location was believed by members of the judiciary court on 20 August 1673.⁴

Although Stewart wrote that the audience he most anticipated reading *Jus Populi* would be people who participated in, or at least were sympathetic to, the Pentland Rising, whom he called ‘Noble patriots’ [33], he no doubt hoped that thoughtful members of parliament and other social leaders would also read it. Reactions of some who did were none too friendly. The earl of Kincardine would call *Jus Populi* ‘a most wicked piece as ever yet has come out, farre beyond Neptali itself’.⁵ On 12 January 1671 the privy council ordered an investigation to determine the book’s author, printer, and sellers ‘and to seize upon any cotypes of the saids books [that] can be found, and to imprison any person guilty of printing, importing or dispersing theroff’.⁶ Having received a marked copy of *Jus Populi* from Sharp, Lauderdale wrote back to the Archbishop on 26 January about that ‘damnable traitorous book’ that ‘no good is to be expected to Bishops or orthodox ministers from a partie w^{ch} ownes such principles’, adding, ‘if that partie prevaile, the King, Monarchie, and all loyall men are utterly destroyed’.⁷ Sharp wrote on 2 February to Lauderdale that ‘the most probable conjecture heer sayes that the author of it is the same with that of Naphthali, Mas John Brownn, a banished minister in Holland’, and that ‘that mischeivous book . . . hath castin a greater reproach upon our religion and nation then any in print’. He made the best of a bad situation, however, adding, ‘the author . . . has done ws that right . . . to make the cause of Episcopacy to be the same with the cause of the king and state’⁸ (a sentiment confirmed by the 21 July 1683 Oxford decree cited at the end of chapter 4 above). On 16 February a royal proclamation was issued against the

³Preserved in the Hay Fleming Reference Library, St. Andrews, Scotland, now incorporated into the library of the University of St. Andrews.

⁴Wodrow, *History*, 2:225; Mann, *Book Trade*, 181, agrees.

⁵Cited in Greaves, *Enemies*, 187.

⁶*RPC*, Third Series, 3:265.

⁷*Miscellany of the Maitland Club, Consisting of Original Papers and Other Documents Illustrative of the History and Literature of Scotland* (Edinburgh, 1840-), 1:265.

⁸*Lauderdale Papers*, 2:213-14, at 213.

most seditious and scandalous pamphlett and lybell containing pernicious and damnable principles of treason and rebellion against us and all supream magistratts and the rights of monarchy itself, to the great hazard of our person and government and to the great reproach and scandall of the nation and the reformed religion.

The proclamation required the book burned; outlawed ‘the importing, printing, haveing, venting, dispersing or concealing of that book or any uther book of that nature or of the authors or dispersers therof’; commanded all copies turned over to the Council; required ‘any person, of whatsoever degree, quality or sex’ possessing the book fined £2000 Scots besides other relevant penalties; commanded anyone who knew ‘the authours, importers, printers, dispersers or any of them’ to reveal them immediately; and offered rewards of £50 for information leading to the apprehension of distributors and £100 for the author or importers—with a promise of immunity if informants were themselves guilty of such crimes.⁹ Ironically, the king had granted a remission to Stewart’s father, Kirkfield, just a month before.¹⁰ The government would condemn both *Jus Populi* and *Naphtali* repeatedly in coming years.¹¹ In another ironic twist, the government would condemn them for the last time on 15 August 1688,¹² after their (officially anonymous but by then widely recognized) author Stewart had been pardoned and given a post under James VII’s Scottish secretary Melfort, and less than a year before the Scottish parliament would embody their most important ideas in its rationale for declaring that James had forfeited the crown.

Prior Comment on *Jus Populi*

What sort of book is *Jus Populi*? It has rarely been subjected to careful study,

⁹*RPC*, Third Series, 3:296-7.

¹⁰*Coltness Collections*, 339-41.

¹¹Wodrow, *History*, 2:225 (20 Aug. 1673); 3:229, 240 (11 and 22 Nov. 1680); Fleming, *Notes*, 42-4.

¹²Wodrow, *History*, 4:443-4 (text and note). Mann, *Book Trade*, 181, 257, mistakenly conflates the two titles condemned on that date into one, *Jus pupuli Naphtali*.

and the scarce comments on it, usually brief and superficial, frequently evidence misunderstanding. What appears to be the most extensive study of it thus far published is Robert v. Friedeburg's twenty-three page article focusing almost exclusively on its use (or misuse) of Johannes Althusius (1557-1638).¹³ Almost half of the article is endnotes, and the actual discussion of *Jus Populi* amounts to slightly over five pages. Though valuable for its discussion of Stewart's use of Althusius, the article is marred by some factual mistakes. On its first page, Friedeburg writes that Sharp was assassinated 'in the streets of St. Andrews' (19), though the assassination actually took place outside the city. He writes that Stewart had 'just [been] admitted to the Scottish bar' when he and Stirling wrote *Naphtali* (23), though Stewart had been admitted seven years before. On p. 25 he reports a total of twenty-seven references to Althusius in *Jus Populi*, while on p. 28 he reports '27 quotations to 29 references', and on p. 41 he reports twenty-nine references, but in fact Stewart used thirty-nine distinct (plus one general) references from Althusius on thirty-two pages of *Jus Populi*.¹⁴ He writes that in *Jus Populi* Althusius's 'notion of "tyrant" becomes inflated' (26), citing p. 98, where all that Stewart said in defining a tyrant was that such 'is free of all conditions'—hardly an inflation on anything Althusius said. He says that Stewart 'rejects the metaphor from body to depict the relation of magistrate and subjects' (27), though rather than rejecting it Stewart (quite sensibly) listed the metaphor's limits. He writes that 'Rutherford insists that while man constitutes magistrates, God instituted the office of magistracy' (40, note 138), the context of the main text (27) implying that Stewart made no such distinction; in fact, he did (e.g., *Jus Populi*, 85). He writes, 'A preliminary survey suggests 92 references' to a total of '22 authors mentioned' (40-

¹³Friedeburg, 'Collective Representation'. The next most extensive published discussion of *Jus Populi* appears to be approximately four pages of Ian Smart, 'Political Ideas' (183-7), which contents itself with a fair but necessarily brief and general review of Stewart's argument and does not seek to interpret it in any sophisticated way or to discuss its interaction with other writers other than to place it chronologically among Covenanter writings. Nonetheless it provides a helpful summary of the argument.

¹⁴*Jus Populi*, 50, 59, 86, 87, 88, 90, 95 (two), 98, 99 (two), 104, 110, 140, 141 (two), 142 (two), 143 (three), 149 (two), 153, 161, 204, 253, 268, 328 (misnumbered 216), 329, 334 (two), 335 (two), 336, 337, 366, 369, 371, 383.

41, note 149), but in fact Stewart cited seventy-eight authors (besides Scripture, cited about 450 times)—Honyman alone hundreds of times, Calvin twenty, Knox thirteen, Rutherford and Brown about a dozen each, etc.¹⁵ He writes that Stewart ‘circumvented’ passages in Althusius’s warning in *Politica* ‘that not every single failure qualifies the supreme magistrate as a tyrant’ (29), but unless Stewart is to be accused of ‘circumventing’ for not quoting Althusius at every point at which they agreed, this charge is empty, for Stewart repeatedly pronounced the same qualification.¹⁶

J. D. Douglas writes that *Jus Populi* ‘might be classed as a minor version of Rutherford’s *Lex Rex* (it has the same meticulously legal approach, the same appeal to precedent supported by learned authorities), were it not that Sir [sic]¹⁷ James, freed on this occasion from the restraining influence of a clerical co-author, evinces in places a purely secular spirit’ and offers as illustration the statement, ‘The law and light of Nature decrees that a man defend his life; men are not better than beasts in that respect’.¹⁸ That *Jus Populi* is in many ways similar to *Lex, Rex* is beyond dispute; that in it Stewart uses the argument from beasts’ natural self-defence to man’s natural right of self-defence is also certain (40-43). But such an argument neither distinguishes *Jus Populi* from *Lex, Rex* nor is ‘purely secular’ so as to arise only in the absence of clerical co-authorship. Indeed, Rutherford used it, as did Brown of Wamphray.¹⁹ Further, true, Stewart does write, ‘Our 3 argument is taken from the law and light of nature which alloweth to beasts, a power and ability to defend themselves, against violence. An argument made use of, not only by *Lex Rex* and the *Apology*, but by Divines, Canonists, Lawyers and others who write of this subject’ (40), but the sentence Douglas quotes is nowhere in *Jus Populi*. It is difficult to know just what Douglas means by saying that *Jus Populi* might almost

¹⁵See Appendix B, ‘Index of Authors Cited Directly in *Jus Populi*’, for complete list; see pages 217ff below for summary.

¹⁶*Jus Populi*, 281, 307-8, 311, 373, 396.

¹⁷Stewart was not knighted until 1704; see below, chapter 7.

¹⁸Douglas, *Light*, 121.

¹⁹Rutherford, *Lex, Rex*, Q.XXXI, 159-60; Brown, *Relation*, 162-3.

be seen as a ‘minor version of *Lex Rex*’. A rough estimate puts *Lex, Rex* at about 220,000 words and *Jus Populi* at about 224,000. Stewart used almost all the same arguments Rutherford used, plus others. He demonstrated greater familiarity with political and legal sources and less with theological. Perhaps Douglas had in mind simply that *Jus Populi*, printed only once, never had the reprints, distribution, and popularity (even into the late twentieth century) *Lex, Rex* had, and its author was neither so widely known nor so well loved.²⁰ That is certainly true. Rutherford was a well-known and well-loved Scottish pastor and theologian as well as a delegate to the Westminster Assembly when *Lex, Rex* was first published and, four years later, reprinted, ‘by authority’, during the English Civil War. It upheld what turned out to be the winning side in that war. Stewart was a little-known lawyer living in exile when *Jus Populi* was first published, anonymously, and smuggled into Scotland, where it was promptly condemned by the government, copies were collected and burned, and it was never reprinted, there or elsewhere.²¹ Further, it upheld what was for nearly the next twenty years the losing side in what can hardly be described as a war but was instead essentially a popular, underground movement heavily persecuted by the government.

Douglas goes on to say that *Jus Populi* ‘adds little that is new to the discussion’.²² While generally true, this obscures some important new developments noticed by Friedeburg in Stewart’s use of Althusius and, in one instance, Rutherford in *Jus Populi*. While ‘*Naphtali* had operated within the rhetorical and argumentative boundaries of Scottish Presbyterian rhetoric, developed from John Knox (c. 1514-1572) and Buchanan via Calderwood and Henderson to Rutherford’ and was intended ‘to narrate the “Wrestling” of the true church and the suffering of its

²⁰*Lex, Rex* was reprinted in London in 1648 as *The pre-eminence of the Election of Kings* and again in 1657 as *A Treatise of Civil Policy*, and in Edinburgh in 1843 under its original title along with Buchanan’s *De Jure Regni*, an edition reprinted in Edinburgh in 1846 and in Harrisonburg, VA, in 1982 (Coffey, *Rutherford*, 261).

²¹Except that Still Waters Revival Books has included a facsimile in .pdf format in its *Puritan Bookshelf* CD-ROM collection.

²²Douglas, *Light*, 121.

martyrs, not to engage in debate on political theory' (an exaggeration but on the whole true), *Jus Populi* attempted to meet Honeyman's survey on its own terms and thus had to provide a comprehensive account of the true nature of society and government. To this end Stewart combined incompatible strands of argument that had developed in radically different contexts in time and space. He thereby transformed . . . and amalgamated them with novel claims'. By lifting many of Althusius's ideas out of the constitutional context provided by the empire and fitting them awkwardly to the Scottish constitutional context, Stewart inadvertently achieved some 'constructive distortion' and 'novel claims'. According to Friedeburg, Stewart 'inflated' several ideas present in Althusius and Rutherford. A 'pact between the *ephors*, Althusius' guardians of the constitution and also representatives of the people, and the supreme magistrate' was an idea 'that Stewart was going to exploit to a considerable extent for his own purposes' but 'was not central to Althusius' idea of the state'. 'Popular sovereignty and notions of contract invoked against an Anglo-Scottish background lacked the constitutional and conceptual safeguards that Althusius had at hand'. 'To Rutherford self defence was a capacity common to all men as distinguished from the virtues of the regenerate. To Stewart it became a part of the catalogue of rights enjoyed in the state of nature. Both the inflation of common notions to new meanings and his frequent mentioning of rights in the state of nature whose defense [sic] serves as an end for civil society were going to shape the character of the argument to come'. Stewart's understanding of the state of nature and of 'the rationally calculating individual . . . differ substantially from the image of men in the *Politica*', *Jus Populi* making '[n]o reference' to the *politeuma* (the corporate people) or its *ius symbioticum* (literally, the law of symbiosis; in Althusius, the law of the corporate people). 'Rather', Friedeburg says of Stewart's view in *Jus Populi*, 'each individual possesses a number of rights, among them the right to defend those rights, a notion alien to Althusius'. Further, he says, Stewart both inflated the very 'notion of "tyrant"' and

transformed Althusius's understanding of a contract between supreme magistrate and people into 'a relationship of mutual conditionality', and in *Jus Populi* 'Althusius' assertion that constituting a tyrant was against the law of nature . . . changes its meaning almost beyond recognition, for the supreme magistrate becomes not only bound to specified performances but loses his title in case of nonperformance'.²³ While some of Friedeburg's assertions of incompatibility and inflation are contested or nuanced above or below, he correctly recognizes that Stewart, whether intentionally or inadvertently, achieved some significant new developments in seventeenth-century Calvinist political thought.

Douglas also asserts that *Jus Populi*, by laying the basis of opposition to tyranny in 'the law of Nature,' is not much different from some of the writings of classical antiquity on the same subject . . . and (though . . . liberally sprinkled with biblical quotations) scarcely in parts more spiritual. For that reason it ought not to be regarded as typical of Covenanting literature. It lacks also the reiterated insistence of the latter on civil obedience, in so far as such obedience does not conflict with God's Word, which we find in Stewart's fellow-Covenanters; for example in Alexander Shields's *A Hind Let Loose*.²⁴

Yet the law of nature was but one buttress of Stewart's argument among several and played an important role in other Covenanters' arguments, particularly Rutherford's in *Lex, Rex*.²⁵ The Biblical quotations and citations, of which there were hundreds, were neither perfunctory nor superficial but played a substantive role in the argument and often were carefully, even painstakingly interpreted. Douglas does not explain precisely what he means by saying that *Jus Populi* is 'scarcely more spiritual' than some 'writings of classical antiquity', but when nine of twenty-two chapters (counting the 'Epistle to the Christian Reader' as a chapter), containing 55

²³Friedeburg, 'Collective Representation', 20, 30, 21, 25, 26-7.

²⁴Douglas, *Light*, 121-2.

²⁵*Lex, Rex*, Qs. I, XXXI, XLIV.

percent of the text, including the four longest and six out of the seven longest chapters, are overwhelmingly religious/theological/Biblical in orientation,²⁶ and when like arguments arise repeatedly in the remaining chapters, one wonders what it takes to qualify a work on political theory as ‘spiritual’. Of course, if all Douglas meant was that some ‘parts’ of *Jus Populi* were not particularly ‘spiritual’ but employed ‘secular’ arguments, that is true, but it is also trivial and would apply to any Covenanter political tract. The passionate appeals Stewart made repeatedly to a sacred covenant sworn by perpetually binding oaths before a holy God are surely signs of spirituality. Those, combined with the obvious spiritual fervour of *Naphtali* before it and of Stewart’s own life,²⁷ suggest that when, in the final sentence of *Jus Populi*, he wrote, ‘If I can prevaile no further with thee, remember thou art a rational creature, created after the image of God’ he meant it as something more than mere rhetorical flourish—though no doubt he meant it as that, too.

Stewart did repeatedly affirm the duty of obedience to lawful commands,²⁸ but if these reminders were less frequent here than in some other Covenanter literature, the *Survey of Naphtali* set the agenda for *Jus Populi*; Stewart’s chief aim being to refute that, it is not surprising that he reiterated the duty of obedience no more frequently than he did. Further, he did say that ‘a subject is bound to obey the Magistrates lawful commands, though he in his private judgement should account them sinful’—that is, subjects could not properly use their own private judgment alone to justify disobedience but had to have an objective authority for that judgment—even if by saying so Stewart did evidence some confusion. He carefully limited proper disobedience, insisting that ‘such as say that the sinful and unjust commands of Magistrates should not be obeyed, do not open a gap to all

²⁶*Jus Populi*, ‘Epistle’ (37 pages) and chapters 3 (14 pages), 6 (49 pages), 9 (43 pages), 10 (29 pages), 13 (27 pages), 14 (20 pages), 20 (17 pages), and 21 (45 pages). The seven longest elements, in descending order, are chapters 6, 21, and 9, the ‘Epistle’, and chapters 19, 10, and 13.

²⁷See Wodrow, *Analecta*, 2:202-4, cited in the Introduction, above, and ‘Extracts from Sir James Stuart’s Bible’ *Edinburgh Christian Instructor*, No. XXXIX (October 1813), Vol. VII, No. IV, 241-3.

²⁸See, at least, *Jus Populi*, 3, 21, 37, 79, 105, 120, 178-9, 244-6, 248-50, 270, 291, 283-4, 307, 312, 318 [misnumbered as 216], and 330-31.

disobedience'. He restricted both the duty of obedience and the right of disobedience: 'Subjects are not bound to an absolute obedience, but always in the Lord' (307, 309, 172). In short, there seems no good reason to agree that *Jus Populi* is not 'typical of Covenanting literature' of a political nature.

While Ian B. Cowan, whose *The Scottish Covenanters* is an excellent survey of Covenanter history, admirably summarizes the most distinctive elements of Stewart's argument in *Jus Populi* in only sixteen lines, he mistakenly says that in it the 'right of resistance was a new development brought about by the course of events',²⁹ since for over a century a number of significant Calvinist thinkers (among others), including the Covenanter Rutherford, had defended that right before. He was, nevertheless, correct to see *Jus Populi*'s locating of this right not only in parliaments or other lesser magistrates but also and finally in the people themselves as a fairly new development. While Rutherford embraced the idea, he did not emphasize it so much. In this respect *Jus Populi* is to be understood as an intermediate work between *Lex, Rex* and Locke's *Two Treatises*.

A Link Between Pre-Modern and Modern Political Thought

Despite scholarly inattention to it for over three centuries, *Jus Populi*'s appearance just over halfway between the first publication of *Lex, Rex* (1644) and Locke's *Two Treatises* (1690),³⁰ Stewart's association with Locke among British radical exiles in Holland,³¹ the substantive political thought in it, and his later significant roles before and after the Glorious Revolution, both in opposition to Charles II and James VII and in government under James VII, William, and Anne, certainly justify its careful and more thorough study.

Stewart had several purposes in writing *Jus Populi*. The first and most obvious

²⁹Cowan, *Covenanters*, 159.

³⁰Although they were not published until 1690, Locke almost certainly wrote the *Two Treatises* during 1681-1682. See John Marshall, *John Locke: Resistance, Religion and Responsibility* (Cambridge, 1994), 222-58; Ashcraft, *Politics*, chapter 7.

³¹Ashcraft, *Politics*, 429 (text and note 95), 436.

was to rebut Honyman. A second, the necessary consequent, was to vindicate the Pentland Rising, as he had done already in *Naphtali*, but now against specific counterarguments. But a third and much larger purpose was to give, as Friedeburg puts it, ‘an account of society and government in general that was meant to bear out *Naphtali*’s conclusions’ but avoid ‘being dispensed with as sectarian rhetoric’.³² While clearly his aim was to justify private resistance to tyranny, he insisted that it was higher than that:

to prevent intolerable Tyranny, the ruine of humane Societies and Kingdomes, and to keep the true Divine Authority which God hath clothed his own civil officers with, from contempt and disgrace, which Magistrates degenerating into Tyrants expose themselves unto, by changing the ordinance of God into the ordinance of Satan, and in stead of acting and carrying as Ministers of God for the good of the People, walk and act as Ministers of Satan, laying out themselves to the utmost for the destruction of the People both in soul and body.

One who seeks to do this, Stewart wrote, ‘is very far from opening a gap to endless rebellions’; rather, he ‘layeth downe a course to prevent rebellions: For if Kings remembered that their Subjects might lawfully and would oppose them, when they turned Tyrants, they would walk more soberly’ (465). *Establishing the right of private resistance was not his end, it was his means—to just and stable government and the prevention of tyranny*. Not rebellion, not instability, not democracy or anarchy, not even a republic, but stable, limited, constitutional, godly monarchy was Stewart’s principle, and he aimed to promote it with *Jus Populi*.

A Survey of *Jus Populi*

Jus Populi is a work of 509 pages beginning with a thirty-seven-page ‘Epistle

³²Friedeburg, ‘Collective Representation’, 25. Stewart’s staunch opposition to episcopacy calls Friedeburg’s view that he intended to avoid ‘being dispensed with as sectarian’ into question.

to the Christian Reader’ and containing twenty-one chapters. A four-part division suggested by Friedeburg is reasonable. Chapters 1-4 (77 pages) outline the argument and offer Biblical and historical support. Chapters 5-8 (80 pages) present ‘the new core of Steuart’s argument’, attempting ‘sophisticated argument on the erection of government, the covenant of men and magistrates, the nature of magisterial power and the “people’s safety” as the supreme law’. Chapters 9-14 (138 pages) repeat some arguments from *Naphtali*. Chapters 15-21 (159 pages) return to current political debates and argue anew lessons to be drawn from Phineas.³³ A table of contents (none appears in the book) would be as follows:

	Epistle to the Christian Reader (37 pages)	[1]
I.	The Question cleared and stated. (22 pages)	1
II.	Three Arguments proposed, taken 1. from the Concessions of Adversaries. 2 The resistance of Parliaments: 3. The Light & Law of Nature. (24 pages)	22
III.	A fourth Argument Vindicated, taken from Scripture-instances. (14 pages)	46
IV.	Our Argument from other approved instances, and authorities, both abroad, and at home. (20 pages)	60
V.	Of the Peoples power, in erecting Governours: and several Arguments thence deduced. (15 pages)	80
VI.	Of the Covenant betwixt King and People. Our Arguments hence deduced. (49 pages)	95
VII.	Of the Nature of the Kings Power over his Subjects. Our Arguments hence. (9 pages)	144
VIII.	The Peoples saifty is the supreme Law. The King is not absolute. Hence some Moe [sic] Arguments. (20 pages)	153
IX.	Of the Peoples Power in the work of Reformation. Our Argument hence. (43 pages)	173
X.	Arguments taken from the hazard of becoming guilty of the sin of others, and of partaking of their Judgments. And from the duty of relieving the oppressed, &c. (29 pages)	216
XI.	Of our qualified alledgiance to the King. Our Arguments hence. (6 pages)	245
XII.	Some moe Arguments Briefly proposed and Prosecuted. (16 pages)	251
XIII.	The Surveyer’s grounds taken from Scripture, for absolute Submission to Suffering, examined. (27 pages)	267
XIV.	The Surveyers grounds for absolute Submission to suffering, taken from the primitive Christians, and reason, examined. (20 pages)	294
XV.	Some other Particulars, alledged by the <i>Surveyer</i> , against us, examined. (18 pages)	314
XVI.	Three Principall Objections Answered. (26 pages)	332
XVII.	The Objections of others examined. (7 pages)	358
XVIII.	How weakly & foolishly The Surveyer maintaineth the Union of his Majestie’s Dominions, is cleared. (13 pages)	365
XIX.	How weakly and foolishly the Surveyer defendeth his Majestie’s Life, is shewed (31 pages)	378
XX.	The Surveyer’s discourse concerning the fact of Phineas examined (17 pages)	409
XXI.	Some Animadversions upon the Surveyer’s Virulent preface and Title-page (45 pages)	426
	Postscript ³⁴ (2 pages)	471

In the ‘Epistle to the Christian Reader’ Stewart set the stage by arguing that

³³Friedeburg, ‘Collective Representation’, 25-6.

³⁴Some copies of *Jus Populi* were printed without this. That used for the Puritan Bookshelf CD-ROM collection lacks it. One in the Hay Fleming Reference Library, photocopied as part of this research, has it.

Charles II had violated the ‘tearmes and conditions’ on which he had become king by repudiating the Covenants and persecuting those who remained faithful to them [1-5]. As in *Naphtali*, so here Stewart gave preeminent importance to the covenants. This was consistent with general Covenanter thought, which in turn was rooted in the Biblical concept of covenant, which saw it as more fundamental than and actually the basis of law—even divinely revealed law.³⁵ In most of the remainder of the ‘Epistle’, Stewart offered brief responses to Part II of the *Survey of Naphtali*, which had appeared too late to allow him to respond fully but to which he apparently hoped to respond more thoroughly at another time, though he never did [12].³⁶ Some responses repeated elements of the main text, and others are of little consequence to this analysis, making further discussion of them needless. But a few points in the ‘Epistle’ deserve notice. The main question, Stewart wrote, was whether ‘*privat persons defending themselves and their Covenanted Religion from the manifest violence, tyranny and intolerable oppression of the Sovereigne and inferiour Magistrats to the edification of all*’ was justified—a conclusion defended by *Naphtali* but opposed by Honyman. Honyman had sought to prejudice the debate by perverting the question, making it ‘whether “*under pretence of Religion, it is lawful for Subjects, to rise in Rebellion against lawful authority*”’, assuming points needing proof: that the Pentland Rising had been against ‘lawful authority’, which *Naphtali* denied; that it had been a rebellion, whereas ‘it was rather in loyalty to God and the Countrey’; and that it ‘was in *pretence* of Religion’ rather than truly so. To Honyman’s question where the Covenanters had learned to resist magistrates as they had done, Stewart replied ‘That they had learned this from the law of God, the law of Nature, the civil law, the law of Nations, Sound reason, and the practices of Christians, both under the law, and under the gospel [i.e., under both Testaments]’ [10, 12-13], thus foreshadowing the sorts of arguments he would

³⁵Robertson, *Covenants*, 170-71.

³⁶There is a fragmentary draft of a work by him on political theory, probably written around 1670, of 21 folios, in the Coltness Collections in the library of the University of Edinburgh, MS 2291/30, but it is not a further response to Honyman.

mount later.

The Argument Introduced: Chapters 1-4

Chapter 1 argued that the Covenants bound all Scotland, magistrates and king included, and were a part of the constitution. Consequently the post-Restoration rescinding of the Covenants was a ‘subversion of the fundamental constitution of our Christian and reformed Kingdome’ and thus itself a ‘revolution’;³⁷ therefore the Covenants still bound all, leaving the government without legal grounds for persecuting faithful Covenanters (3-6). Laws reinstating episcopacy being enforced militarily rather than civilly and within the bounds of law; supplication to higher magistrates outlawed ‘under the paine of treason and . . . contrary to the law of nature and nations’; and faithful men having intervened to protect a man from unlawful torture and thus found themselves irrevocably committed to resistance, the men eventually defeated at Rullion Green ‘rose in armes . . . not to dethrone the King . . . but to resist, repel, and defend themselves from, unjust violence and oppression, and to seek reparations . . . and the removal of . . . Hierarchy’, aiming to petition the government at Edinburgh and intending ‘no insurrection or rebellion against the Kings just and lawful authority; for they swore to defend the Kings Majestyes person and authority’ (6-9). Hence arose the true question:

Whether or not, when King and Parliament and Council have abjured a covenant, & overturned a reformation, which they solemnly swore to defend, in their places & capacities, and made their subjects do the same, and now with illegal force, compel the subjects to the like perjury and wickednesse, may these privat subjects, when there is no hope or possibility otherwise of releefe, stand to their owne defence, and withstand the mercyllesse cruelty of their bloody Emissaries acting without their commission, or with their allowance, yet contrare to expresse law; and seek

³⁷Compare Locke, *Second Treatise*, § 227.

releef, and security for Religion, lives, lands and liberties, having no intention, to wronge the King's person or just government? [10-11]

Chapter 2 raised three initial sorts of arguments for an affirmative answer to the question stated in chapter 1. First, various royalists conceded as much, even if only implicitly or grudgingly. Even Honyman admitted as much by focusing solely on what may be done when magistrates act lawfully, vitiating his own position, since Stewart and other proponents of resistance defended it only in case magistrates acted contrary to law—whether statutory, natural, or Biblical (22-4).³⁸ If, as Henry Ferne (1602-1661) admitted, ‘personal defence is lawful’ for individuals ‘against the suddaine and illegal assaults, of the King’s messengers, yea of the Prince himself, thus farre, to ward his blowes, to hold his hands’³⁹—a common concession among royalist writers—surely it must be for groups threatened likewise. And if it is lawful to resist tyranny against the body, much more must it be to resist tyranny against the soul (27-8). Second, parliamentary resistance to supreme magistrates violating fundamental laws (e.g., the Scottish parliament’s resistance to Charles I in the Bishops’ Wars) provided legal precedent. But since parliaments’ powers are cumulative, not destructive, ‘the people’s Representative cannot, *de jure*, make them more liable to irremediable tyranny and oppression, [than] they were without a parliament’, and ‘if the Representatives betray their trust, the People, in so far, are as if they had no Representatives, and may no lesse defend themselves in extreame necessity, then if the officers of their army . . . should revolt to the enemy’ (29-30, 39).

The first part of Stewart’s argument exemplifies what Richard Tuck calls the principle of ‘interpretative charity’ common to seventeenth-century radical

³⁸Stewart’s citations are tendentious and depend on interpretations that might not have pleased their authors. See William Barclay (1546-1608), *contra Monarchomachos* (= *De Regno et regali potestate adversus Buchananum, Brutum, Boucherium et reliquos monarchomachos, libri sex* [Paris, 1600]), IV.16; Henning Arnisaeus (1576/9-1637), *De auctoritate principum in populum semper inviolabili* (1611), 2.10; Hugo Grotius (1583-1645), *de Jure Belli ac Pacis* (1625), 1.4.7.

³⁹Stewart gave no citation but appears to have cited indirectly via Rutherford, *Lex, Rex*, Q.XX, 158. Ferne was chaplain extraordinary to Charles I, author of four anti-resistance tracts in 1642-1643, and reputed ‘the leading royalist writer of the period’ (Joyce Lee Malcolm, ed., *The Struggle for Sovereignty: Seventeenth-Century English Political Tracts*, 2 vols. [Indianapolis, 1999], 1:181).

thought.⁴⁰ No rational people, it was assumed, could have intended to form a government under which their rights would be less protected than they had been without it. Stewart would raise this principle repeatedly in *Jus Populi*.⁴¹ Locke would use it a little over a decade later.⁴² The second part was implicit in the first: if the mechanism chosen to protect rights threatened them instead, the people, who cannot have intended that, retained their power to erect government and could replace the one that had become corrupt. This, too, would find expression in Locke.⁴³ The *American Declaration of Independence* would borrow Locke's language in asserting that 'when a long train of abuses and usurpations, pursuing invariably the same Object evinces a design to reduce them under absolute Despotism, it is [the people's] right, it is their duty, to throw off such Government, and to provide new Guards for their future security'. Third, Stewart argued that 'the law and light of nature . . . alloweth to beasts, a power and ability to defend themselves, against violence', and if beasts, much more men, who are of greater value (40).⁴⁴

Chapter 3 offered ten Biblical precedents for self-defence, individual and communal, against law-breaking magistrates (46-59) and cited Knox's commendation of two⁴⁵ that 'Kings have no privilege, more then hath the people, to offend God's Majesty' (58)⁴⁶ and Althusius's commendation of others.⁴⁷ This argument, too, would find its reflection in Locke, who would write, 'The title of the

⁴⁰Richard Tuck, *Natural Rights Theories: Their origin and development* (Cambridge, 1979), 143, 156, 161, 172.

⁴¹E.g., *Jus Populi*, 82, 111, 146-9, 162, 263-4, 334-5, 342.

⁴²Locke, *Second Treatise*, §131, cf. §137.

⁴³Locke, *Second Treatise*, §225.

⁴⁴Cf. Skinner, *Foundations*, 203-4. On pp. 41-6 of *Jus Populi* Stewart replied to Honyman's arguments against this reasoning.

⁴⁵Azariah's resisting King Uzziah's attempt to perform priestly duties in the temple (2 Chronicles 26), and those who resisted Amaziah (2 Chronicles 25:21-28).

⁴⁶Cf. Knox, *History*, 2:128, cf. 2:121; *History*, 2:126.

⁴⁷Cf. Althusius, *Politica* (Latin), 38.106. It is not surprising that §106 is excluded from Carney's condensed translation of *Politica*. But §§ 106 and 109 are both left out of the standard Latin edition of *Politica* (the only one I could obtain during this study), the editor inserting a note saying simply '§§ 106 & 109 contain a critical discussion of citations from the bible adduced by Barclajus'. This is as good a place as any to register a protest against the anachronistic tendency of modern scholarship to discount the importance of Biblical arguments to early-modern authors, many of whom believed the Bible as the very Word of God was of absolute authority.

offender and the number of his followers make no difference in the offence, unless it be to aggravate it',⁴⁸ a point made by the *Westminster Larger Catechism*, Q. 151; far from exempting them from the rule of law, magistrates' high office aggravates—increases the wickedness of—their sins against it, a point Stewart, too, would make (89).

Chapter 4 offered nine additional historical precedents, five foreign and four Scottish, for resistance, and drew nine lessons from them (60-75). Among the lessons were that those who acted assumed no 'authoritative or Magistratical power . . . but walked upon the ground of that fundamental right . . . to maintaine the Truth of God', and that 'mens commands or laws . . . against the Highest of all . . . are as no commands before God, and disobedience unto these, is no disobedience unto the lawful authority' but faithfulness to God (68-9). Stewart cited five authorities in support of such actions (75-9). The Lutherans of Magdeburg in their *Apology* (1550), cited by Knox, justified their resistance to imperial forces by arguing that when magistrates threatened rather than preserved the good, they became 'no longer ordained of God'.⁴⁹ Knox boldly told Queen Mary that just as children might resist and even imprison a frenzied father attacking them, 'even so with princes that would murther the people of God . . . : their blinde zeal is nothing but a very mad phrenzie, and therefore to take the sword from them, to binde their hands, and to cast them into prisone . . . is no disobedience . . . but just obedience, because it agreeth with the word of God'.⁵⁰ Thomas de Finola, rector of the University of Bologna, was reported by John Craig during Knox's debate with Lethington to have

⁴⁸Locke, *Second Treatise*, §176.

⁴⁹Knox, *History*, 2:129-30; cf. Allen, *History of Political Thought*, 103-6; Roland Bainton, *Age of Reformation* (Princeton, 1956), 172-3. See also E. Hildebrandt, 'The *Magdeburg Bekenntnis* as a possible link between German and English resistance theories in the sixteenth century', *Archiv für Reformationsgeschichte* lxxi (1980), 227-53; R. M. Kingdon, 'The First Expression of Theodore Beza's Political Ideas', in Kingdon, ed., *Church and Society in Reformation Europe* (London, 1985), ch. 10; R. G. Gamble, 'The Christian and the Tyrant: Beza and Knox on Political Resistance Theory', *Westminster Theological Journal* xlvi (1984), 125-39, all cited in Dawson, *Two Knoxes*, 573n.

⁵⁰Citing John Knox, *The Historie of the Reformation of the Church of Scotland; Containing five Books: Together with some Treatises conducing to the History* (London, 1644) 1644 ed., 313; compare in the Dickinson ed., 2:16-17. Stewart raises this point again at *Jus Populi*, 150.

said that when rulers broke their oaths to their subjects they ‘ought to be reformed, or bridled, by them’ because the oath bound princes as much as subjects.⁵¹ The combined Reformed clergy in Scotland had declared in 1559 that ‘To bridle the rage and fury of misled Princes . . . appertaineth to the Nobility . . .; And also to the Barons and People’.⁵² And the German Calvinist theologian and commentator David Pareus (1548-1622), had written on Romans 13:4, ‘It is lawful for private subjects, if the Tyrant set upon them as a robber . . . to defend themselves and theirs . . . as against a privat Robber. 1. Because, against whomsoever a defence is lawful by the help of Magistrates, against the same, privat defence, in case of necessity, is also lawful, when the defence by Magistrates cannot be had: because in such cases, Kings themselves do arme private persons. But in the case of necessity, defence by the inferiour Magistrate against the Superiour, is lawful. Therefore also private defence is lawful’.⁵³

The Core of the Argument: Chapters 5-8

Chapters 5-8 contain, as Friedeburg notes, ‘the new core of Stewart’s argument’. In them Stewart sets forth a covenantal theory of the erection, nature, limits, and end (*salus populi*) of civil government. In these chapters, according to Friedeburg, Stewart frequently inflated or distorted ideas from Althusius, getting more service from the great political thinker than was really there. Stewart certainly used Althusius where he could to support certain building blocks in his theoretical edifice. Nonetheless, although his theory of private resistance went farther than did Althusius’s, it will appear as we review these chapters that he did not misrepresent him.

⁵¹Citing Knox, *History*, 1644 ed., 395; in Dickinson ed., 2:132.

⁵²Citing Knox, *History*, 1644 ed., 179; in Dickinson ed., 2:227.

⁵³Paraeus’s ‘commentary on Romans [was] well known to English theologians for the anti-monarchical principles which it embodie[d], and which gave so much offense to king James I and the University of Oxford’ (McClintock & Strong, *Cyclopedia*, s.v. ‘Paraeus, David’). Stewart noted that James VI had the book burned but that ‘both the book, and the Author are in great esteem with the reformed’.

Chapter 5 first set forth theses regarding the ‘constitution and erection of civil Government’. Stewart appealed to what would become a principal element of Whig political philosophy, the idea of the origination of government from a free agreement among people in a state of nature to enhance the defence of life, liberty, and property (80-82).⁵⁴ Nearly a century earlier, Buchanan had written that ‘there was a time when men lived in huts and even in caves, and strolled at random, without laws, without settled habitations, like mere vagrants, uniting in herds as they were led by fancy and caprice’ but then had been brought together in civil societies ‘of utility as one cause’ but more importantly by ‘the law implanted in our minds by God at our birth’ as the ‘much higher and more divine origin’.⁵⁵ Three decades before Buchanan, François Connan had offered a similar picture, though without the explicit appeal to divinely implanted law as cause, and faint outlines of the notion had been apparent in the medieval decretalists.⁵⁶ More recently, the royalist Dudley Digges had argued that while men had indeed begun in such a state of nature, they had renounced the natural right of self-defence as the price to be paid for the greater security afforded by life in civil societies⁵⁷—a conclusion Stewart and the later Whigs would reject on the basis, as we have seen, of the principle of interpretative charity, coupled with the Calvinist doctrine of human depravity. The aim of those combining in civil society cannot have been to ‘be redacted unto a worse condition, then that was, into which they were, before the constitution’ (82-3; cf. 88-9), which would have happened had they abandoned the right of self-defence. Surely those who formed civil societies must have done so rationally. But that entailed that they must have understood that those they chose as ‘Magistrates . . . abide men of the like passions and infirmities with the rest (yea and subject to moe [sic] temptations and so in greater hazard to miscarry)[.]’ This

⁵⁴See Locke, *Second Treatise*, chapters 2 and 7-9.

⁵⁵Buchanan, *De Jure Regni*, 242-3; in the 1680 edition, 11-15; cf. Tuck, *Rights Theories*, 43.

⁵⁶Tuck, *Rights Theories*, 37 (citing Connan, *Commentariorum Iuris Civilis Libri X* [Paris, 1558], 19v-20r), 18.

⁵⁷Tuck, *Rights Theories*, 103, citing Dudley Digges, *The Unlawfulness of Subjects, Taking up Armes against their Sovereigne* (n.p., 1644), sig. B3v.

change doth not Transforme them into Angels⁵⁸ They are still obnoxious to the sin of injuring their neighbour, and transgressing the law of righteousness, no lesse then others' (83; cf. 89). Therefore the people cannot have intended to make even the supreme magistrate absolute, which is what it would have meant for them to surrender the right of self-defence. Rather, they must have reserved to themselves the right to resist any who tyrannized over them. Here again Stewart's argument presaged Locke's, who wrote,

It cannot be supposed that [men] should intend, had they a power so to do, to give to any one or more an absolute arbitrary power over their persons and estates and put a force into the magistrate's hand to execute his unlimited will arbitrarily upon them. This were to put themselves into a worse condition than the state of nature wherein they had a liberty to defend their right against the injuries of others and were upon equal terms of force to maintain it⁵⁹

Although government was ordained by God, its specific form and officers in any state were 'meerly from the People', 'no man coming out of the womb into this world, with a crowne on his head, and a scepter in his hand', a notion Althusius and even, indirectly, Barclay supported.⁶⁰ The distinction between office and person followed,⁶¹ God ordaining the former and the people choosing the latter, a point Stewart supported by references to the Bible and political theorists, noting (correctly) that even Honyman admitted it.⁶² It followed that the people retained the power to change both the form and the officers of government, if they thought it

⁵⁸Compare James Madison, *Federalist*, #51, in Alexander Hamilton, James Madison, and John Jay, *The Federalist Papers*, ed. Clinton Rossiter (1787-1788; New York, 1961), 320-25.

⁵⁹Locke, *Second Treatise*, §137.

⁶⁰Althusius, *Politica*, Latin, 19.103: 'So therefore the constituting of the highest magistrate is completed by election and inauguration. Barclay contra. *lib. 3.c.3 de regno & regali potestate*, separates the election and constituting of the king from each other in turn. For it is one thing, he says, to establish kings and another to choose them; one power for choosing and another for regulating the king The choice, says Barclay, is God's, the regulation, the people's'. Translations not found in Carney's abridgement are by Jackie Cork, Latin instructor at Westminster Academy, Ft. Lauderdale, Florida, sometimes refined by this author.

⁶¹Cf. Locke, *Second Treatise*, § 226.

⁶²*Survey*, 1.2:102-3. Cf. Rutherford, *Lex, Rex*, Qs. IV and XI.

necessary, to preserve the ends for which they had erected it (83, 85, 89-91). Monarchical succession by heredity did not vitiate this principle, for the heir could hold the throne by no greater claim than did the first in line—that he was chosen by the people—a view embraced by Althusius and Marcus Zuerius Boxhornius (1602-1653),⁶³ Leiden University political science professor for a decade until four years before Stewart matriculated there (86-7, 91-2). All this was clear since ‘People at the first erection of Government and Governours, acted rationally’, not surrendering ‘their birth-privilege, and power of self-defence’ in case the government itself ‘should prove their avowed and open enemies’. Here, too, Stewart found support in Althusius, who had written that the magistrate must not exceed his bounds without punishment and that the commonwealth did not, ‘by establishing a prince, rob itself of the ability to preserve itself’.⁶⁴ Just as a church congregation could, if he turned heretic, remove a minister it had chosen, so could a people remove a king it had chosen if he turned tyrant (90-91).⁶⁵ Stewart concluded the chapter by answering the likely objection that Scotland’s government was not elective but hereditary monarchy rooted in conquest, rebutting the claim by drawing on Buchanan’s *History* (92-4).⁶⁶ The argument was hardly necessary, since in Stewart’s view not only was conquest not a just title but also every government, however begun, was necessarily conditional.

Chapter 6, the longest in the book, reflecting Stewart’s commitment to the Covenants and covenant theology, began by arguing from citations of ‘lawyers and polititians . . . that the King, is absolutely bound unto his Subjects, and the people obliged unto the King conditionally’ by the ‘Covenant betwixt King and People’, which ‘polititians ordinarily call *fundamentall lawes*’ (95-6). Stewart referred to several authorities for the conditionality of the people’s subjection. One was

⁶³Althusius, *Politica*, 19.90 (132); Boxhornius, *de Majestate Regum* (Leiden, 1649), 11-12.

⁶⁴Althusius, *Politica* (Latin), 38.32.

⁶⁵Cf. Althusius, *Politica*, 38.35.

⁶⁶Cf. George Buchanan, *The History of Scotland*, 4 vols., trans. and ed. with *A Continuation to the Union in the Reign of Queen Anne*, by James Aikman (Glasgow and Edinburgh, 1827), 1:149-59.

Vindiciae (1579), Q. III, a chapter that, in the Garnett edition, occupies over a hundred pages (with notes) and from which Stewart specified no particular passage. The conclusion, however, says,

In constituting a prince, there is a covenant [*foedus*] between him and the people, whether tacit or explicit, whether according to natural or even civil [law], to the effect that . . . as long as he complies with the laws, all will submit to him. . . . The officers of the kingdom are the vindicators and custodians of this covenant Whoever perfidiously and persistently breaks this contract, is truly a tyrant by practice. So the officers of the kingdom are bound by their office both to judge him according to the laws and, if he resists, to restrain him by force if they cannot do so by other means.⁶⁷

He also cited Althusius's *Politica*, 20.3 and 21, and 38.30. In the first Althusius affirmed that 'there arises from the people a promise of obedience and allegiances under the condition, silent or expressed, that the magistrate give orders justly and dutifully',⁶⁸ and in the second that 'because a proper condition of the agreement and compact is not fulfilled, the contract is dissolved by right itself. . . . the people, or members of the realm, will not recognize such a perfidious, perjurous, and compact-breaking person as their magistrate, but treat him as a private person and a tyrant to whom it is no longer required to extend obedience The magistrate loses the right to exact them justly'.⁶⁹ In the last he offered ten reasons for 'the right . . . of resisting the supreme magistrate, and removing him from his office, which the nobles (*optimates*) have in the name of the people'.⁷⁰ While Althusius in this last passage located the right of 'resisting the supreme magistrate' in the nobility rather than, as Stewart did, the people at large, Stewart's point in citing him was simply to support his point that the people's obligation to the king is conditional.

⁶⁷*Vindiciae*, Q. III (172).

⁶⁸Althusius, *Politica* (Latin), 20.3.

⁶⁹Althusius, *Politica*, 20.21 (134).

⁷⁰Althusius, *Politica* (Latin), 38.30.

Stewart presented a variety of reasons why the constituting of a government was always conditional (96-9). None could claim sovereignty but by the people's choice, which necessarily involved a compact, explicit or implicit, which in turn arose from the people's rational consideration of their own interests, a consideration incompatible with giving someone unlimited power over themselves. Before forming the government, 'every one of them might saifly have judged the Prince by themselves'. Knowing themselves to have 'an inclination to domineer . . . , they might rationally have concluded that the Prince was, and would be but a Man of the same passions' and so limited him (97). An unlimited sovereign was an unfit instrument to achieve the people's presumptive ends; therefore they cannot have intended to make one.

It was against nature to set up a tyrant, a view supported by Althusius.⁷¹ The crucial passage in the four sections of *Politica* 19 Stewart cited (but did not quote) was in 19.35, where Althusius transformed the principle of interpretative charity into an observation about the very nature of imperium:

The nature of magistracy and imperium is that they regard the utility of subjects, not the benefit of the one who exercises the imperium, and they administer the commonwealth according to right reason and justice. For, as Augustine says, when justice is taken away, what are realms other than large bands of robbers?⁷² And so absolute power and the jurisdiction of sinning cannot be given to the supreme magistrate. Therefore, even a concession made with the most general wording is to be interpreted in support of the welfare and utility of the conceding people. For the mind of the conceding people was surely that which restricts and limits the general wording.

It was also 'contrary to nature' for 'the power of the one' to 'be greater than the power of the whole' (19.36), just as it would be contrary to nature for the

⁷¹Althusius, *Politica*, 19.33, 35-7 (124-5).

⁷²Augustine, *City of God*, IV.4.

magistrate, who received his power from the people, to have a power the people never had: a ‘power for evil’ (19.37).

Further, a king free of conditions would have his subjects as mere property; the consequent being false, the antecedent must be also (98). To install a sovereign without conditions would be ‘sin against the Law of God, which will have such and such duties performed by’ the people—duties with which unlimited sovereignty could conflict. All nations’ practice confirms that kings’ power is conditional. Lawyers and politicians affirm that all free republics (note the begged question) have such conditions (98-9). Philip Heinrich Hoenonius (1556-1640), professor of law at Herborn, Althusius’s *alma mater*, had taught that ‘Subjects do stipulate from the Magistrates, whether they will rule so as they may lead a peaceable and quiet life’⁷³ and ‘that the Magistrates do absolutely promise; and the Subjects upon condition promise what is their duty’.⁷⁴ Althusius, Stewart’s principal source in this discussion, had written that the people are obligated to obey the magistrate when he ‘justly and dutifully’ reigns, and that ‘When God lets a kingdom grow up under such a condition . . . [the magistrate] is a helper’ to the people ‘for good’. But ‘If this condition is lacking, the people no longer are obligated to obey. Moreover, the chain of this obligation is dissolved by that one, who first withdraws from the agreements, who therefore loses every right acquired by the agreement, that the other may become free: For the obligation vanishes and is held for nothing, when its essential conditions, on account of which it was concluded, are violated’.⁷⁵ Again, he had written, ‘no realm or commonwealth has ever been founded or instituted except by contract entered into one with the other, by covenants agreed upon between subjects and their future prince, and by an established *mutual*

⁷³The last clause alludes to 1 Timothy 2:2.

⁷⁴Marcus Zuërius Hoenonius, *Disputationum Politicarum Liber Unus*, 3d ed. (Herborn, 1615), 2, Thes. 4 and 5. For brief discussion of Hoenonius, see Daniel J. Elazar, *Covenant and Civil Society: The Constitutional Matrix of Modern Democracy*, vol. 4 of *The Covenant Tradition in Politics* (New Brunswick, NJ, 1998), 25-6, and Christoph Strohm, ‘Recht und Jurisprudenz im Bereich des reformierten Protestantismus 1550-1650’, at <http://www.ruhr-uni-bochum.de/kg-ref/Forschung.htm>.

⁷⁵Althusius, *Politica* (Latin), 38.32.

obligation that both should religiously observe. When this obligation is dishonored, the power of the prince loses its strength and is ended'.⁷⁶ And finally he had written,

In this election . . . certain laws and conditions concerning subjection, and the form and manner of the future imperium, are proposed to the prospective magistrate If he accepts these laws, and swears to the people to observe them, the election is considered firm and settled. This agreement entered into between magistrate and people is known as a *mutually binding obligation*. . . .⁷⁷

The language of mutuality in these last two passages is particularly significant in light of Friedeburg's charge that Stewart 'inflates [the] claim' 'that the King is absolutely bound unto his subjects, and the people obliged unto the King conditionally' into 'a relationship of mutual conditionality'.⁷⁸ Stewart did indeed stress the mutuality of the conditions on which a man is made king, not only here but also later in the chapter (112), but Althusius did likewise.

Not least important among the reasons to believe that government was always erected on conditions was that Scripture taught so. Stewart spent over ten pages arguing the point (99-110) from David's covenant with the ten tribes of Israel (2 Samuel 5:3; 1 Chronicles 11:3), Jehoiada's covenant with the people of Judah (2 Kings 11:17; 2 Chronicles 23:3, 16), and Jephthah's covenant with the people (Judges 11:2-13), all cited by Althusius as examples illustrating the same point.⁷⁹ Also, God commanded men to obey the king 'according as your oath to God will permit' (Ecclesiastes 8:2). Along the way Stewart replied to Honyman's objections

⁷⁶Althusius, *Politica*, 19.15 (122), emphasis added.

⁷⁷Althusius, *Politica*, 19.29 (123-4), emphasis added. Stewart also cited two other sources in support of this point. The first was Timplerus, *Polit. Lib. 2. Cap. 1. Quest. 5*, a source I have not been able to identify but that Stewart says 'proveth that there is a mutual obligation betwixt Magistrates and Subjects'. Timplerus is Clemens Timpler (1567/8-1624), a Calvinist neo-scholastic associated with a revival of Aristotelian thinking. (I am grateful to Roger Mason for this information.) The second was probably Johann Gerhard (1582-1637), though possibly Johann Gerhard (1621-1688), both Lutheran theologians, one of whom in *de Magistratu*, Thes. 94 (p. 726) 'proveth that it is no new thing, That Magistrates and Subjects do Covenante with each other'. I have been unable to identify *de Magistratu* and which Gerhard was its author.

⁷⁸Friedeburg, 'Collective Representation', 26, citing *Jus Populi*, 95.

⁷⁹Althusius, *Politica*, 19.20 (Latin). Stewart mentioned Althusius' use only of the last.

to using such examples in that manner.

In sum, Stewart wrote, ‘by vertue of this mutual compact, the Subjects, have *jus* against the King, a Right in law to pursue him for performance’ (112), despite Honyman’s strident objections (112-17). When the king violates the covenant, wholly or in the main, the people are free, by the nature of a covenant, ‘For it is absurd to say, that in a mutual conditional compact, one party shall still be bound to performe his conditions, though the other performeth none . . . , or performeth not the maine and principal one’ (117).

Before drawing conclusions from all that went before, Stewart took a detour to answer Honyman’s objections to such covenantal politics (118-39). (a) Honyman claimed that the mutual obligation between king and people arose not from a covenant but from the ordinance of God (118),⁸⁰ but this was a false choice, would imply that subjects also were not bound by the covenants (which Honyman did not want to affirm), and would leave no purpose for covenants. Further, Honyman had admitted elsewhere that the covenant bound the king to the people.⁸¹ No obligation could be essential to a constitution that neither flowed from nor grounded it—and covenants were, as he had pointed out, the ‘fundamental laws’ or constitutions of realms—and if no obligation existed before the constitution by compact, and obligation was essential to the constitution, then obligation must arise from the constitution (the underlying compact) itself. (b) Honyman claimed that mutual obligations were not always conditional, e.g., of children to parents or wives to husbands (119).⁸² But the first was a false analogy (e.g., because ‘Children have no hand in making up that relation, betwixt Parents and them’), and the second was false: wives are *not* bound unconditionally to their husbands but may divorce them for cause (119-20). (c) Honyman argued that the covenant theory failed to distinguish a limited from an absolute prince, ‘one who is *integræ Majestatis*’, and

⁸⁰Honyman, *Survey*, 1.1:88.

⁸¹Honyman, *Survey*, 1.2:100.

⁸²Honyman, *Survey*, 1.1:88.

that the latter was, according to Act 1, Parl. 18, James VI, the nature of the Scottish monarchy (120-21).⁸³ But, Stewart answered, Scots law is no proof of what is *jure divino*, and that is what is at stake. Further, the *Apologeticall Relation* had demonstrated a contrary interpretation of the statute Honyman cited.⁸⁴ Honyman himself had admitted that the king's authority did not supersede municipal laws,⁸⁵ and these being of lesser authority than the constitution, it followed that his authority did not exceed that of the covenant or fundamental laws of the realm. To Honyman's idea that the king's supremacy entailed his legal impunity,⁸⁶ Stewart responded that although such a view would 'destroy the nature of the mutual compact' it would still not shield the king from resistance, 'for if this be all his absolutenesse, then he may be withstood, and resisted (though not brought to the barr) even by private subjects, when he contraveeneth his principal conditions' (121-2). (d) Honyman claimed that conditions applied only to elected rulers, not to proper (hereditary) monarchs, like the kings of Scotland.⁸⁷ But, Stewart answered, Scotland's monarchy had begun by election and therefore was conditional, giving successive kings no more claim than had the first (122-3).

(e) Honyman claimed that Scotland's monarchy was founded on conquest, not covenant and election (123-4).⁸⁸ But, in addition to pointing out that conquest did not justify rule, to each of the first four examples Honyman offered Stewart cited

⁸³Honyman, *Survey*, 1.1:88-9; for the Act, which affirmed that the king was 'souerane monarche / absolute prince Judge and gouernor ouer all p[er]sones Estaittes and caus[es] baith spirituall and temporall within his said realm', see *APS* 4:281-4 and *Source Book*, 3:57-8 (the latter elliding the relevant language).

⁸⁴Brown of Wamphray had argued that Acts 1 and 2 Parl. 8 and Act 1 Parl. 18 James VI, when compared, showed that parliament had had no intention of asserting absolute authority in the king. Act 2 Parl. 8 affirmed parliament's supremacy, while Act 1 asserted the king's, and 'by the two acts compared together it is abundantly clear that the authority mentioned in the first act of that parliament, which is granted to the king, is not over the "estates of parliament," but over "private persons whether civil or ecclesiastic;" and so it is but a granting of him to be *singulis major* . . .'. Act 1 also affirmed that his authority comprehended ministers when they acted in civil affairs. Act 1 Parl. 18 affirmed nothing more of the king's authority and indeed implied that even what it affirmed was 'founded upon personal qualifications . . . such as "extraordinary graces, most rare and excellent virtues, singular judgment, foresight, princely wisdom," and the like; and these may be wanting in one possessing the crown, and therefore it could not be the mind of the parliament to give a supremacy founded upon such qualifications to those who had not these qualifications, and so they could not annex it unto the crown'. *Apologeticall Relation* (1845 ed.), 72-3; cf. 125-6 in 1665 ed.

⁸⁵Honyman, *Survey*, 1.1:89.

⁸⁶Honyman, *Survey*, 1.1:89-90.

⁸⁷Honyman, *Survey*, 1.1:90.

⁸⁸Honyman, *Survey*, 1.1:90-91; cf. *Trew Law*, 73.

the opposite judgment from Buchanan (124-8). To the fifth, Charles II, whom Honyman lauded as a conquering saviour from the English, he replied that before Cromwell had conquered Scotland Charles had been ‘solemnly engaged to the People by Covenants, vowes and oathes, to defend Religion according to the National Covenant, and Solemne League and Covenant, and to prosecute the ends of these Covenants, and upon these conditions took his Crowne and Scepter’. He was then a covenanted king, reigning conditionally. When Cromwell had conquered Scotland, its (in Stewart’s judgment unrepresentative) representatives to the Commonwealth had disowned Charles. According to Honyman, Charles had regained the throne by conquest, but in fact he had sworn the covenants again, in the *Declaration of Dunfermline*, as a condition of restoration (128-31). All of this led to a dilemma for Honyman—and, indeed, for the king: If after being restored Charles held the throne by reason of the original covenant between him and the people at his coronation and its reaffirmation at Dunfermline, then he stood condemned for violating it (in ways listed on 139) and had lost his right to rule. But if he held the throne only by right of conquest, then he was no more than a tyrant without title, ‘for his old title, being gone and expired, he had no new title whereupon to ground the lawfulnessse of his conquest, and therefore by his scope and drift here, he [Honyman] proclaimeth a liberty to all the People of *Scotland* to carry towards him, as an usurper; to seek to dethrone him, and to cut him off’ (132-5).

(f) Finally, Honyman claimed that no Scottish ruler before James VI had been crowned on condition of covenants and that even James VI, Charles I, and Charles II did not owe their crowns to such covenants (136).⁸⁹ Stewart replied that Honyman’s evidence—the absence of record of such covenants in Buchanan—was a mere argument from silence and proved nothing, while other historians reported that at least some Scottish kings had taken oaths at their coronations. Further, even if

⁸⁹Honyman, *Survey*, 1.1:92.

none had sworn such an oath, 'a virtual and implicate Covenant' was enough, and 'seing Kings, who could not reigne, was layd aside; others who corrupted government, were pursued, sentenced, punished, imprisoned, and killed in battel, or otherwise made to promise amendment; And seing we finde bonds laid upon Kings', it was 'abundantly cleare that the Kings of old were under bonds and obligations, if not explicite, yet tacite' (136-7).⁹⁰ James VI's advisers had sworn for him in his minority. That the Scots had crowned Charles I on the assumption that he had sworn to uphold some conditions was apparent from their later treating him 'as a King obliged by tearmes and conditions unto them'—i.e., from their going to war against him when they thought he had violated said conditions. And of course Charles II had, as a condition of his coronation, sworn repeatedly to uphold the Covenants. 'Here was then a mutual conditional Covenant, explicitly . . . : what needs more to clear all which we have said, and to ground all which we would inferre, to justify the late action[?]' (138-9).

Stewart brought this longest chapter to its close by drawing out the consequences of this covenantal understanding of government (140-43). Kings who violate the conditions on which they entered office may be resisted by the people acting in self-defence. Since the people may defend the constitution, those who rose at Pentland cannot be condemned, for 'in defending themselves, they stood for that which was the maine and principal tearme of our constitution'. The prince cannot violate the constitution 'as a Prince, having already engaged as a prince to maintaine the constitution, [so] he must do it as a private person, or an enemy to the constitution and whole body of the land. Therefore he may wel be resisted, even by private persones' (140-41).⁹¹ In support of the last point he cited (but did not quote) Althusius, who had written that a 'tyrant, working against the contract entered into with the people and breaking the very fundamentals of the state, loses by the law

⁹⁰He cited Buchanan, *History*, 1:166, 180-81, and 182-5.

⁹¹Compare Buchanan, *De Jure Regni*, 280.

itself all power and becomes a private citizen . . . against whom it is lawful for anyone, even a private citizen, to defend himself, and to repel the one attacking the life or goods and laws of the people tyrannically, and to get rid of the danger'.⁹² Indeed, Stewart added, 'a Prince violating all, or the maine conditions, upon which he was made Prince, becometh *stricto jure* no Prince' and therefore 'may be resisted, even by Private persones', as Althusius also implied (141).⁹³ Surely if the people may resist the prince in such a circumstance, they may resist his emissaries likewise (142). The prince having received from the people only that power specified in the contract⁹⁴ breaks the law and may be resisted if he usurps more (143).⁹⁵

Over three centuries before, Ockham had addressed papal deposition with reasoning strikingly similar to—indeed, presupposing—principles of the sort of sixteenth- and seventeenth-century Calvinist resistance theory Stewart exemplified, with its doctrines of resistance by lesser magistrates and even, finally, private persons. As Kilcullen and Knysh summarize Ockham's argument, a heretical pope is already automatically excommunicated and by right has lost all spiritual and administrative authority, though he may still reign as pope *de facto*. . . . Once it has been duly decided that the pope is a heretic, he must be removed from the papal office It is for cardinals, bishops, and other prelates to begin the process against a heretic pope, but if . . . they fail to act, the duty devolves upon lay leaders (the emperor, kings, and other rulers). Justice must prevail at all costs, and no ruler's authority is sufficiently powerful to evade or subvert this requirement. Hence if Church and lay authorities fail to act, it might be up to ordinary members . . . to save the Church from a

⁹²Althusius, *Politica* (Latin), 38.37.

⁹³Althusius, *Politica* (Latin), 38.40.

⁹⁴Compare the tenth amendment to the U.S. Constitution: 'The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people'.

⁹⁵Althusius, *Politica* (Latin), 19.47.

pope who has become a heretic by resisting in whatever way they can.⁹⁶

Transfer the discussion from the ecclesiastical to the civil realm and the argument is essentially identical to Stewart's.

Chapter 7 Stewart devoted to discussing the limits to royal power and their implications for the right of resistance, beginning with a list of seven types of power a king did not have. A king's power over his subjects was not: parental, because it arose from a voluntary compact; marital, because a wife was appointed to help her husband, but a king to help his subjects; organic, because while a body's members die without the head, a commonwealth survives the death of its king; 'lordly, dominative, or masterly', because such was 'a frute of sin', not freely chosen by slaves, would put subjects in a worse condition than before the contract of government, and entailed a right to sell subjects as masters sold slaves, which kings could not do since 'Subjects are the King's brethren, *Deut. 17. 20*'; despotic and masterly as of an owner over his possessions, for the prince was chosen to protect, not to destroy or take, his subjects' property; proprietary, because the king could not sell his kingdom; usufructuary, because princes could not pledge or give their kingdoms away or do with them whatever they pleased, as usufructuaries could (144-9). Interpretative charity figured prominently in establishing several of these points. It was simply not rational for people to choose a government that could do such things to them. Rather, the sovereign's power was properly fiduciary, 'for to this end & purpose was He created of the People, that he might defend them from injuries and oppressions', and his power, like that of any other fiduciary, was restricted by compact (149).

From these observations Stewart derived eight arguments for the right to resist

⁹⁶John Kilcullen and George Knysh, 'Ockham and the *Dialogus*', British Academy, 1995, 2002, at <http://www.britac.ac.uk/pubs/dialogus/wockk.html>, as of 22 Aug. 2002. The final appeal to popular resistance is strikingly similar to that in *The Appellation of John Knox from the cruel and most unjust sentence pronounced against him by the false bishops and clergy of Scotland, with his supplication and exhortation to the nobility, estates and commonalty of the same realm* (1558) and *To His Beloved Brethren the Commonalty of Scotland, John Knox wisheth grace, mercy and peace with the spirit of righteous judgement* (1558), in *John Knox on Rebellion*, ed. Roger A. Mason (Cambridge, 1994).

kings violating the contract of government. If (a) children could resist their fathers, and (b) wives their husbands, and (c) servants their masters, bent on destroying them, and if (d) the body could resist a distemper in the head, then, although in each instance the authority of the one over the others was less conditioned than that of a prince over his subjects, surely subjects could resist a prince bent on their destruction. If princes (e) had no despotic power over their people's goods and (f) could not sell their kingdoms, then the people had a right to resist if they acted otherwise. (g) If an owner could hinder a usufructuary from damaging his land, then the people could hinder the prince from damaging the commonwealth. Finally, (h) 'If the King's power be only *fiduciary*, as is shewed. Then when that power is manifestly abused . . . lawfully enough may he be resisted' (149-53), as Althusius affirmed.⁹⁷

Chapter 8 turned to the Ciceronian maxim that the people's safety was the supreme law, arguing that it implied limits to royal power. Their own safety was the people's aim in constituting the government and choosing their rulers in the first place; consequently they must have intended to limit all their rulers to that end. As the end it must be preferred above all means to it. The Word of God (Romans 13:4) defined the magistrate as ordained by God for the people's good. All laws were enacted for the people's good, which was '*anima & ratio Legis*'; hence no law detrimental to it was valid, and the sovereign could in cases of necessity neglect the letter of the law to serve its supreme end (153-4).⁹⁸ *Salus populi est suprema lex* did not, as the logician and moralist Robert Sanderson (1587-1662) claimed, aim at the safety of king and people together, with the latter conceding to the former when they conflicted, for the maxim first appeared in *de Legibus* III, where Cicero (106-43 B.C.) distinguished *populum* from the magistrates rather than incorporating

⁹⁷Althusius, *Politica* (Latin), 38.39.

⁹⁸Stewart concluded his demonstration by asserting that 'the very law of nature requireth' *salus populi* as the supreme end of government, citing Boxhornius, *Inst. Polit. lib. 1. Pag. 25*, but I have been unable to obtain a copy of the source, which perhaps was published within his *Varii tractatus politici* (Utrecht, 1663).

magistrates into *populo* (154-8). Consequently, it was irrational to exalt a sovereign, who was a means, over the safety of the people, which is the end of government; any law contrary to the safety of the people was ‘really no law’; fine points of laws ‘must be accounted as no lawes really’ if contrary to that end; as surely as the people’s safety prevailed over any privilege or prerogative of the crown, so it prevailed over any privilege or prerogative of parliament, another means; neither could king and parliament, both means, together outweigh their end. So when king and parliament together sought to overthrow ‘the work of reformation’, to force the people to sin by renouncing their covenant with God, and to overturn the constitution, so that ‘by an arbitrary and illegal tyranny, no man hath security for his life, his lands, his libertyes, nor his religion’, *salus populi* was manifestly threatened and could be defended. That having been the aim of the Pentland Rising, those who rose ‘were noble Patriots and loyall to that Supream law, *The saifty of the People*’ (158-60). It was no use for Honyman to appeal to the notion of absolute monarchy, for the sovereign was in the nature of the case always obliged to the people. He was not exempt from the laws of God, as Deuteronomy 17 taught and as Althusius, Bodin, and even Honyman himself agreed (160-61).⁹⁹ The sovereign was subject not only to the laws of nature and nations but even to such civil laws as are ‘consectaryes of’ them. Even Honyman admitted that ‘the King is bound before God to rule his People according to the Law of God, of reason and nature; yea and to take his directions in government, from the rational Lawes of the Kingdome . . . agreed to by the consent and good likeing of his people’. From this it followed that the king could not dispense with a just law by prerogative, kill at will, make laws alone, make his will law, act as sole interpreter of law, or, when interpreting a law, do it ‘as he wil [sic]’ (161-2).

If the king’s power were absolute, absurdities would follow: The people would

⁹⁹Althusius, *Politica*, 19.9-11 (121-2); Bodin, *Commonwealth*, I.8 (28-9); Honyman, *Survey*, 2:57-8.

have set over themselves someone without limits, making their condition worse after than before and effectively repealing *salus populi*. The king ‘might then break all bonds and oathes’ and so would become ‘a great plague and judgment to a People’, his subjects then being ‘formal Slaves’ to him and he not ‘the Servant of God for the good of the People, contrare to *Rom.* 13:4’. His power as a king being from God, it would follow that ‘God should give him power to sin and tyrannize’. There would be no material difference between a king and a tyrant; the king would be immune even from rebuke by prophets, contrary to scriptural history; and ‘lawes would become no lawes, neither were there need of lawes, nor should the making of lawes be a meane to promote the good of the Realme’ (162-3). The thrust of his argument was that monarchical absolutism was the repudiation of the rule of law. That his view, expressed by others in coming generations, became dominant in the Anglophone world is illustrated by American founder John Adams’s remark that Aristotle, Livy, and Harrington ‘define a republic to be a government of laws, and not of men’,¹⁰⁰ the last eight words being incorporated into the Massachusetts Constitution (1780).

Stewart sought then to demonstrate from Scotland’s own laws that its monarchy was indeed limited, not absolute. After referring the reader to Rutherford’s ‘24 particulars’,¹⁰¹ supporting the same point, he added fourteen of his own (163-5). The first two were that the Scottish parliament had power to make and interpret laws and appoint punishments, both of which were elements of sovereignty, while the king

¹⁰⁰John Adams (1735-1826), *The Works of John Adams*, vol. 4, ed. Charles Francis Adams (Boston: Little, Brown, 1851), and *Novanglus Papers*, Boston Gazette, no. 7 (1774).

¹⁰¹Rutherford, *Lex, Rex*, Q.XXIII, 113. Rutherford listed the following twenty-five things the Scottish king may not do: (1) ‘marry whom he pleaseth’; (2) ‘marry the daughter of a strange god’; (2a) [He failed to number this.] ‘expose his person to hazard of wars’; (3) go over sea and leave his watch-tower, without consent’; (4) allow ‘papists to come within ten miles of him’; (5) retain ‘pernicious counsellors . . . discharged . . . by laws’; (6) ‘eat what meats he pleaseth’; (7) ‘make wasters his treasurers’; (8) ‘dilapidate the rents of the crown’; (9) disinherit his eldest son of the crown at his own pleasure’; (10) follow false gods or go to mass; (11) allow a priest to say mass to him with impunity; (12) ‘write letters to the Pope’; (13) ‘pardon seducing priests and Jesuits’; (14) ‘take physick for his health but from physicians, sworn to be true to him’; (15) ‘educate his heir as he pleaseth’; (16) ‘marry [off] his eldest son as he pleaseth’; (19) ‘build sumptuous houses without advice of his council’ [though Rutherford uses only ‘ought not’ here instead of ‘may not’]; (20) ‘dwell constantly where he pleaseth’; (21) ‘go to the country to hunt, far less to kill his subjects and desert the parliament’; (22) ‘confer honours and high places without his council’; (23) ‘deprive judges at his will’; (24) ‘be buried where he pleaseth’.

was not always the final appeal from all courts, though that, too, was an element of sovereignty. Bodin, to whom Stewart appealed rightly as affirming that the sovereign was the final appeal, would have disagreed with Stewart's claim that law making and punishing were elements of sovereignty, for he distinguished supreme from subordinate powers of both sorts.¹⁰² That the Scottish parliament could make laws with the king's consent would not have persuaded Bodin that the Scottish king was not sovereign or that parliament was.

To substantiate each of the remaining twelve limits on Scottish kings Stewart cited acts of parliament. His form of citation was not always consistent and differed from modern forms and enumerations. However, by using the comparative tables of the statutes published at the front of each volume of *APS*, it is possible to identify all but a few of the many statutes he cited. In the notes here, forms have been modernized and made consistent, and correlated pages in *APS* have been listed to ease verification. Thorough reading of all certainly identifiable statutes cited shows that in every instance he cited accurately and the statute did indeed support the point he made. His points were:

1. Parliaments, not kings, levy new taxes, imposts, and customs.¹⁰³
2. Kings alone cannot appoint the value of money.¹⁰⁴
3. Scottish law requires the king to rule 'by the lawes of the land', not by his mere will.¹⁰⁵
4. The king is not the first judge in all causes.¹⁰⁶

¹⁰²Bodin, *Commonwealth*, 45, 42-3. On sovereignty generally, cf. Bodin, *Commonwealth*, I.10 (40-49).

¹⁰³Act 277 Parl. 15 James VI (*APS* 4:142-6, no. 48); Act 2 Parl. 23 James VI (*APS* 4:597-600, no. 2); Act 1, 14, and 15, Parl. 1 Charles I (*APS* 5:13-16, no. 1, and 5:32, nos. 14, 15); Act 13 Parl. 1 Charles II (*APS* 7:78, no. 112).

¹⁰⁴Act 67 Parl. 8 James III (*APS* 2:112, no. 7); Acts 93 and 97 Parl. 13 James III (*APS* 2:166, no. 10, and 2:174, no. 1); Act 23 Parl. 1, James I (*APS* 2:6, no. 24); Act 33 Parl. 8 James II (*APS* 2:39-40, nos. 1-14); Act 59 Parl. 13 James II (*APS* 2:46, no. 7); Act 2 Parl. 1 James IV (*APS* 2:208-9, no. 11); Act 17 Parl. 2 James IV (*APS* 2:221-2, no. 18); Act 40 Parl. 4 James IV (*APS* 2:233, no. 10); Acts 17 and 20 Parl. 1 James VI (*APS* 3:29, no. 21, and 3:31, no. 26); Act 249 Parl. 15 James VI (*APS* 4:134-5, no. 20); and Act 9 Parl. 16 James VI (*APS* 4:230, no. 18).

¹⁰⁵Act 79 Parl. 6 James IV (*APS* 2:252, no. 24); Acts 130, 131 Parl. 8 James VI (*APS* 3:293, nos. 3, 4); Act 48 Parl. 3 James I (*APS* 2:9, no. 3).

¹⁰⁶Act 45 Parl. 2 James I (*APS* 2:9, no. 24) and Act 62 Parl. 8 James III (*APS* 2:111, no. 3).

5. Some cases are not in the king's jurisdiction at all.¹⁰⁷
6. Some cases may be decided by the Lords of Session with no liberty for appeal to the king.¹⁰⁸
7. The king 'is limited in granting remissions'.¹⁰⁹
8. The king is limited in alienating lands, possessions, and moveable goods.¹¹⁰
9. The king is limited in erecting royal burghs.¹¹¹
10. The king is limited in appointing public offices for administration of justice.¹¹²
11. The king may not pass gifts, signatures, or remissions without consent of the privy council.¹¹³
12. The king has often been admonished by parliament of his duty.¹¹⁴

Whether these limits disqualified the Scottish king from what Bodin called sovereignty is not important. That they were inconsistent with claiming that he was an absolute, unlimited sovereign was sure. From these limits, in turn, Stewart drew consequences (165-72).¹¹⁵

¹⁰⁷Act 105 Parl. 14 James 3 (*APS* 2:177-8, no. 10).

¹⁰⁸Act 65 Parl. 3 James I (*APS* 2:11, no. 19); Act 63 Parl. 14 James II (*APS* 2:48, no. 3); Act 93 Parl. 7 James V (*APS* 2:371, no. 10); Act 1 Parl. 2 Mary (*APS* 2:425, no. 15??); Act 170 and 183 Parl. 13 James VI (*APS* 4:22, no. 24); Act 211 Parl. 14 James VI (*APS* 4:67, no. 21); Act 23 Parl. 1 Charles I (*APS* 5:41-2, no. 23); Act 23 Parl. Anno 1661 Charles II (*APS* 7:240, no. 260); Act 92 Parl. 6 James VI (*APS* 3:459-67, nos. 57-59); Acts 47 and 79 Parl. 11 James VI (*APS* 3:450, no. 31, and 3:456-7, no. 54).

¹⁰⁹Act 46 Parl. 2 James I (*APS* 2:8, no. 25); Act 51 Parl. 3 James I (*APS* 2:9, no. 7); Act 75 Parl. 14 James II (*APS* 2:50, no. 19); Act 42 Parl. 6 James III (*APS* 2:99, no. 3); Act 94 Parl. 13 James III (*APS* 2:170, no. 4); Acts 62 and 63 Parl. 6 James IV (*APS* 2:250, nos. 6, 7); Act 174 Parl. 13 James VI (*APS* 4:22, no. 23).

¹¹⁰Act 2 Parl. 1 James II (*APS* 2:[31—the page is not numbered]); Act 41 Parl. 11 James II (*APS* 2:42, no. 1); Acts 70 and 71 Parl. 9 James III (*APS* 2:113, no. 0); Act 112 Parl. 14 James III (*APS* 2:179, no. 0); Act 5 Parl. 1 James IV (*APS* 2:211 no. 19); Acts 10 and 22 Parl. 2 James IV (*APS* 2:219, no. 7; 2:222-3, no. 25); Act 50 Parl. 4 James IV (*APS* 2:235-6, no. 21); Act 90 Parl. 6 James IV (*APS* 2:253, no. 36); Act 84 Parl. 6 James V (*APS* 2:360-61, no. 19); Acts 115 and 116 Parl. 7 James V (*APS* 2:376-7, nos. 34, 35); Act 6 Parl. 9 James VI (*APS* 3:23, no. 6); Act 176 and 159 Parl. 13 James VI (*APS* 4:27-8, no. 32; 4:582, no. 82); Acts 203 and 204 Parl. 14 James VI (*APS* 4:64-5, nos. 13, 14); Acts 236, 242, and 243 Parl. 15 James VI (*APS* 4:131-2, nos. 7, 13, 14); Act 1 Parl. 16 James I (*APS* 3:13-14, no. 2); Act 4 (??) Parl. 23 James VI (*APS* 4:605, no. 4); Act 10 Parl. 1 Charles I (*APS* 5:27, no. 10).

¹¹¹Act 43 Parl. 11 James II (*APS* 2:43, no. 4).

¹¹²Act 44 Parl. 11 James II (*APS* 2:43, nos. 5-6).

¹¹³Act 12 Parl. 2 James IV (*APS* 2:220, no. 12).

¹¹⁴Act 23 Parl. 1 James I (*APS* 2:6, no. 24); Acts 5 and 6 Parl. 3 James II (*APS* 2:32-3, nos. 2, 3); Act 14 Parl. 6 James II (*APS* 2:35, no. 3); Act 92 Parl. 13 James III (*APS* 2:165-6, no. 8); Act 8 Parl. 2 James IV (*APS* 2:218, no. 3); Act 29 Parl. 3 James IV (*APS* 2:225, no. 10); Act 17 Parl. 1 James VI (*APS* 3:29, no. 21).

¹¹⁵Stewart listed the consequences as twelve numbered points, but some overlapped or were redundant. They are summarized here.

1. If a king is limited, his subjects may resist him when, by violating God's law or man's, he exceeds his limits. The king going beyond his bounds is no magistrate, as even the royalist Arnisaeus admitted.¹¹⁶
2. If he may be resisted at law, he may be resisted by force when legal recourse is unavailable. Honyman's objection¹¹⁷ that since Scripture says not to resist the powers ordained of God, absolute power must be of God and, though abused, remains of God and therefore must not be resisted is absurd, for it implies that 'The King might not be resisted if he . . . should fill ditches with his living subjects, and to satisfy his lust and pleasure should tumble them be thousands downe a precipiece into the midst of the sea' and that resistance to tyranny is resistance to God. On the contrary, if abuse of power is not from God, then resistance to abuse of power is legitimate and no injury to the power itself. Further, if Honyman was right, then subjects must never refuse active obedience to sinful commands, which even Honyman denied.
3. If the king's power is not absolute, then the people are not denuded of the power of self-defence.
4. If the king's power is not absolute, then neither is parliament's; therefore parliaments, too, may be resisted when they exceed their proper limits and fail to serve the true end of government, *salus populi*.
5. If king and parliament are both limited, then neither alone nor together may they 'make what lawes they will' 'in prejudice of the lawful rights of a third party' or of God, the church, or the interests of Christ; any such laws they

¹¹⁶He cited Arnisaeus, *De auctoritate principum in populum semper inviolabili*, 2.10: '*Dum contra officium facit Magistratus, non est Magistratus, quippe a quo non injuria sed jus nasci debeat*', i.e., as Stewart translated it, 'while the Magistrate doth against his office, he is no Magistrate; because a Magistrate should do no wrong but right'. Compare Locke, *Second Treatise*, § 235: 'An inferior cannot punish a superior. That is true, generally speaking, whilst he is his superior. But to resist force with force, being the state of war that levels the parties, cancels all former relation of reverence, respect, and superiority; and then the odds that remains is that he who opposes the unjust aggressor has this superiority over him, that he has a right, when he prevails, to punish the offender both for the breach of the peace and all the evils that followed upon it'.

¹¹⁷Honyman, *Survey*, 1.2:37.

make are of no force.

6. If king and parliament may be resisted, so may their emissaries.

In light of these, Stewart concluded the chapter, the Pentland Rising, 'being the defence of innocents in the case of extreame and inevitable necessity, against illegal commissions, contrary to the Law of God, cannot be branded with rebellion, but accounted an Act of lawful self-defence' (172).

***Naphtali* Revisited: Chapters 9-14**

Chapter 9, the third longest, revisited *Naphtali*'s arguments for the people's right to maintain, reform, and defend religion, including their covenants with God, and then answered Honyman's objections. It illustrates the extent to which Stewart's political philosophy remained fundamentally religious, despite his incorporating some secular arguments. For Stewart, 'the maintainance of truth, and the true Worshipe of God, were and are the principal ends and motives of contracting of Societyes, and erecting of Governments'. Consequently God held magistrates and people alike responsible, and both were obliged to defend orthodoxy and morality (173). *Naphtali* had intended to show the lawfulness of the people's maintaining, reforming, and defending religion, not, as Honyman made out, to imply that private persons had the authority of magistrates to destroy the king or all other magistrates (174). As private persons could, in necessity, defend their lives and properties and even the commonwealth itself independently of magistrates' assistance, so also could they defend religion, though in both cases defence was first the magistrates' responsibility (176). This private authority in religion was apparent in religious duties acknowledged by all: self-reformation, maintenance of personal moral purity, and mutual rebuke and exhortation even if prohibited by magistrates (a point Honyman admitted, though he knew people to be persecuted for it).¹¹⁸ Indeed, even if magistrates approved religious corruption, as

¹¹⁸Honyman, *Survey*, 1.2:84.

was then happening, it remained the duty of ministers to suppress it pastorally, as Biblical examples showed, and in such situations it was Christians' duty to obey godly ministers even against magistrates' orders, since they must obey God rather than men (Acts 5:29). God judged private persons for rejecting His message even though they were following their rulers (176-9). Where once true religion had been legally ratified, all men had a duty to uphold it. If magistrates then opposed it, subjects could defend themselves and maintain the truth 'by force, when there is no other probable meane left', particularly 'when liberty to supplicate or petition is . . . discharged'.

Surely if defence of life and estate were lawful, defence of religion, the true and proper end of life and property, must be (179-81). 'If it be lawful to maintaine the interests of a King against an usurper . . . Then much more must it be lawful, to defend *Christ Iesus* and his interest, when King and Parliament . . . have rebelled, and are seeking to dethrone him'—an implicit reference to Charles's Erastian ecclesiastical policy. And 'If private persons may resist and withstand the Prince and Parliaments, when they sell them . . . unto a forraigner, . . . Then much more may they withstand them, and defend their Religion, when they are selling it by their apostatical acts, and thereby selling them and their Souls unto Satan'. This was particularly so when, as in Scotland, religion had by covenants become part of the constitution (181-5). Stewart devoted the next nine pages (186-95) to providing Biblical support for the duty, and hence right, of private persons to maintain, reform, and defend religion, drawing for explanation on various commentators.¹¹⁹

¹¹⁹Passages discussed included Deuteronomy 13:12-14; Isaiah 59:4, 15-16; Jeremiah 5:1; 8:6; 9:3; 13:18; Ezekiel 22:30; Hosea 2:2. Prominent among his authorities were (a) John Diodati (1576-1649), an Italian Reformed scholar whose *Annotationes in Biblia* (Geneva, 1607) was translated and published in English as *Pious and Learned Annotations upon the Holy Bible: Plainly Expounding the Most Difficult Places Thereof* (London, 2d ed., 1648; 3d ed., 1651), running to over 1,200 pages and widely used; (b) the *Dutch Annotators*, i.e., *The Dutch Annotations Upon the whole Bible: Or, all the Holy Canonical Scriptures of the Old and New Testament, Together With, and according to their own Translation of all the Text: As both the one and the other were ordered and appointed by the Synod of Dort, 1618. and published by Authority, 1637. Now faithfully communicated to the use of Great Britain, in English*, trans. Theodore Haak (London: Henry Hills, 1657), a product of the Synod of Dort (1618-1619), and (c) the *English Annotators*, i.e., *Annotations Upon all the Books of the Old and New Testament; Wherein The Text is Explained, Doubts Resolved, Scriptures Paralleled, and Various Readings observed* (London: John Legatt and John Raworth, 1645; later

Scripture showed that

more is required of private persons, in a general day of defection, then to keep themselves free of the same, or to mourne in secret And if we lay the[se scriptures] together, they will clearly prove it the duty of privat persones, in such a day of defection, to be publickly declaring their abhorrence of the wicked courses which are carryed on: to be actually and effectually interposeing with King and Great ones, that a stope may be put unto the course of wickednesse, and God's wrath averted. [194-5]¹²⁰

Honyman, in contrast, believed that private persons could defend religion with violence only if magistrates led (195).¹²¹ The implication was that religion was subordinate to king and state and that rights found their roots not in God but in grants from the sovereign state, embodied in the monarch. To Stewart and other Covenanters, who rooted rights in God and His law, Honyman's notion was idolatry. It led to such absurd beliefs as that King Ewen III's law that a virgin had 'not a legal right unto her chastity' was right and that if a foreign army were attacking, subjects could not respond without the magistrate's leadership. It was a surrender of 'Religion to the arbitrement of Magistrates' (195-6).¹²²

The next argument to which Stewart responded, and his response, reveal how much alike he and Honyman were in their assumptions, despite their disagreements, and the difficulties to which those assumptions drove them. Honyman asserted that *Naphthali's* arguments implied that even the magistrate could not use force in

expanded into two volumes published in 1657), incorporating 'the best English exegetical work of the period' (*Cambridge History of English and American Literature*, 18 vols. [1907-1921], vol. 7, chapter XIII, §11, at <http://www.bartleby.com/217/1311.html>), by such writers as William Gouge, Meric Casaubon, Francis Taylor, and Thomas Gataker. In short, his authorities in Biblical exposition were excellent scholars but all Reformed.

¹²⁰To a secularist reader, arguments like these last might seem quaint and unreasonable, but to treat them so is to beg the question whether it is Stewart and those like him or modern secularists who are mistaken as to the nature of this world and the ultimate ends of life. While we may not settle that issue here, it is clear, *pace* Douglas, that Stewart's defence of resistance and limited government remained fundamentally religious, not secular.

¹²¹Honyman, *Survey*, 1.2:46.

¹²²On p. 197, Stewart considered and rebutted some appeals to the Church Fathers by Honyman; comparing the two interpretations with the originals, Stewart got the better of the argument, but it was not particularly material to the debate.

religion, i.e., that complete toleration was necessary—and that was clearly absurd.¹²³ Stewart's answer was direct: only the *true* religion was to be tolerated. To Honyman's reply that everyone thought his own religion true, Stewart rejoined that Honyman's argument turned back on itself, for it would refute his own belief in the right of disobedience to magistrates' sinful commands; that abuse of a principle does not falsify it; and that in fact Honyman admitted that the religion defended at Pentland was true (198-9). Stewart did not recognize the inconsistency of his own position. The Covenanters' rejection of religious toleration was inconsistent with their rejection of Erastianism and insistence that those who followed the true religion must be free from magistrates' opposition.

To Honyman, the Covenanters' error was that they thought king and people so bound in covenant that if either failed, the other was equally liable with it to make reparation. Rather, the people had only to reform and keep themselves pure; the magistrates alone would answer for their own deficiencies (203).¹²⁴ Stewart replied that Honyman's view was inconsistent with his support for the magistrate's control over religion, for if the people were not answerable for the magistrates, neither must the magistrates be for the people. Further, Stewart rightly noted, Althusius was on his side.¹²⁵ The people's obligation to do more than keep themselves pure was clear by analogy: private persons could and should oppose invaders or fight a fire in a city without the magistrate's lead; soldiers could and should fight enemies even if their superior officers defected; it followed that 'in cases of extreame necessity, private persones may do more, then in ordinary case; and yet not sinfully goe beyond their places and callings: and though materially, they, for that exigent, occupy the places of Superiours, . . . yet they cannot be accounted Usurpers' (204-6). Once again it was apparent that those who rose at Pentland were justified, 'mindeing their Oath and Covenant made with God', 'endeavouring in their places

¹²³Honyman, *Survey*, 1.2:47.

¹²⁴Honyman, *Survey*, 1.2:85-6.

¹²⁵Althusius, *Politica*, 28.18 (163).

and stations . . . to have the Church and Kingdom purged’, ‘defending the maine fundamental law and constitution of the Kingdome’, ‘repenting of their National sin’, and acting in self-defence (210-12). Stewart concluded the chapter with lengthy quotations from Knox’s *Appellation* and *Commonalty*¹²⁶ to drive home the point that covenant theology necessarily implied corporate, mutual, and severable responsibility on the part of king and people for religious fidelity.

Chapter 10, the sixth longest, continued the focus on covenantal solidarity and responsibility for sin, arguing that the people share responsibility with magistrates, and consequently suffer God’s punishment, for others’ sins, and that people are morally obligated to mutual assistance. (The centrality of covenantalism to Stewart’s argument should be apparent from the fact that, in addition to the concept’s arising frequently throughout the work, the first, third, and sixth longest chapters [6, 9, and 10], comprising nearly one-fourth of the book, focused specifically on it.) Scripture taught this: families were punished for the sins of their heads,¹²⁷ a principle clear in the second commandment, where God ‘threatneth to visite the iniquities of the Fathers upon the Children, unto the 3 and 4 generation’; people for the sins of their pastors;¹²⁸ multitudes for the sins of a few;¹²⁹ subjects for the sins of their rulers.¹³⁰ From such passages it was clear that it was not sufficient merely not to participate directly in sin oneself. As Knox put it, ‘God craves not only that a man do no iniquity in his own person, but also that he oppose himself to all iniquity’.¹³¹ Difficulty explaining the justice of this principle does not justify rejecting what Scripture teaches (216-20). Stewart might have strengthened his

¹²⁶Knox, *Appellation*, 99-102, and *Commonalty*, 118-19. If Dawson’s interpretation of *Commonalty* is correct (‘Two Knoxes’, 568-70), then Stewart went well beyond Knox’s understanding of commoners’ responsibility in reformation.

¹²⁷Genesis 12:17; 20:17, 18; Numbers 16:27, 32-3; Joshua 7:24-5; 1 Kings 14:10-11; 15:29; 21:21-2, 24; 16:3-4; 2 Kings 9:8; 2 Chronicles 21:14; and many others.

¹²⁸Leviticus 10:6; 1 Samuel 2:12; 3:11; 4:10-11; Isaiah 43:27-8; Lamentations 4:13; Micah 3:11-12.

¹²⁹Deuteronomy 13:12-17; Numbers 25; 32:14-15, cf. 22:17-18; Joshua 7:5; Judges 20.

¹³⁰Genesis 20:7, 9; Exodus 6-10; 2 Samuel 21:1; 24:1-2, 15; 1 Kings 14:16; 20:42; 2 Kings 21:11-13; 24:3-4; 23 and 26; 1 Chronicles 21:1-2, 14; 2 Chronicles 33:12; Nehemiah 9:10; Micah 3:9-12.

¹³¹Knox, *History*, 2:120.

argument considerably by making explicit the covenant theological underpinnings of this principle, particularly in the doctrines of the substitutionary, satisfactory atonement by Christ and of justification by faith alone through the imputation of Christ's righteousness to the believer, but he did not. Briefly put, any who thought it unjust to be condemned and punished for another's sin must also think it unjust to be justified and rewarded on account of another's (Christ's) righteousness—and that was the heart of Christianity. Honyman's denial of this principle, therefore, implied denying the material principle of the Reformation: *sola fide*, justification by faith alone.

Honyman had argued against this covenantal perspective in the *Survey* that none are punished for the sins of others as the deserving cause but only as the occasional cause, or for the sins of rulers merely because they tolerated or did not individually resist them, but only for accession to them; that requiring people to shoulder responsibility for rulers' sins would destroy peace and quiet; and that *Naphthali*'s use of Scripture to support the principle was faulty.¹³² To the first Stewart replied that it could not explain at least four instances he had listed: God's punishing the community for the sins of Achan, Saul, and David, and the second commandment's warning; that even granting Honyman's principles it would remain true that the prevention of others' sins would avert God's visiting general punishment; and that the notion that people only suffered for accession to others' sins could not explain why in Scripture it was clear that young children and later generations, who could not accede, and faithful adults, who did not, suffered punishment for others' sins (221-5). To the second he replied that the principle covered only public and heinous sins, that Honyman's argument committed what we would now call the slippery slope fallacy, and—a point he would make several times in different contexts—that even the best principles may be abused (226-7; compare 198, 239, 403, 412, 414).

¹³²Honyman, *Survey*, 1.2:51-3.

To the third, he replied with six pages of careful exegesis of relevant passages,¹³³ successfully showing that Honyman, not *Naphtali*, misunderstood them.

From this principle of covenantal solidarity in responsibility for sin it followed that the Pentland Rising was justified because those involved were defending themselves and others not only from oppression but also from God's corporate judgment if the sins of magistrates were not opposed. They also had Biblical precedent in the case of Israel's reaction to the tribe of Benjamin when the Levite's concubine was murdered (233-6).¹³⁴

Stewart concluded the chapter with arguments for the duty of mutual assistance, drawing first on Scripture¹³⁵ (236-9) and then on general considerations of brotherly and covenantal love (240-41). Of particular importance was Proverbs 24:11-12,¹³⁶ in which the Hebrew for 'deliver', *natsal*, imported the use of force in rescuing the innocent (237). To Honyman's objection that this would undermine the security of rulers acting justly,¹³⁷ he replied that Honyman's doctrine freed every magistrate to murder with impunity and, again, that even the best principle could be abused. He pressed the point home with a personal challenge:

But let him speak in earnest, what would he do if he saw his wife carried away by some drunken officers, before a judge drunk as a beast, so as he could neither hear nor speak sense, who yet without further processe, would condemne her to be brunt as a witch, or executed as a harlot, would he not labour, if he had power, to relieve his innocent wife out of the hands of these bloody oppressours? What would he then do with his pretences? Would these scar his tender conscience? I suppose not. And what if he saw the King, without ground, or colour of reason, possibly upon a mistake,

¹³³Jeremiah 26:15; Deuteronomy 13 (already treated on pages 186-8); Joshua 7 and 22:17-19; Judges 20.

¹³⁴Judges 19-21.

¹³⁵Matthew 7:12; Mark 6:31; Proverbs 24:11-12; Jeremiah 22:23.

¹³⁶'If thou forbear to deliver them that are drawn unto death, and those that are ready to be slain; if thou sayest, Behold, we knew it not: doth not he that pondereth the heart consider it? and he that keepeth thy soul, doth not he know it? and shall not he render to every man according to his works?'

¹³⁷Honyman, *Survey*, 1.2:50.

runing [sic] in a rage to kill his wife, or only son, would he not help the innocent in that case, and hold the King with force? Or would he only assist them by prayers to God for them, by consolatory words, by giving counsel to them or by supplications to the Magistrate with all dutiful respects, and if nothing could avail, sit downe as having discharged his duty; and would not resist more? [239]¹³⁸

If in such an instance Honyman would resist, how would he refute the criticism—which he had directed against *Naphtali*—that the worst of men would then resist the magistrate acting legally and morally on pretense that he was in a rage?

Again he concluded his chapter with lengthy quotations from the Covenanters' patron saint, Knox, this time from *Commonalty* (1558)¹³⁹ and his *Exhortation to England* (1559),¹⁴⁰ plus a general reference to Knox's debate with Lethington, all stressing the necessity of the faithful's acting to defend others from oppression, followed by quotations from the Scots *Confession of Faith* (1560), c. 14, which instructs 'to save the lives of innocents, to repress tyranny, to defend the oppressed' and from Ambrose (340?-397), '*qui non repellit a socio injuriam si potest, tam est in vitio quam ille qui facit*', i.e. (in Stewart's translation) 'he who doth not repel an injury from his brother when he may, is as guilty as he who doth the injury' (241-4).¹⁴¹

Chapter 11, the shortest in the book, argued from ultimate and absolute allegiance and obedience to God that every other oath of allegiance must be understood as restricted by that prior obligation, even if not explicitly stated, and that a government that requires unrestricted allegiance is tyrannical. *Naphtali* had said the same, but Honyman had misrepresented it as saying that subjects should tender allegiance only when government was actively defending religion and

¹³⁸Citing, at the end, Honyman, *Survey*, 1.2:49.

¹³⁹In Mason, *Knox on Rebellion*, 124-6; John Knox, *The Works of John Knox*, 5 vols., ed. David Laing (Edinburgh, 1856), 4:535-7; John Knox, *Selected Writings of John Knox: Public Epistles, Treatises, and Expositions to the Year 1559*, ed. Kevin Reed (Dallas, 1995), 548-50.

¹⁴⁰In Knox, *Works*, 5:513-14, 516-17; Knox, *Writings*, 593, 596-7.

¹⁴¹Ambrose, *De Officiis* I.36.179.

liberty.¹⁴² *Naphtali*'s point instead had been 'That obedience is not to be given to any creature on earth, against Religion or the revealed will of God'.¹⁴³ Although Honyman had written that he 'easily granted' this, he had effectively revoked the restriction on allegiance by writing 'that the measure of that Liberty, must not be made by every private mans will; but by the Declarature of the Parliament, . . . which best knows what thereunto belongs'.¹⁴⁴ But, Stewart responded, parliaments, like kings, 'can basely betray their trust . . .; and shall People have no more liberty competent to them, then what a perfidious company conspired against the good of the Commonwealth, to pleasure a sinful Creature, determineth? . . . we see no more reason, for asserting an infallibility, or absoluteness of power in Parliaments, then in Princes' (245-7). It followed that the Pentland Rising, 'being, according to their sworne alleagiance to God, a necessary defence of Religion', was justified (251).

In Chapter 12, Stewart took a breather from long, sustained arguments, offering a potpourri of short, unconnected ones. He began with brief reviews of arguments from *Lex, Rex*, Qs. XXVIII and XXXI (that a wicked, destructive, and lawless government is tyrannous and may be resisted; that children, wives, clients, and servants may resist their superiors acting lawlessly, and people owe no greater moral obligation to kings than in those relationships; that kings, ordained by God for the good of the church, cease to be kings when they become the church's enemies; etc.; 251-6) and then set forth eighteen more of his own grounds for resistance. Fully half repeated earlier arguments. Others were substantially new. Some of these were blatantly fallacious. Flight itself, permitted by most absolutists (including Honyman), was a kind of resistance in self-defence, but so was violent resistance, therefore both were justified as self-defence (259-60). This was hasty

¹⁴²Honyman, *Survey*, 1.2:6.

¹⁴³Stewart might also have pointed out (but did not) that the Negative or King's Confession (1581, renewed 1592), incorporated into the National Covenant (1638) and authorised by Charles I in July 1638 (without the added language of the National Covenant) (*DSCHT*, 459), had used language similar to *Naphtali*'s: 'we shall defend [the king's] persone and authoritie . . . in the defence of Christis evangell, libertie of our countrey, ministration of justice, and punishment of iniquitie'. If that had not implied that those who subscribed would defend the king *only* when he was actively pursuing those ends, there was no reason to insist that *Naphtali* had implied it.

¹⁴⁴Honyman, *Survey*, 1.2:6-7.

generalization. Since absolutist doctrine ‘that a poor oppressed people may not defend themselves’ is obviously contrary to reason, it cannot be of God (261-2). This begged the question. If foreign princes could justly invade to defend a people against a tyrant, the people could spare him the trouble by defending themselves (263). This both begged the question in its antecedent and failed to provide a logical link between antecedent and consequent. Since Scottish monarchs (James VI and Charles I) had aided foreign subjects in resistance to tyrants it was unreasonable for any Scottish monarchs to condemn their subjects’ resistance to them when they acted tyrannically (263). This was both a *petitio principii* and an *ad hominem*. But three other arguments were more respectable. First, the absolutist doctrine that people could not resist without leadership of lesser magistrates implied that they were worse off with than without them, which was absurd, since (applying the principle of interpretative charity) it was certain that people would not have elected to have lesser magistrates except with the intent of protecting their own best interests (263-4). Second, if, as absolutists admitted, it was lawful to resist the sovereign madly bent on self-destruction, it must be lawful to resist him when madly bent on destroying the whole society, since the latter was worse than the former (265). Third, if, as Honyman admitted, private persons could disobey sinful commands, then they could also resist a tyrant, for Scripture required both obedience and subjection, and if the former could be restricted without harming the sovereign’s lawful authority, so could the latter (266-7).

Chapter 13, the seventh longest in the book, rebutted three of Honyman’s arguments from Scripture for absolute submission to suffering. First, Honyman had argued from Hebrews 12:9-10 and 1 Peter 2:18-20 that if children were to suffer patiently the sometimes improper discipline administered by their parents, and servants likewise from their masters, subjects ought to do likewise rather than to resist tyranny.¹⁴⁵ Yet, Stewart replied, Honyman himself had admitted that children

¹⁴⁵Honyman, *Survey*, 1.2:28-31.

could resist parents in some instances, e.g., when, as Knox had suggested, a father in frenzy attacked a child.¹⁴⁶ Honyman's argument proved too much, implying that a servant could not flee unjust treatment by his master.¹⁴⁷ Further, as Stewart had pointed out before, the analogies were deficient (e.g., 'There is a great difference betwixt suffering of Buffettings, and correction, and such like petty, private, personal injuries, at the hands of Parents or Masters; and the suffering of losse of Liberties, Life, Lands, Religion, and such like, which tend to the ruine of the Commonwealth'), and just as Honyman restricted parents' and masters' authority to their proper spheres, so also should kings' authority be restricted. Honyman's appeal to the fifth commandment would not do, for it is the basis of all subjection to every authority, yet Honyman admitted a right of resistance to lesser magistrates when they contravened the supreme, implying that the commandment did not require absolute submission to non-divine authority. Honyman's argument also assumed that patient suffering and resistance were incompatible, but, as *Lex, Rex* had pointed out,¹⁴⁸ they were not. Honyman's position was self-refuting, for it could not reconcile duties to conflicting authorities. If a lesser magistrate commanded a subject to attack a superiour, and a superiour magistrate commanded him to attack the lesser, how could the subject respond? Recognizing a hierarchy of authorities obviously solved the problem, but it also eliminated absolutism except at the highest level, namely, God (267-76, cf. 285).

Second, Honyman had argued that since Christ called those blessed who were persecuted for righteousness' sake (Matthew 5:10; 1 Peter 4:14, 17), they must not resist.¹⁴⁹ But such an argument would prohibit self-defence against or even flight from *any* persecutor, superiour or inferiour, positions Honyman would not take. To Honyman's protest that allowing resistance in any case risks constant sedition, he repeated his former reply that abuse does not falsify a principle and added that

¹⁴⁶Knox, *History*, 2:16-17; 1644 ed., 313. Compare *Jus Populi*, 150.

¹⁴⁷Honyman, *Survey*, 1.2:31 ('our hired servants, free to go off when they will').

¹⁴⁸Rutherford, *Lex, Rex*, Q.XXX, 152-3 (1644 ed., 281, misnumbered 313).

¹⁴⁹Honyman, *Survey*, 1.2:33-5.

tyranny is just as dangerous as sedition (276-82).

Third, Honyman had argued that Romans 13:1-2 and 1 Peter 2:13 required nonresistance because in them *subjection* meant a ‘standing in order under’ authorities, which was incompatible with resistance.¹⁵⁰ But since Honyman admitted that it could not mean unlimited obedience, he must also admit that it could not mean unlimited subjection. No authority would give to one below himself license to overturn his own authority. This was as true of God as of man. Therefore, God being the highest and only truly absolute authority, from whom all lesser authority derives, no lesser authority has license to contravene God’s law. Again, universal prohibition of resistance to magistrates entailed unresolvable contradiction if magistrates ordered opposite acts. Submission to the office—the authority—was consistent with resistance to the person, and, finally, a command as to *how* to suffer was not a command *to* suffer (282-93).

In short, Honyman’s position was self-contradictory.

Chapter 14 replied to Honyman’s appeals to church history and prudence against resistance. Honyman had argued that the early Christians, though able to resist, had refused, choosing instead to suffer patiently all persecution.¹⁵¹ Yet Honyman admitted that not every example in Scripture should be imitated; surely he must admit the same about the examples of early Christians. Indeed, Tertullian (c. 160-c. 220/240), who implied that Christians should not even resist mobs (let alone authorities) that sought to persecute them, or even flee from persecution,¹⁵² Ambrose and Augustine (354-430), both of whom prohibited killing in self-defence;¹⁵³ early Christians who purposely pursued martyrdom (Indeed, it was more

¹⁵⁰Honyman, *Survey*, 1.2:35-8.

¹⁵¹Honyman, *Survey*, 1.2:39.

¹⁵²Tertullian, *Apology*, 36 (The relevant passage, which Stewart quoted in Latin, said, ‘We are the same to emperors as to our ordinary neighbors. For we are equally forbidden to wish ill, to do ill, to speak ill, to think ill of all men. The thing we must not do to an emperor, we must not do to any one else’.) and *de Fuga in Persecutione*, 4 (The relevant passage, again cited in Latin, said, ‘men should not flee in it. For if persecution proceeds from God, in no way will it be our duty to flee from what has God as its author’). Translations are from *Ante-Nicene Fathers* (Ages Software ed.), 3:81 and 4:242.

¹⁵³Ambrose, *de Officiis*, III.iv.24, 27 (in *A Select Library of the Nicene and Post-Nicene Fathers of the Christian Church*, First Series, 14 vols., ed. Philip Schaff; Second Series, 14 vols., ed. Philip

the desire for martyrdom than principled rejection of self-defence that motivated the early Christians' rejection of resistance.);¹⁵⁴ and those who forbade the use of arms against foreign invaders all contradicted Honyman. Honyman rejected pacifism, yet Anabaptists justified it by appeals to the early church. Contrary to Honyman's claims, the early Christians' numbers had not necessarily made them able to resist successfully, and there were examples of their resisting force by force (295-305).¹⁵⁵ To Honyman's prudential argument that permitting any resistance would lead to sedition and anarchy, Stewart replied that Honyman's doctrine of nonresistance substituted a greater danger for a lesser. He added,

we say that a subject is bound to obey the Magistrates lawful commands, though he in his private judgement should account them sinful; so we say he is bound to submit to punishment, which is just and justly inflicted, though he judge otherways: Yea we grant furder, he is bound to submit to unjust sentences patiently, when he cannot by faire and possible meanes shun them. Yea moreover we grant that in matters of smaller moment, he may lawfully beare with the losse of a little to redeeme more, or save more

Schaff and Henry Wace [Grand Rapids, 1978, 1979 reprints], *On the Duties of the Clergy*. The relevant passages, cited in Latin, said, '... a man who guides himself according to the ruling of nature, so as to be obedient to her, can never injure another. If he injures another, he violates nature . . . I do not think that a Christian, a just and a wise man, ought to save his own life by the death of another; just as when he meets with an armed robber he cannot return his blows, lest in defending his life he should stain his love toward his neighbor'.); Augustine, *Epistola ad Publicolam*, 5 (In *Nicene and Post-Nicene Fathers*, Letter 47. The relevant passage, cited in Latin, said, 'As to killing others to defend one's own life, I do not approve of this, unless one happen to be a soldier or public functionary acting, not for himself, but in defense of others or of the city in which he resides, if he act according to the commission lawfully given him, and in the manner becoming his office'.). Translations are from *Nicene and Post-Nicene Fathers* (Ages Software edition), Second Series, 10:174-5; First Series, 1:556-7.

¹⁵⁴Stewart cited only Foxe, *Acts and Monuments*, but without a specific reference. John Foxe (1516-1587) included (Book I, p. 708) the famous story of Origen, whose mother frustrated his wish for martyrdom by hiding his clothes so that he could not go out in public. Many others, in several centuries, intentionally sought martyrdom. See Philip Schaff, *History of the Christian Church*, 8 vols., CD-ROM ed. (Albany, OR, 1997), 2:80. Sulpitius Severus (c. 363-c. 410), in his *Sacred History*, II.32 (paraphrased by Stewart on p. 298), wrote that 'under the emperors Diocletian and Maximian, . . . almost the whole world was stained with the sacred blood of the martyrs. In fact, they vied with each other in rushing upon these glorious struggles, and martyrdom by glorious deaths was then much more keenly sought after than bishoprics are now attempted to be got by wicked ambition'. *Nicene and Post-Nicene Fathers* (Ages Software edition), Second Series, 11:237.

¹⁵⁵Among other examples he rightly listed were the rescue of Dionysius of Alexandria in A.D. 235; of Athanasius in 342; of Basil in 387; of Eusebius Pius of Samosata in 373; and of Paulus in Constantinople about 356, citing as sources the Reformed historian David Blondel's (1591-1655) *Scholia* and Grotius's *De imperio summarum potestatum circa sacra*, 65 (sources I have not been able to check).

from hazard. But our question is, if the Body of a land or a considerable part thereof, ought stupidly to submit to the losse of Life, Lands, Libertyes and Religion, when not only they judge these to be in hazard; but when all who have eyes in their head see it [307]

In short, Honyman's worries stemmed from misrepresenting the Covenanters' position. 'Our case is a case that is manifest and notour' (307-8).¹⁵⁶ Here, though he capitalised on the Saxon lawyers' case for resistance against unjust judges when they rendered notoriously and irreparably unjust verdicts,¹⁵⁷ Stewart begged the question when he implied that anyone who disagreed with his assessment of the provocation must have no eyes to see.

Miscellaneous Political and Personal Debates:

Chapters 15-21 and Postscript

In chapter 15, Stewart responded to Honyman's mustering of Reformed authorities John Calvin, Peter Martyr (Vermigli), Andreas Rivet, and William Ames against resistance.

Calvin, Honyman had noted, had written that 1 Samuel 8:11-17 taught that the people were legally obligated to submit even to tyrannous kings and that 'we must . . . be very careful not to despise or violate that authority of magistrates . . . even though it may reside with the most unworthy men, who defile it as much as they can with their own wickedness'.¹⁵⁸ But, Stewart replied (314-15), Calvin's point had simply been that a king's wickedness did not justify general refusal to submit. Calvin wanted subjects to honor the office, or ordinance of God, regardless who held it; the Covenanters agreed. Actually, Calvin's explanation of 1 Samuel 8:11 in *Institutes*, IV.xx.26, was less favourable to his position than Stewart admitted. '*Hoc ius erit Regis qui regnabit super vos: . . . Certe non in iure facturi erant reges,*

¹⁵⁶See the text at footnote 16.

¹⁵⁷Cf. Dawson, 'Two Knoxes', 573.

¹⁵⁸Honyman, *Survey*, 1.2:22; Calvin, *Institutes*, IV.xx.26, 31.

quos optime ad omnem continentiam lex instituebat, sed ius in populum vocabatur, cui parere ipsi necesse esset nec obsistere liceret, Calvin had written; ‘This shall be the **right** of the king that will reign over you: . . . Surely, the kings would not do this by legal right, since the law trained them to all restraint. But it was called a right in relation to the people, for they had to obey it and were not allowed to resist’ (emphasis added). Much of the trouble stemmed from the common assumption that the Hebrew *mishpat*, commonly translated ‘right’ or ‘justice’, always meant that; in fact it sometimes meant nothing more than ‘practice’ or ‘habit’, as, e.g., in 1 Samuel 2:13.¹⁵⁹ Regardless, even if Calvin did not go so far as the Covenanters about resistance, Stewart wrote, he went farther than Honyman, writing in *Institutes*, IV.xx.31,

if there are now any magistrates of the people, appointed to restrain the willfulness of kings, . . . I am so far from forbidding them to withstand, in accordance with their duty, the fierce licentiousness of kings, that, if they wink at kings who violently fall upon and assault the lowly common folk, I declare that their dissimulation involves nefarious perfidy, because they dishonestly betray the freedom of the people, of which they know that they have been appointed protectors by God’s ordinance.

Had he been aware of it, he might also have cited Calvin’s commentary on Daniel 6:22: ‘For earthly princes lay aside all their power when they rise up against God, and are unworthy of being reckoned in the number of mankind. We ought rather utterly to defy than to obey them whenever they are so restive and wish to spoil God of his rights, and, as it were, to seize upon his throne and draw him down from heaven’.¹⁶⁰

The early Reformer and Oxford divinity professor Peter Martyr (1500-1562) had written, ‘Those which onely are subiect and counted altogether private, ought not

¹⁵⁹Compare *Lex, Rex*, Qs. XVIII, 73, and XXXIX, 155-6; Beza, *Right*, 117.

¹⁶⁰Calvin, *Daniel*, 1:382; partially cited by John T. McNeill in Calvin, *Institutes*, IV.xx.31, note 54.

to arise against their Princes and Lordes'; that 'if it bee lawfull for the people to cast out of a kingdome those that uniustlie bear Rule, there shall neuer bee anie Princes or kinges in safetie, for although they live iustlie and godlie, yet doe they not satisfie the people'; that 'godly men must suffer' 'a wicked prince . . . seeing they be private persons, and have no authoritie over him'; that 'against a Tyrant thou hast not now how to deale, unless thou wilt raise up sedition, tumult or conspiracie against him, or else thou thyselfe of thy private authoritie wilt kill him: which thinges be contrarie to the meaning of the holy scriptures'; that 'Because powers be of God, tyrannie must be abidden'; and the like.¹⁶¹ Stewart replied first, mistakenly, that Martyr rejected resistance only if its aim were to displace princes of their dignity or degree, but second, rightly, that Martyr approved of lesser magistrates' resisting the supreme, even by war if necessary, if he violated his compacts¹⁶²—a position Honyman rejected.

The French theologian and Biblical commentator Rivet (1573-1651) had written against resistance in his commentary on the decalogue.¹⁶³ But, Stewart replied, Rivet had written of private individuals' seeking revenge, not of the community's defending itself, and he had explicitly permitted private individuals to defend themselves from unjust assaults by princes (316 [misnumbered 216]).¹⁶⁴

The Puritan and anti-Arminian Ames (1576-1633), chaplain first at Cambridge and then at the Hague, and later divinity professor at Franeker in Friesland, Honyman had quoted from his famous *Conscience, with the Cases Thereof* (1630 in Latin, 1643 in English) as arguing that as a relative could not exist without its correlative, so authority could not exist without submission, and so 'not onely all

¹⁶¹Honyman, *Survey*, 1.2:22-3. Honyman cited the Latin as from IV.20. The material was actually from IV.21. Stewart reproduced Honyman's error (*Jus Populi*, 316 [misnumbered 216]). Translations here are from Martyr, *Common Places*, IV.21.12, 13, 19, 20, and 21, pages 324-5, 328-39.

¹⁶²Martyr, *Common Places*, IV.21.13.

¹⁶³Honyman, *Survey*, 1.2:23.

¹⁶⁴Stewart did not cite the precise location of the quotation, but he used the abbreviated title *Decal.*, apparently a work on the Ten Commandments. Perhaps this was Rivet's *Commentarii in Librum Secundum Mosis* (Leyden, 1634, 4to). Rivet's *Opera Theologica*, 3 vols., was published in Rotterdam in 1651-1660.

violent insurrections, but contempt also, and disesteeme' were 'repugnant' to authority.¹⁶⁵ Stewart answered that Ames had only required subjection with a care to preserve *authority*, not *tyranny*; forbade *insurrection* against this authority, not *self-defence* against one abusing it; admitted that there could be submission without obedience; related subjection and obedience in a manner that implied that if obedience were limited (which it was), subjection was also; and permitted violent self-defence and defence of others by individuals under attack.¹⁶⁶

In chapter 16 Stewart replied to what he called 'Three Principall Objections': that though resistance led by inferiour magistrates might be justifiable, private resistance could not be (332-6); that even if private resistance by a whole people might be justifiable, that would not justify the Pentland Rising, which was by but a small and unrepresentative part (343-6); and that even if resistance by a small, unrepresentative private group might be justifiable in principle, the Pentland Rising had lacked sufficient grounds (346-57). The arguments here mainly repeated earlier ones both in *Jus Populi* and in *Naphtali* and need not be examined in depth again. Having magistrates, whether supreme or lesser, must not make the people worse off than not having them, which would be the case if it robbed them of their right to self-defence, and magistrates became private persons when they transgressed their 'true limites'. If self-defence was lawful for one, it was surely lawful for a few, whether representative or not; those who rose at Pentland, though a minority, acted in the interest of all because their cause 'was of common concernment'; and the failure of a majority to uphold a sacred covenant did not relieve the minority of its obligation. The cause at Pentland was certainly sufficient, as a review of the persecution of faithful Covenanters in the southwest demonstrated.

Yet in the midst of all this repetition of earlier arguments some fresh points arose. Scotland's parliament had betrayed the nation by declaring the king's power

¹⁶⁵Honyman, *Survey*, 1.2:23, citing Ames, *Conscience*, 5.20, from the Latin. The translation here is from Ames, *Conscience*, 155.

¹⁶⁶He cited simply *Conscience*, 5.20. The relevant passages are 5.20.6 and 5.31.9.

absolute and unlimited (337), an action condemned by Althusius:

Absolute power, or what is called the plenitude of power, cannot be given to the supreme magistrate. For first, he who employs a plenitude of power breaks through the restraints by which human society has been contained. Secondly, by absolute power justice is destroyed, and when justice is taken away realms become bands of robbers, as Augustine says. Thirdly, such absolute power regards not the utility and welfare of subjects, but private pleasure. Power, however, is established for the utility of those who are ruled not of those who rule, and the utility of the people or subjects does not in the least require unlimited power. Adequate provision has been made for them by laws. Finally, absolute power is wicked and prohibited. For we cannot do what can only be done injuriously. Thus even almighty God is said not to be able to do what is evil and contrary to his nature. The precepts of natural law (*jus naturale*) are to 'live honorably, injure no one, and render to each his due.' [*Digest* I, 1, 10, 1.] Law is also an obligation by which both prince and subjects are bound. . . .¹⁶⁷

Here Stewart explicitly claimed that, granted parliament's betrayal, the people were 'as if they had not Parliaments, nor inferiour Judges' but could not be in a worse condition than if they had never had them (342). Here was the substance of Locke's argument that a people, betrayed by its government, returned to the state of nature. Stewart also made it clear that religious concerns were more important to him than secular. If anyone thought a people could resist, without leadership by lesser magistrates, a king and parliament conspiring to transfer title to all real and personal property in the kingdom to the king, 'Then why not . . . when the People . . . are put out of the possession of their Covenanted Religion . . .? . . . Seeing soul matters are of infinite more worth' (342-3). His response to the charge that those who rose at Pentland were but an unrepresentative minority made it clear that he was not a

¹⁶⁷Althusius, *Politica*, 19.9-11 (121-2).

majoritarian (344-5). Covenantalism, i.e., constitutionalism, not democracy, was his principle.

In chapter 17, Stewart raised and briefly answered a variety of objections from others—thirteen from Hoenonius (358-61), four from Gerhard (361-2), three from Alberico Gentili¹⁶⁸ (364-5), two from the unnamed author of *An Appeal to Conscience* (363-4), one from Ferne (363), and one unattributed (362). None differed significantly from any he had already rebutted from Honyman, and his answers raised no significant new issues.

In chapters 18 and 19 Stewart sought to break the king's trust in Honyman, who, he said repeatedly, had been paid (no doubt with royal approval) to write the *Survey* (378, 451, 454). Many of the arguments are *ad hominem* and of little interest to political philosophy, and most also repeated arguments used before. Yet a few are intriguing.

At the start of chapter 18, though he denied that it had been *Naphtali's* intent to declare Scotland's government dissolved (a step the Cameronians would take later), Stewart expanded on the principle that a government could be dissolved by its own malfeasance and more precisely explained its relevance to self-defence. *Naphtali* had said

That through the Manifest and notorious perversion of the great ends of Society, and government, the bond thereof being dissolved, the persons one or more thus liberated therefrom, do relapse into their primeve liberty and privilege, and accordingly as the similitude of their case, and exigence of their cause doth require, may upon the very same principles againe joyne and associate for their better defence and preservation, as they did at first enter into Societies.¹⁶⁹ [366]

¹⁶⁸Gentili (1552-1608) was an Italian suspected of Protestantism who sought refuge in England in 1580, teaching law at Oxford and publishing *De iure belli* and *Regales disputationes*, a defense of monarchical absolutism.

¹⁶⁹*Naphtali*, 150.

Honyman had charged that *Naphtali* wanted to dissolve the kingdom.¹⁷⁰ Not so, Stewart insisted. It had only meant to justify the Pentland Rising. The disputed sentence should be read in that light, as an argument from greater to lesser: if people could join together to form a government in the first place, they could also join in self-defence against it when it violated the conditions of the compact. For the greater he claimed support from Althusius, who had written, ‘But if the supreme magistrate does not keep his pledged word, and fails to administer the realm according to his promise, then the realm, or the ephors and the leading men in its name, is the punisher of this violation and broken trust. It is then conceded to the people to change and annul the earlier form of its polity and commonwealth, and to constitute a new one’.¹⁷¹ That the lesser was comprehended in the greater was obvious (367-9).

In chapter 19, Stewart more precisely defined his understanding of the types of power in government, using language, as we saw before, of Rutherford.¹⁷² Honyman having argued that the supreme power ‘is indivisible and incommunicable to distinct subjects’,¹⁷³ Stewart agreed that the supreme *executive*, or administrative, power was indivisible and resided in king, parliament, or the two combined, but the ‘fountain power’, from which administrative power flowed, was in the people, whose original covenant had given rise to the government and its magistrates, not in the magistrates. Therefore it was consistent to hold that there was a civil authority higher than that of the supreme magistrate. In Scotland, parliament was the supreme magistrate, not the king.¹⁷⁴ Thus parliament could judge the king. But the people, because they had the ‘fountain power’, could judge parliament and king alike. Indeed, since the Biblical requirement of submission to authority (Romans 13:1-2) applied to all authority, kings and parliaments should submit to the people as the

¹⁷⁰Stewart cited no particular passage at this point but interacted generally with *Survey*, chapters 1, 3, and 4.

¹⁷¹Althusius, *Politica*, 20.20 (134). Locke would argue similarly in *Second Treatise*, chapter 19.

¹⁷²See chapter 3 of the present work and Rutherford, *Lex, Rex*, Q.XXXVIII, 143.

¹⁷³Honyman, *Survey*, 1.2:73.

¹⁷⁴Compare Rutherford, *Lex, Rex*, Q.XLIII.

fountain power just as much as private individuals should submit to kings and parliaments as the executive power (382-7).

The question of magisterial legitimacy arose in connection with Honyman's declaring it 'blasphemy' to say that 'God's Word approves the murdering or deposing of Princes [. . .] by Subjects, who are not his judges'.¹⁷⁵ Yet Scripture warned kings that they would suffer at the hands of subjects or foreigners for their sins, implying that they were not, as Honyman insisted, 'inviolable'—Stewart apparently either missing or hoping his readers would miss the equivocation in both his and Honyman's uses of the term. More important, Honyman begged the question, for deposing tyrants was not murder. There were examples in Scripture of God's animating people to do such and then commending them for it (e.g., Jehoiada deposing Athaliah, 2 Kings 11). Worst of all, Honyman's argument would have served as well to protect Cromwell, the usurper, as Charles II, the covenanted king, for it required assuming that whoever reigned *de facto* also reigned *de jure* (391-2). No wonder even Charles I recognised the importance of the covenants for his own protection, having them preached, while he sought refuge on the Isle of Wight, in hopes of persuading the people to protect him against army factions (408)!¹⁷⁶

In the midst of defending Rutherford against Honyman's arguments (394-401), the details of which need not concern us, Stewart expressed an important distinction between theological and political approaches to the issues in question. A question, he said, might be

answered politically and theologically: And . . . many things may be tolerated or forborne in poynt of policy, upon politick grounds and ends, which, if considered *stricto Iure*, according to conscience, should not be forborne, nor tolerated. . . . So that though we should suppose it lawful for

¹⁷⁵Honyman, *Survey*, 1.2:77.

¹⁷⁶*Covenanters Plea*, 87.

a Commonwealth to enact and determine in Law, that their King should not be questioned for one single act of Murther or Adultery, as other persones are: Yet in poynt of conscience, if the question be stated *in thesi*, whether a King may be questioned for one single act of Murther and Adultery, as another private person, it may be answered affirmatively, because the Law of God, makes no exception of persones.

Stewart, in short, gave much greater weight to religious/theological reasons for action than to political. Even if political considerations might justify keeping the king immune from prosecution for isolated crimes ‘because of the probable hazard into which the Commonwealth may be brought by coercing of him’, still ‘it will never be allowed, in poynt of conscience, to make him free of all coaction of Law, so as he may without control, murther millions, destroy and waste Religion: For that were not conduceable to the peace of the Commonwealth, but a ready way to destroy all’ (396). Protecting the commonwealth would in some instances shield the king and in others demand his prosecution and punishment, political considerations varying as they did with circumstances; but right and wrong, determined by the unchanging and universally binding law of God, were invariable. ‘Wonder at it who will, that which is right is right: and it is consonant to equity, that the consciences of the People be so far judges of what is done by their Representatives, as not to suffer them, in their name, and by any power borrowed from them, to destroy the Commonwealth and to overturne the foundations of Religion and Liberty’ (405).

Stewart also more carefully defined his own position relative to democracy,¹⁷⁷ which Honyman had called ‘the worst of governments’, in which all the people rule.¹⁷⁸ Honyman misunderstood democracy as a government in which ‘all governe’, but in that case really none governed because none was governed. Rather,

Democracy is where some are chosen out of all the People by turnes . . . to

¹⁷⁷See above, page 209, and *Jus Populi*, 344-5.

¹⁷⁸Honyman, *Survey*, 1.2:81.

gouverne the rest. And *Lex Rex* will not say that these governours have an uncontrollable sovereignty but may be opposed & resisted . . . because under all species of governments, the fountaine power and Majesty abides in the People, and is resumeable, in cases of necessity. [406]

Stewart remained a monarchist all his life, but he defended democracy from misrepresentation. At the same time he showed himself politically astute enough to dodge the typical anti-Whig tactic of taunting radicals ‘with the accusation of being Levellers or democrats in order to force an open debate, and therefore a division within the ranks of the Whigs, on the issue of the franchise’.¹⁷⁹

In chapter 20, Stewart replied to Honyman’s arguments against using Phineas as a precedent for private resistance. A matter treated at some length in chapter 3, it need not concern us much here other than to say that Stewart had the better arguments. None of the texts Honyman cited actually proved Phineas a magistrate or even that he acted upon Moses’ approval. Although Honyman resisted drawing principle from precedent—at least in this instance!—Knox had shown a more deliberate and objective way of determining whether an act recorded in Scripture was true precedent: ‘where the example agrees with the law, and is, as it were, the execution of God’s judgment, . . . the example approved of God stands to us in place of a commandement’, for the immutable God will not condemn today what He approved yesterday.¹⁸⁰ By this criterion, Phineas’s act was indeed a precedent that Christians might follow. Honyman’s argument that when men act without human call the only justification is an immediate divine call was absurd, for men may do any ‘ordinary’ act without the call of either magistrates or God (414-22).

Although Chapter 21 is the second longest in the book, it conveys little of Stewart’s political thought. It is principally a point-by-point response to bits and

¹⁷⁹Ashcraft, ‘Radical Dimensions’, 768.

¹⁸⁰Stewart cited Knox, *History*, 2:124; 390 in 1644 ed. On Knox’s hermeneutic, see R. Kyle, ‘John Knox’s methods of biblical interpretation: an important source of his intellectual radicalism’, *Journal of Religious Studies* xii (1986), 57-70, cited in Dawson, *Two Knoxes*, 564.

pieces of the preface of Honyman's *Survey*, much of it *ad hominem*,¹⁸¹ some evidencing the deep sense of betrayal that heightened the Covenanters' passion,¹⁸² some refuting the theory of *jure divino* episcopacy defended by Honyman (440-43), some correcting misrepresentations of *Naphtali* (444-49)—particularly the charges that those of *Naphtali*'s persuasion were Anabaptists (certainly a curious charge to combine with that of their being papists!—460-62) and that they intended 'to open a gap to endlesse rebellions' and 'to ruine Kingly Authority and Magistracy, the ordinance of God'¹⁸³ (464-6). Reflecting Knox's prophetic warnings of divine judgment on England should it not repent after the death of Queen Mary,¹⁸⁴ he warned,

so long as there is no repentance of the horrible Apostasy . . . whereof King and all ranks are guilty: And particularly that Apostate pack [the bishops] which care neither for Church or State, King or Countrey, but in subordination to their owne bellies and base lusts, is not extirpated with all their adherents, we have no ground to expect that God shall preserve either Church or State from destruction and ruine: Because we have forsaken the Lord . . . , we can not but fear that he shall forsake us [468]

Stewart's Use of Sources

By far the most common source of quotations and references for Stewart was

¹⁸¹The *Survey* lives up to its name because it is superficial (426-7). Honyman is a coward for publishing anonymously when he had royal protection (427). He is a 'royally rewarded court flatterer, who having a latitudinarian's conscience . . . maketh no conscience what he sayeth, if he can please King and Court' (429). He is an apostate 'who to obtaine a bishoprick . . . hath sold and given away the most weighty matters of Law and Gospel both (437), one 'whose prudence is to saile with all windes' (438), who owes his title to the king and not to God or the church (446), 'a double face'd gentle man, who hath turned his coat & his tongue too' (449) who wrote 'this work of Satan which a little money hath prompted him to' (451), a hireling and a wolf, 'destroying the flock of God' (455 [misprinted as 255]), a man who 'hath sold his Zeal and Conscience' (464).

¹⁸²Honyman makes much of speaking with the authority of the church, but it is an apostate church that persecutes the true followers of Christ, who 'were not suspicious that this accursed thing was still with them, or that after they had joyned with them, in commending the good wayes of God, and crying *Grace Grace* upon the building, they should with the same breath, cry out *Crucify Crucify* all the friends of the work of God; and by an unparalleled dissimulation . . . He cannot be ignorant, I say, that this gave the rise to all these sad debates' (435).

¹⁸³Honyman, *Survey*, 1.1:3.

¹⁸⁴In Knox, *Works*, 5:496-536; Knox, *Writings*, 579-612.

the Bible, which he considered the very Word of God, ‘written for our learning’ and as examples, and ‘for our admonition’, not to be looked upon ‘slightly’ but pondered ‘narrowly’ (220, citing 2 Timothy 3:16-17). His use of it was typical of other Covenanters of his period who wrote on politics, like Rutherford and Brown of Wamphray, and was, like theirs, heavily influenced by Knox, particularly regarding how to make use of scriptural precedent to teach rights and duties.¹⁸⁵ Indeed, he held Knox in such high esteem that he could write that ‘he, . . . knew not what [it] was to feare the face of any breathing, in the defence of his Master’s cause and interest: and was an eminent divine, a holy Man of God, living in near communion with God, and was far above the reproaches and calumnies of his adversaryes’, and ‘the testimony of Mr. *Knox*, is more to be valued, then the contrare assertions, of all the perfidious Prelates in *Britane*, and of all their underlings, yea then of all the time-serving, and men-pleasing court parasites, who first have debauched their consciences into a stupide silence, and their judgment into the atheists beleef that there is no God, and then devoted soul, body, religion and all, unto the lust of a sinful creature’ (77, 79). Stewart was also heavily influenced by Reformed commentators commonly recognized on the British scene, like the English and Dutch annotators, John Diodati, and Calvin himself, as well as by more topical writers, especially Rutherford and Althusius, both of whom also used Scripture extensively in their political works. His Biblical studies were sophisticated and included the use of technical histories¹⁸⁶ and commentaries from the original languages.¹⁸⁷ He evidently had earned the high praise for Biblical scholarship given him by Wodrow:

He was exact in the originall of the Neu Testament, and . . . I have heard

¹⁸⁵See above, p. 214.

¹⁸⁶E.g., on p. 397 he quoted twice from the Lutheran orientalist Wilhelm Schickard’s (1592-1635) *Jus Regium Hebraeorum*.

¹⁸⁷E.g., on p. 109 he argued about the translation of Eccles. 8:2 and appealed to the commentary by the French Huguenot Hebraist Jean Mercier (Latin Mercerus; d. 1562), while on p. 400 he argued about the sense of Gen. 9:6 and appealed, among others, to the *Commentarii in Genesis* (Basel, 1554 fol.) by the Lutheran Hebraist Wolfgang Meusel (Latin Musculus; 1497-c. 1563).

him pitch, without book, upon most of the places where any remarkable Greek word was used He had studyed [the] Old and Neu Testament very much; writt upon some of it, and digested the whole of it, and was perfectly master of it.¹⁸⁸

Unsurprisingly, the overwhelming majority of his approximately 452 citations—approximately 90 percent—came from the Old Testament, which dealt much more fully with matters of social and political structure than did the New. Also unsurprising was the distribution of quotations from specific books. Twenty-eight citations apiece were from the books of Deuteronomy (the renewing of the Mosaic covenant, focusing on the political and social order), 1 Samuel (the constituting of Israel’s monarchy), Psalms (many of the citations having to do with the righteous character of the Messianic kingdom), and Romans (especially chapter 13, the key chapter on submission to and the nature of God-ordained authority—from which alone there were twenty-five citations, more than from any whole book except these four and Jeremiah). Fourteen citations were from Deuteronomy 17, which set forth constitutional limits on any king Israel would choose. It and Romans 13 were undoubtedly the key texts for Christian political theorists of all persuasions, and Stewart was no exception to that rule. Stewart cited Jeremiah twenty-five times, mostly in connection with the duty of people and lesser magistrates to resist the rulers’ unjust punishment of the prophet. He cited 2 Chronicles twenty-three times, 2 Kings twenty-two times, 1 Kings twenty times, and 2 Samuel nineteen times; together with the twenty-eight citations from 1 Samuel, this meant the six books of the history of the Jewish monarchy accounted for 112 (nearly one-fourth) of the citations in *Jus Populi*. Twenty-two other citations came from Isaiah, mostly dealing with corruption among Israel and Judah’s rulers, and twenty others from Numbers, mostly related to Phineas. Of individual verses, Stewart used Romans 13:4 (which defined the magistrate as a servant of God for the people’s good and

¹⁸⁸Wodrow, *Analecta*, 2:202-4.

consequently gave Biblical support to the principle *salus populi suprema lex*) four times, more than any other single verse. He used Romans 13:1 (which required submission to the powers ordained by God), 2 Samuel 5:3 (which reported the making of a covenant between David and the elders [representatives] of Israel at Hebron, thus providing Biblical support for covenantalism), 1 Timothy 2:2 (which required prayer for those in authority, that Christians might lead quiet and peaceable lives), and 1 Peter 2:13 (parallel to Romans 13:1) three times each. Twenty-seven other verses he used twice each. The remaining 394 verses, passages (sometimes including verses listed above—these uses not included in the counts there), or clusters of verses he cited only once each.¹⁸⁹

Stewart cited, either by quotation or specific reference, seventy-eight extra-Biblical authors.¹⁹⁰ Not surprisingly, he cited Honyman (designated as the ‘Surveyer’) more frequently than any other. He mentioned him thus on 134 pages, often as many as five or six times per page, but on hundreds of others he mentioned him in other ways. His citations from the *Survey* mount to several hundreds, and it would be possible to reconstruct large portions of it from these quotations. Careful comparison of Stewart’s quotations with the original demonstrates that he represented accurately what Honyman had written, even when he condensed or rearranged his words. His use of other sources is likewise faithful to the immediate meanings of the words quoted, or cited without quoting, although, as Friedeburg points out in discussing his use of Althusius, he often used those meanings as points of departure for ideas of his own that went well beyond those of his source. Stewart found himself in the situation common to many radicals of needing to legitimate ideas or behavior by appealing, as Skinner puts it, to ‘some of the *existing* range of favorable evaluative-descriptive terms’ used by respected political thinkers and showing that they ‘can somehow be applied as apt descriptions of [their] own

¹⁸⁹See Appendix A for an index of Scripture citations in *Jus Populi*.

¹⁹⁰Seventy-nine, if we include *Naphtali*, which he named on eighty-seven pages.

apparently untoward actions'. Or he found himself, as Tully puts it, needing "'to stretch' ideological conventions" by changing the meaning of one part of an accepted convention while preserving other parts'.¹⁹¹

Second to Honyman in number of citations, but clearly above him in esteem as an authority in the debate, came Althusius. As we have seen, Stewart used thirty-nine distinct (plus one general) references from Althusius on thirty-two pages of *Jus Populi*. He clearly considered him the most authoritative writer on politics, often citing him as if to do so were to end debate. Yet his admiration for him did not elicit the sorts of remarks noted above about Knox or below about Calvin and Rutherford. Only twice did he comment on Althusius rather than on a statement by him, calling him 'learned Althusius' and (faint praise) 'a better lawyer than' Honyman (59, 204).

Next in frequency of citation came Calvin, with twenty distinct citations, from both his *Institutes* (mostly from Book IV, chapter 20) and his commentaries on the Bible, on sixteen pages. Stewart's respect for Calvin is apparent from his calling him, within eight lines of a single page, 'excellent Mr. Calvin', 'worthy Calvin', and 'famous Calvin' (389). Frequently Stewart showed that Honyman, who also cited him as an authority, misrepresented, misunderstood, or misapplied Calvin.

Following Calvin came Knox, with thirteen citations. Of those, five were of his debate with Lethington, when under fire he defined his own understanding of lawful resistance, while two were of his *Commonalty* and one of his *Appellation*, both also important sources for understanding his theory of resistance, the former regarding commoners and the latter regarding nobles. Two other authors, ideological descendants of Knox, whom Stewart cited very frequently were Samuel Rutherford and John Brown of Wamphray, neither of whom he ever named. He cited them by the titles of their anonymously published books, *Lex, Rex*, cited on fifty-one pages,

¹⁹¹ Ashcraft, 'Radical Dimensions', 755, citing Quentin Skinner, 'Some Problems in the Analysis of Political Thought and Action', *Political Theory* 2, no. 3 (1974): 277-303, reprinted in *Meaning and Context: Quentin Skinner and His Critics*, ed. James Tully (Princeton, 1988), 97-118, at 112, 115-17, and James Tully, 'The Pen is a Mighty Sword: Quentin Skinner's Analysis of Politics', in *Meaning and Context*, 7-25, at 14.

and *Apologeticall Relation*, cited on twenty-one pages. This was to be expected in that significant parts of the *Survey* targeted these two works. But in both cases most of the citations are indirect—Stewart citing the *Survey* citing one of these works—and often they were very general, not to specific passages, which is why they cannot be considered as cited as frequently as Althusius or Calvin as actual sources or authorities. Yet clearly Stewart held the two books in high esteem and sought to defend them from Honyman’s many accusations. He expressed especially high regard for *Lex, Rex*, calling it ‘that unanswerable book’ (twice) with ‘many clear and unanswerable arguments’ and referring to its ‘Learned’ and (twice) ‘worthy’ author (381, 382, 388, 114, 153, 278)—whose identity was by then well known. Often Stewart followed *Lex, Rex* and sometimes the *Apologeticall Relation* in his own arguments.

After them came the Lutheran theologian Gerhard,¹⁹² with eleven citations, and Hoenonius, with ten. Next, with eight each, came the Jewish historian Josephus (37-c. 103), two early church fathers, the lawyer, apologist, and theologian Tertullian and the ecclesiastical historian Socrates (fl. early fifth century), and two recent Biblical commentators, John Diodati and Peter Martyr, the last of whom he called ‘this most learned of our Protestants’ (316, misnumbered as 216). Stewart cited William Barclay (1546-1608), a defender of absolute monarchy and author of *de Regno* (1600), seven times. Six times each he cited the Biblical commentator Rivet,¹⁹³ the Calvinist scholastic Timpler,¹⁹⁴ and the royalist Arnisaeus.¹⁹⁵ Five times each he cited Ames, Cicero, Grotius, and Buchanan, and four times each the covenanting divine and commentator George Hutcheson (1615-1674), the Dutch Calvinist theologian and commentator Gysbertus Voetius (1588-1676), Ambrose, and a Biblical commentator named Sanctius.¹⁹⁶ Eight authors he cited thrice each,

¹⁹²See footnote 77.

¹⁹³See page 207.

¹⁹⁴See footnote 77.

¹⁹⁵See footnote 38.

¹⁹⁶I have been unable to identify this author.

fourteen twice each, and thirty-one once each.¹⁹⁷ This range of authors demonstrates that Stewart had studied widely and was at home with Biblical, theological, legal, and historical scholars both ancient and recent, but especially with those in the Calvinist, particularly the Knoxian, tradition.

Securing Government by Limiting It:

Parallels Between *Jus Populi* and Locke's *Second Treatise*

As we have seen, Stewart had three purposes in writing *Jus Populi*. The first two—to refute Honyman and to vindicate the Pentland Rising—were the more obvious, the first structuring the whole book and the second reiterated at strategic points throughout. It would be easy to think these the only purposes, so obvious are they. Were they not tied to larger issues, the book would be of little more than antiquarian interest. But the third was to assert and defend a theory of limited, constitutional government that would prevent magistrates' degenerating into tyrants and so bringing contempt on themselves and government in general, 'the ruine of humane Societies and Kingdomes', and 'the destruction of the People both in soul and body' (465).¹⁹⁸

That this purpose was genuine and not merely asserted for rhetorical effect is apparent for two main reasons. First, Stewart was passionately devoted to Scotland's Covenants, and those firmly linked 'the true worship of God and the Kings authority' and bound their subscribers to 'defend [the king's] persone and authoritie', 'to resist all treasonable uproars and hostilities raised against the true Religion [and] the Kings Majesty', 'to maintaine the King Majesty's Royal Person, and Authority, the Authority of Parliaments', to 'stand to the defence of our dread Sovereigne, the Kings Majesty, his Person, and Authority', and 'to maintaine the

¹⁹⁷Many other authors mentioned in *Jus Populi* appear only within quotations from authors listed above and therefore are excluded from consideration here. See Appendix B for a complete index of authors directly cited.

¹⁹⁸See above, p. 165.

true worship of God, the Majesty of our King, and peace of the Kingdom'.¹⁹⁹ Second, unlike many radicals then and after, Stewart proved himself, after the Glorious Revolution, as capable and energetic in a monarchical government as, before it, he had been in opposition. He was no anarchist; he was not even an antimonarchist. He was a constitutional monarchist ardently opposed to absolutism, the practice of which he believed was the surest means to undermine any government.

Absolutism was the real threat to monarchy. Constitutionalism and its companion doctrine, the right of resistance, were its real friends. When kings forgot their calling to rule 'as Ministers of God for the good of the People', they exposed 'themselves to disgrace, and to the contempt of these who otherwise would most willingly honour them as God's vicegerents'. Far from 'opening a gap to endless rebellions', Stewart sought 'to prevent rebellions' by vindicating the right not to rebel but to resist tyranny, 'for if Kings remembered that their Subjects might lawfully and would oppose them, when they turned Tyrants, they would walk more soberly, . . . and so give lesse occasion to Subjects to think of opposing them' (465).

Locke reasoned similarly that 'this doctrine of a power in the people of providing for their safety anew by a new legislative, when their legislators have acted contrary to their trust by invading their property, is the best fence against rebellion, and the probablest means to hinder it'. But then, deftly turning etymology to his advantage, he moved in a different direction, arguing that it prevented rebellion not by the people but by the rulers, for 'whoever they be, who by force break through, and by force justify their violation of [the laws], are truly and properly rebels', for men 'who set up force again in opposition to the laws do *rebellare*—that is, bring back again the state of war—and are properly rebels; which they who are in power, . . . being likeliest to do, the properest way to prevent the

¹⁹⁹*Source Book*, 3:32-5, 95-104.

evil is to show them the danger and injustice of it who are under the greatest temptation to run into it'.²⁰⁰ Despite Locke's different move, both he and Stewart argued that limiting government and affirming a right to self-defence against it if it transgressed its bounds were steps not to strife but to tranquility.

The trouble with absolutism, beyond its leading to constant unrest, was that it was both irreligious and unreasonable. It was irreligious, Stewart believed, because it gave to monarchs the same power blasphemously claimed by popes. It was irrational because it implied that kings were 'above all law of man' and might do as they pleased 'without controle' and that 'lawes would become no lawes' (200, 162). Instead, 'absolute power' was 'no ordinance of God', and one who asserted it, to the injury of subjects, could be resisted (166-7). The same applied to parliaments (335). If rulers were not absolute, then neither obedience nor submission must be absolute; indeed, 'absolute subjection [was] as repugnant to reason, as absolute obedience', suited perhaps to beasts but not to men ([22], 41). Consequently self-defence, founded in both natural and Biblical law, remained lawful even against sovereigns, when they turned tyrants, with or without the concurrence of lesser magistrates (38-40, 75). To say otherwise was absurd, for it assumed that 'at the first erection of Government' the people acted irrationally and 'resigned and gave their birth-privilege, and power of self-defence away'. This they cannot have done, for they knew that 'Erected Magistrates remaine men, and sinful men, and men that can do wrong and violence and injustice, can oppresse innocents, destroy, pillage, plunder, kill and persecute unjustly'. The founding of government cannot have been to the people's 'detriment and manifest hurt', which it would have been had it, *faire l'impossible*, stripped them of the right of self-defence. 'No power given to Magistrates, can take away Natures *birth right*, or that innate power of self defence' (88-90, 166, 257).

Again Locke argued similarly that 'monarchs are but men' and that 'he that

²⁰⁰Locke, *Second Treatise*, § 226.

thinks absolute power purifies men's blood and corrects the baseness of human nature, need read but the history of this or any other age to be convinced to the contrary'. Kings would be made not righteous but 'licentious by impunity'. Consequently, since 'no rational creature can be supposed to change his condition with an intention to be worse', it could 'not be supposed that [the people] should intend, had they a power so to do, to give to any one or more an absolute arbitrary power over their persons and estates', which would be 'to put themselves into a worse condition than the state of nature wherein they had a liberty to defend their right against the injuries of others and were upon equal terms of force to maintain it'. To think otherwise was to think men wise enough to join together for mutual defence are 'so foolish that they take care to avoid what mischiefs may be done them by polecats or foxes, but are content, nay, think it safety, to be devoured by lions'.²⁰¹

This insistence on both the rationality and the sinfulness of men played a major role in the reasoning about the framing and limits of government in both Stewart's *Jus Populi* and Locke's *Second Treatise*. Joined together, the two concerns led directly to the principle of interpretative charity (see above, p. 169). Stewart wrote, 'Sure it must be granted that [people] remaine Rational creatures, and that Rational Creatures would never rationally yeeld unto such a change as should deteriorate their condition, let be brutify them'. '[H]ow is it imaginable that they would set any over them with an illimited power, without any tearmes and conditions to be condescended unto him? Would rational men . . . set a Sovereigne over them, without any limitations, conditions, or restrictions[?]' (82, 96). Further,

It is irrational, and meer flattery to cry up and exalt the Soveraignes prerogative, in prejudice, and to the destruction of that, for which both He and His Prerogatives are, and were appoynted, as subservient meanes, *the saifty of the People*. That being *de jure* his maine end, and it being for this

²⁰¹Locke, *Second Treatise*, §§ 13, 92, 93, 131, 137.

cause and end, that he is endued with such power, and hath such privileges and prerogatives conferred upon him, and allowed unto him, He and his Prerogatives both, should vaile unto this Supream Law *the saifty of the People*: so that when they come in competition, The Peoples saifty *of right*, is to have the preheminance. [158]

Likewise, Locke wrote that the idea that in joining in society men forfeited their rights to property (which he defined as life, liberty, and estate) was ‘too gross an absurdity for any man to own’ and that the absolutists’ notion that ‘the prince had a distinct and separate interest from the good of the community and was not made for it’ implied that ‘the people under his government are not a society of rational creatures . . . but are to be looked on as a herd of inferior creatures If men were so void of reason and brutish as to enter into society upon such terms, prerogative might indeed be what some men would have it: an arbitrary power to do things hurtful to the people’. On the contrary, ‘prerogative’ was ‘nothing but a power in the hands of the prince to provide for the public good’ where ‘unalterable laws could not safely direct. Whatsoever shall be done manifestly for the good of the people, and establishing the government upon its true foundations is, and always will be, just prerogative’, but all done against the laws and the public good was not prerogative but tyranny.²⁰²

Stewart, as we saw in reviewing chapter 6 of *Jus Populi*, founded government on the consent of the governed through covenants (compacts, or contracts). Their conditions were the fundamental laws, or constitutions, of governments. Conditions being of the essence of compacts, it was nonsense to assert that people should submit unconditionally to their rulers. Indeed, ‘if they had set up a Sovereign without any conditions, their condition could not but be worse’ than it had been in the state of nature, since the sovereign would be but ‘a Man of the same passions and infirmities with themselves, and so as ready, if not more, to deborde and to do

²⁰²Locke, *Second Treatise*, §§ 138, 163, 158.

wrong: . . . and rational men could not but for see [sic] that their condition would, of necessity be worse; for, to set up a Sovereign without conditions, is to set up a Tyrant' (104, 95, 97, cf. 110-11). Locke likewise wrote, 'the beginning of politic society depends upon the consent of the individuals to join into and make one society; who, when they are thus incorporated, might set up what form of government they thought fit'. In forming a society, people, so long as the society endured, restricted their right to self-defence and surrendered their right to punish aggressors, in order better to secure those very rights. But it followed that they must have had conditions in mind when they formed governments—namely, that those governments would not destroy the rights they were intended to protect. There were, therefore, four limits on the supreme (i.e., legislative) power: it must not be absolute and arbitrary but must rule according to law; it must not be arbitrary²⁰³ and partial but common; it must not take property (life, liberty, or estate) without consent, and then only for the common good; and it must not (indeed could not) transfer its power to others.²⁰⁴ The essence of all the conditions on the grounds of which people consented to live in society and under government was the common good, or *salus populi*. On this, too, Stewart and Locke agreed.²⁰⁵ Neither Stewart nor Locke, then, could reconcile with the assumption of human rationality the idea that men would consent to a government to which they surrendered the very rights to life, liberty, and estate—and to the defence of the same—that they intended to secure by erecting it.

This entailed that when a government became destructive of the ends for which it was founded—ultimately, of the common good, the impartial protection of every man's life, liberty, and estate—the people who had formed the government retained in themselves the right to defend themselves against it and even 'to alter or abolish

²⁰³Locke here used *arbitrary* in two different senses, first with reference to laws (i.e., absolute and arbitrary power rules without regard to laws), second with reference to persons (i.e., partial power rules with favour toward particular persons).

²⁰⁴Locke, *Second Treatise*, §§ 99, 106, 124-6, 131, 135-42.

²⁰⁵*Jus Populi*, 18, 25, 153-6; Locke, *Second Treatise*, title page and §§ 158, 131, 142.

it' (as the American *Declaration of Independence* put it) if necessary. This was the essence of lawful resistance. Thus Stewart wrote that if 'to repel violence with violence' was lawful before the founding of government, it could not 'become unlawful afterward'. True, that became the magistrate's job, 'but if he neglect his duty, they are not to forget themselves, or to thinke that their hands are bound up; much lesse, if he himself turne an enemie unto them'. If the people had had the power to determine the form of government and its officers, then they retained the power not only to defend themselves but also to change it 'when it becometh intolerably grievous, and not only not conducing to the good of the Commonwealth, but clearly and sensibly tending to its destruction'. The sovereign's power being fiduciary, he forfeited it when he broke trust (89-90, 114, 152). In sum,

when the Prince doth violate his compact, as to all its conditions, or as to it's cheef, maine, and most necessary condition, the Subjects are *de Iure* free from subjection to him, and at liberty to make choise of another. The very nature of a compact doth cleare this: For it is absurd to say, that in a mutual conditional compact, one party shall still be bound to performe his conditions, though the other performeth none of his conditions, or performeth not the maine and principal one. . . . Were it the rational act of rational creatures to set up Soveraignes upon these tearmes? or to say, wee choose thee, to be our Soveraigne upon condition thou rule us according to justice and equity, and not tyrannize over us, and yet we shall alwayes hold thee for our Prince and lawful Soveraigne, Though thou should transgresse all lawes of equity, humanity, and reason; and deal with us as so many sheep, kill whom thou will, for thy sport and lust, &c. [W]ill any body think that rational men would do so? The law tells us . . . [t]hat *cessante causâ, propter quam res est data, pignus debet reddi.*²⁰⁶ [117]

²⁰⁶ 'The cause for which it is given ceasing, a pledge must be returned', i.e., no obligation continues after the ground on which it was promised has ceased.

Likewise Locke argued that when the magistrate ceased acting for the common good according to law and began to act contrary to it, he degraded himself and became 'but a single private person'. This was because 'The use of force without authority' and 'contrary to the trust put in him' 'always puts him that uses it into a state of war, as the aggressor, and renders him liable to be treated accordingly' while leaving the people free to resist him and restore proper government. Indeed, 'the legislative being only a fiduciary power to act for certain ends, there remains still in the people a supreme [what Stewart and Rutherford called 'fountain'] power to remove or alter the legislative when they find the legislative act contrary to the trust reposed in them; for all power given with trust for the attaining an end being limited by that end, whenever that end is manifestly neglected or opposed, the trust must necessarily be forfeited and the power devolve into the hands of those that gave it, who may place it anew where they shall think best for their safety and security'.²⁰⁷

This did not lead to endless insurrection and unrest, for, first, resistance to tyranny was not insurrection (though tyranny, the overturning of the constitution, was), and, second, not every deviation from its proper course subjected the government to justified resistance or replacement. As we have seen (p. 204 above), Stewart favoured resistance only in extreme cases. Small, private injuries were to be borne with patience. Only 'if the Body of a land or a considerable part thereof was threatened with 'losse of Life, Lands, Libertyes and Religion', when the case was 'manifest and notour', was resistance justified (307-8). Locke thought similarly, though he couched his thoughts more in the language of psychology than of obligation: 'till the mischief be grown general, and the ill designs of the rulers become visible, or their attempts sensible to the greater part, the people who are more disposed to suffer than right themselves by resistance are not apt to stir'. Further, the fault for such strife as did arise lay with those who caused it by

²⁰⁷Locke, *Second Treatise*, §§ 151, 155, 149.

violating the civil compact, not with those who acted according to law. At any rate, one who overturned the constitution was ‘guilty of the greatest crime’ and was answerable ‘for all those mischiefs of blood, rapine, and desolation’ that followed, ‘justly to be esteemed the common enemy and pest of mankind, and . . . to be treated accordingly’.²⁰⁸

It is not known whether Locke ever read *Jus Populi*. It is not listed in his library,²⁰⁹ though that does not mean he never owned or read it. Certainly the arguments in it, as we have seen, were common to many defenses of resistance from natural law, natural rights, and constitutionalist perspectives, and Locke’s wide reading in other sources could have stocked him with the concepts and arguments in the *Two Treatises* without his ever laying eyes on *Jus Populi*. Yet virtually every significant argument in the *Second Treatise* appears, in one form or another, often in greater complexity and bolstered by more authorities (human and divine), in *Jus Populi*. It should be no wonder, then, that the two authors found themselves cooperating in the thick of radical intrigues, such as the plots of invasion by Argyll and Monmouth, in the Low Countries against the Restoration monarchs at least in the 1680s if not earlier.²¹⁰ Can they have been associated in such tight and secretive circles of ideologically close-knit people and *not* have been aware of each other’s political thought? It seems hardly likely.

Locke’s work was, not surprisingly, much more influential than Stewart’s. It has been reprinted untold times and the subject of countless books and articles since it first appeared in 1690; *Jus Populi* not only was never reprinted and, as we saw above (pp. 157ff), has been the subject of only a handful of brief discussions, but also suffered burning by government edict. The *Two Treatises* combined are less

²⁰⁸Locke, *Second Treatise*, 230. Compare Buchanan, *De Jure Regni*, 280-81.

²⁰⁹John Harrison and Peter Laslett, *The Library of John Locke*, 2d ed. (Oxford: Clarendon Press, 1971) lists neither Stewart by name nor either *Naphtali* or *Jus Populi* by title. The copy of *Jus Populi* in the Bodleian Library at Oxford (shelfmark Vet. L3 f.28) ‘bears no indication that it was in John Locke’s personal library’, according to Geoffrey Groom, Assistant Librarian, Rare Books, Bodleian Library, Oxford (electronic mail, 6 Aug. 2002).

²¹⁰Ashcraft, *Revolutionary Politics*, 429n, 435-6.

than half the length of *Jus Populi*, and they are written in elegant English and to appeal equally to devoutly religious and secular men alike, while Stewart's style is rough and his approach unashamedly, relentlessly religious and even sectarian. Locke's *Two Treatises*, though written in the early 1680s probably in view of the Exclusion Crisis, was not published until after the Glorious Revolution, which was successful and for which it could equally be understood as offering justification; *Jus Populi* sought to justify the Pentland Rising, which was not. Yet *Jus Populi* undoubtedly contributed significantly to Covenanter—and consequently wider Scottish and later American—political thought. It likely had an impact on the *Claim of Right* of 1689, and, as we shall see, its arguments—whether because of direct or indirect influence or simply a shared political discourse—reflect heavily in the *American Declaration of Independence* (1776). The likelihood is only slight that it was unknown to John Witherspoon (1723-1794), who 'saw himself as an heir of the Scottish Covenanters and the Glorious Revolution'. He was called from the pulpit of Paisley (which had been *Naphtali* co-author Stirling's pastorate a century before) to be president of the College of New Jersey (later Princeton University) in 1768 and not only was a delegate to the Continental Congress (in which he served continuously, on over one hundred committees, from 1776-1782) and the only clergyman to sign the *Declaration of Independence* but also had among his many influential students James Madison (principal author of the Constitution and fourth president of the United States). Horace Walpole had Witherspoon in mind when he complained that 'Cousin America has run off with a Presbyterian parson'.²¹¹ Although 'much of Witherspoon's library acquisition for Princeton focused on the

²¹¹Schultz, 'Covenanting', 251, 179; cf. Schultz, 'Celebration', 28; Schlenther, 'Scottish Influences', 151. On Witherspoon's vast influence on America's founders see Schultz, 'Covenanting', 46 (citing Varnum Lansing Collins, *Princeton* [New York, 1914]); Garry Wills, *Explaining America: The Federalist* [Harmondsworth, England, 1981], 16, cited in Sandoz, *Government*, 179n; Eidsmoe, John, *Christianity and the Constitution: The Faith of Our Founding Fathers* (Grand Rapids, 1987), 83 (citing Varnum Lansing Collins, *President Witherspoon*, 2 vols. [New York, 1969], 2:229). In his Feb. 1758 sermon 'Prayer for National Prosperity, and for the Revival of Religion Inseparably Connected', Witherspoon affirmed God's providential blessing on the National Covenant, the Solemn League and Covenant, and the Glorious Revolution of 1688 (Schultz, 'Covenanting', 212, 214).

Scots',²¹² it is difficult to ascertain now all that was in it because it was damaged by British forces during the Revolutionary War. Covenanter political theory like Stewart's was certainly familiar to some Americans during their War of Independence, as the republication of an extract from Alexander Shields's *A Hind Let Loose* that cited and extensively summarized *Jus Populi* makes clear. Whether *Jus Populi* itself was read and used by the patriots is unclear.²¹³ The book was still familiar to Scottish Covenanters in the late eighteenth century, if the off-hand manner of John Howie's reference to it in a footnote to his preface to *Sermons in Times of Persecution* is any indicator.²¹⁴ Stewart himself was still of sufficient interest to Scottish Presbyterians in the early nineteenth century to warrant an article reproducing some marginal notes from his Bible in the *Edinburgh Christian Instructor*.²¹⁵

The Declaration of Independence as a Covenanter Document

Elazar has argued persuasively that the *Declaration of Independence* should be understood as a religious covenant.²¹⁶ Viewing it in light of the heavy influence of English Puritan and Scotch-Irish Presbyterian political thought in the colonies

²¹²Schultz, 'Covenanting', 205, citing Ralph Ketcham via L. Gordon Talt, 'John Witherspoon: The Making of a Patriot', *Ohio Journal of Religious Studies* 4 (October, 1976): 54-63, at 48. Although the Princeton Theological Seminary library includes one copy each of both *Naphtali* and *Jus Populi*, there appears to be no way to determine whether either came to the library via Witherspoon (electronic mail from Kate Skrebutenas, Reference Librarian, Princeton Theological Seminary, 13 Aug. 2002).

²¹³In the sermon *Defensive Arms Vindicated and the Lawfulness of the American War Made Manifest* (17 June 1782), by 'A Moderate Whig' [Stephen Case (1746-1794) (?)], the author reproduced much of a chapter of *A Hind Let Loose*, including reference to 'the most famous and learned patrons and champions for this excellent privilege of mankind [viz., 'the lawfulness of taking up arms to oppose all tyranny, oppression, and those who abuse and misuse their authority'], the unanswerable authors of *Lex Rex*, the apologetical relation *Naphtali* and *Jus Populi Vindicatum*'. Sandoz, ed., *Political Sermons*, 720. The type treatment here is as in the published source, but it is clear that *Hind* author Shields actually had in mind Rutherford's *Lex, Rex*, Brown's *Apologeticall Relation*, Stewart and Stirling's *Naphtali*, and Stewart's *Jus Populi*, for two sentences later he wrote, 'The two first of these authors do treat of a defensive war, under the direction of a parliament, like that in England about the year 1645; and the two last of resistance against the abuse of a lawful power, when there is no access to maintain our rights and liberties in any other way'. I am indebted to John Coffey for help with this reference.

²¹⁴*Sermons in Times of Persecution*, 66n.

²¹⁵'Extracts from Sir James Stuart's Bible', 241-3.

²¹⁶Daniel J. Elazar, *Covenant and Constitutionalism: The Great Frontier and the Matrix of Federal Democracy*, vol. 3 of *The Covenant Tradition in Politics* (New Brunswick, NJ, 1998), chapter 2..

during the decades leading up to the Revolution,²¹⁷ we should expect to see in the *Declaration* marked similarities to the typical Scottish Covenanter resistance arguments. While no claim is made here of direct causal connection, the parallels between it and *Jus Populi* are strong and are to be explained by the shared discourse and perspective of the documents' authors.²¹⁸

As Stewart wrote *Jus Populi* (and the earlier *True and short Deduction*) to justify a specific instance of resistance in the eyes of the world, the *Declaration* began with a preamble stating the concern of its authors to justify their act of separation from the British Empire:

When in the Course of human events, it becomes necessary for one people to dissolve the political bands which have connected them with another, and to assume among the powers of the earth, the separate and equal station to which the Laws of Nature and of Nature's God entitle them, a decent respect to the opinions of mankind requires that they should declare the causes which impel them to the separation.

The next paragraph set forth the principles on which the colonists acted. Here it is possible, as the footnotes will demonstrate, to draw point-by-point parallels between the *Declaration* and *Jus Populi*:

We hold these truths to be self-evident, that all men are created equal,²¹⁹ that they are endowed by their Creator with certain unalienable Rights,²²⁰ that

²¹⁷J. C. D. Clark, *The Language of Liberty 1660-1832: Political Discourse and Social Dynamics in the Anglo-American World* (Cambridge, 1994), 27, 29-35, 119-23, 208-16, 226-33, 259-64, 284-8, 325-7, 351-64, *et al.*; Schultz, 'Covenanting' and 'Celebration', both *passim*. The apologists for the American Revolution appealed not only to constitutionalist, natural law, and natural right resistance arguments but also to specifically covenantal arguments, including the argument that Britain's morally corrupt governours were ripe for divine judgment, which would fall—per covenantal solidarity—on those under their authority who did not strive for corporate repentance or, failing that, for separation from them; see Marvin Olasky, *Fighting for Liberty and Virtue: Political and Cultural Wars in Eighteenth-Century America* (Washington, 1986).

²¹⁸It is not claimed that Thomas Jefferson, principal penman of the *Declaration*, shared Stewart's religious perspective, but that many members of the Continental Congress, in whose name Jefferson laboured, did. The *Declaration* should be seen as authored not by Jefferson but by the Congress with Jefferson its wordsmith.

²¹⁹*Jus Populi*, 81 (in the state of nature, 'there was none, who by birth, or any other lawful clame, could challenge to himself any civill dominion . . . so that as to any actual, and formal right unto Magistracy, and supream government, all are by nature alike'), 85, 111.

²²⁰*Jus Populi*, 88 ('this liberty & privilege of self defence, against manifest injuries, cannot be taken away from Rational Creatures, by the erection of a Government'), 166 ('Nor . . . could they

among these are Life, Liberty and the pursuit of Happiness.²²¹ –That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed,²²² –That whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or to abolish it,²²³ and to institute new Government,²²⁴ laying its foundation on such principles and organizing its powers in such form, as to them shall seem most likely to effect their Safety and Happiness.²²⁵ Prudence, indeed, will dictate that Governments long established should not be changed for light and transient causes; and accordingly all experience hath shewn, that mankind are more disposed to suffer, while evils are sufferable, than to right themselves by abolishing the forms to which they are accustomed.²²⁶ But when a long train of abuses and usurpations,

ever give away the power of self-defence, which is their birth right’.), 257, 335-7, 342 (‘liberty which nature hath granted unto them’), 405.

²²¹*Jus Populi*, 26-8, 30 (‘liberty, which is the privilege of all free subjects’), 40, 92, 141, 160 (‘when by an arbitrary and illegal tyranny, no man hath security for his life, his lands, his liberties, nor his religion, is not the saifty of the People in danger?’), 181, 236, 272, 274, 307, 325. (The phrase *pursuit of Happiness* in the *Declaration* indicates the pursuit not of base pleasure but of divine blessing, i.e., the belief and conduct of true religion, and God’s blessing upon it; Gary T. Amos, *Defending the Declaration: How the Bible and Christianity Influenced the Writing of the Declaration of Independence* [Brentwood, TN, 1989], 119-21; William Blackstone, *Commentaries on the Laws of England*, 4 vols., facsimile reprint of 1st ed. [1765-1769] [Chicago and London, 1979], 1:40-41.)

²²²*Jus Populi*, chapter 5, ‘Of the Peoples power, in erecting Governours’ (especially the twelve numbered points on 80-87), 89, 96-7, 101, 119, 144, 146, 270 (magistrates are ‘official fathers appointed by the subjects, and set over them by their will and consent’).

²²³*Jus Populi*, 87 (‘in so far as that meane [viz., government] is perverted, and actually abused to the destruction of those high and noble Ends, [the people] must be interpreted as Non consenters, and *eatenus de Iure*, in no worse condition, then they would have been into, if they had not erected such a constitution, or set such over themselves’), 92, 183, 272, 383.

²²⁴*Jus Populi*, 368 (‘when through the notorious and manifest perversion of the great ends of society and government, the bond there of is dissolved, and the persons now relapsing into their Primeve liberty and privilege, may no lesse now joyne and associate together, to defend Themselves and their Religion, then at first they entered into societes’), 374.

²²⁵*Jus Populi*, 80, 87 (‘People setteth Magistrates over themselves, to promote the glory of God, the good of Religion, and their temporal felicity’), 89, 92, 153 (‘That the peoples saifty is the cardinal law, hence appeareth, 1. That the attaineing of this end, was the maine ground and motive of the peoples condescending upon the constitution’), 158, 272, 333.

²²⁶*Jus Populi*, 155 (‘by saifty here is not meaned dignity, or liberty in some small and inconsiderable trifles, unto which some small and inconsiderable hurt is opposite: . . . yet . . . the saifty of the people, is in hazard, when it is manifest and notour, so as they who run may read it, that lawes . . . are annulled, condemned, and rescinded; nay the Covenants whereby the land was devoted to God, and their Religion secured to them, and the fundamental law or ground of the Constitution, and condition on which the Sovereigne was admitted to his throne, overturned’), 157-60, 168, 180, 274 (‘. . . in smaller injuries subjects may be patient, and beare a little, for redeeming more, and rather suffer the losse of little then hazard all, but when it comes to an extremity; and Life, and Religion and Liberty, . . . then they may lawfully stand to their defence, and resist that abused power, . . . because it . . . destroyeth the ends for which it was appoyntd’), 281 (‘We plead not for resistance by every one who thinketh himself wronged, but for resistance when the wrongs

pursuing invariably the same Object evinces a design to reduce them under absolute Despotism, it is their right, it is their duty, to throw off such Government, and to provide new Guards for their future security.²²⁷—Such has been the patient sufferance of these Colonies; and such is now the necessity which constrains them to alter their former Systems of Government.²²⁸

Finally, the *Declaration* set forth historical examples of the sorts of ‘abuses and usurpations’ that its authors asserted justified their action. As we have seen, both *Naphtali* and *Jus Populi* strove to do likewise in justification of the Pentland Rising.

Conclusion

A century would pass between the publication of *Naphtali* and *Jus Populi* in the 1660s and the first tremours that led to the *Declaration of Independence* and the American Revolution. The principal actors in the latter would draw from many authors, including Rutherford, Stewart, and Locke, the justification of their acts. It is beyond the scope of this work to explore the extent to which any drew from Stewart, although that would be a worthwhile project. We can, however, be confident that at least among Covenanters at home and abroad in the two momentous decades leading up to the Glorious Revolution, *Naphtali* and *Jus Populi* were of significant influence and Stewart was widely revered. As the next chapter

are manifest, notour, undenyable, grievous and intolerable, and . . . as manifest as the sun at the nonetide of the day’.), 291, 307, 311, 373.

²²⁷*Jus Populi*, 94, 159 (‘Since The [sic] privileges, and lawful prerogatives of the Sovereigne must vaile, in cases of necessity, unto this High and Supream Law, *the saifty of the People*. Then no lesse must the privileges of a Parliament yeeld unto this: for whatever privilege they enjoy, it is in order to this end, and the meanes must always have a subserviency unto the end, and when they tend to the destruction of the end, they are then as no meanes unto that end, nor to be made use of for that end’.), and references in the previous note.

²²⁸*Jus Populi*, 18 (‘when strong and inevitable necessity urgeth, in order to necessary and just ends, people may have their owne convocations, even against authority, and *de jure* be guilty of the breach of no standing law against the same, seing all know that *salus populi est suprema lex*’), 26, 37, 39–40, 90 (‘it was in the Peoples power to limite the time definitely or indefinitely, how long such a forme [of government] should continue, and therefore had power . . . to change that forme, when the necessity of their condition did require it’), 91, 149, 150, 151–4, 158, 171 (‘the King may be resisted in cases of necessity’), 261, 265, 276 (‘People must make use of that *Court and tribunal* of *necessity*, which nature hath allowed, and by innocent violence, repel the unjust violence of Princes, seing there is no other remedy’), 383, 406).

will show, during those decades he continued his literary efforts against Stuart absolutism and was intimately involved in radical plots to restrain or even replace the Stuart monarchy, efforts for which he appears to have been rewarded after the Revolution with knighthood and nearly twenty years in government as lord advocate of Scotland.

Chapter 6

From Radical in Exile to the Court of King James VII and II: Stewart's Life, 1670-1689

About two years after publication of *Jus Populi*, on 9 September 1671, Stewart wrote to his father that he intended to move to the continent to conduct business for his brother Robert. The letter hinted at hopes that he might, from abroad, still serve the Presbyterian cause. Increasing pressure against Covenanters from the Lauderdale administration, making it difficult for him to practice law, seems to have added to his motive to go.¹ Six months later, learning of his brother Walter's death, he wrote to Kirkfield that his absence magnified his grief but assured him that faithful Walter, with Christ, must be 'infinitely better than whylle hier with us'.² Details about Stewart's life throughout the 1670s are scarce, but it is clear that he lived sometimes on the continent, in Rouen or the Low Countries (most often in Utrecht, Leiden, or Rotterdam), sometimes in London, and sometimes in Scotland, usually in or near Edinburgh. Much of the time he lived under the names Graham and Lawson.³

Charles II's Scottish government, fearing collaboration between Covenanters and the Dutch and spurred by the Second Dutch War, redoubled efforts to enforce the taking of a declaration of allegiance to the king and rejection of the covenants

¹*Coltness Collections*, 359-61; cf. 365-6; cf. Wodrow, *History*, 2:293.

²*Coltness Collections*, 362.

³*Coltness Collections*, 366; 'Extracts', 241n.

by all civil officers and stepped up action against conventicles. It sought to divide the Presbyterians by a second indulgence, announced on 3 September 1672, of previously outed ministers, of whom about eighty or ninety accepted, bringing the total indulged, on whom restrictions remained severe, to about 136 but still leaving a hardened minority in opposition.⁴ English and Scottish dissenters alike interpreted this and a similar indulgence in England as an assertion of royal prerogative that might lead to the reintroduction of popery, the English parliament responding by so tightening the purse strings on the king that it brought the Dutch war 'to a standstill' and later adopting the Test Act that 'exposed James, duke of York, as a practising Catholic'.⁵ The government followed the indulgence by new legislation against conventicles, forbidding Presbyterians to worship in public except under the ministry of an indulged minister, declaring any worship gatherings outside churches treasonable, ordering the militia to hunt down and arrest those who attended conventicles, and condemning ministers who officiated at them to 'death and confiscation of their goods'. Thus the 'seeming grace of the indulgence was more than counterbalanced by the actual severity of the persecution. Lauderdale's purpose was to conciliate the moderate party by the one, and to crush the irreconcilable by the other'.⁶

Not surprisingly, these policies generated opposition not only among covenanting ministers and their adherents but also among some nobles, like Tweeddale (1625-1697), Moray (1600-1673), and Hamilton (1635-1694), motivated partly by their favouring moderate Presbyterianism but also by their resenting Charles's absolutism and, perhaps above all, Lauderdale's growing power and wealth.⁷ Despite an attempted revolt against his leadership in parliament, Lauderdale only grew in power, gaining an English earldom and purging the

⁴RPC, Third Series, 3:586-91; Douglas, *Light*, 131-2; Donaldson, *Scotland*, 369.

⁵Brown, *Kingdom*, 157.

⁶Story, *Carstares*, 32-3, emphasis original.

⁷John Patrick, 'The Origins of the Opposition to Lauderdale in the Scottish Parliament of 1673', *Scottish History Review*, vol. liii, no. 155 (1974):1-21, at 17, 20; Brown, *Kingdom*, 157.

Scottish Privy Council of all opponents.⁸

An Accompt of Scotland's Grievances

Stewart, apparently having returned to Scotland, anonymously published in Amsterdam in 1674 *An Accompt of Scotland's Grievances by reason of the D. of Lauderdale's Ministrie* and had it smuggled into Scotland.⁹ It was not, contrary to Carstares biographer Story, 'temperately drawn',¹⁰ but dripped with sarcasm, irony, and satire. Carstares, suspected of co-authorship, arranged for its printing in Holland¹¹—an early instance of what developed into cooperation between Carstares and Stewart that lasted through the years of ecclesiastical settlement after the Glorious Revolution. The early paragraphs rehearsed complaints previously treated in *Naphthali* and *Jus Populi*, though in no detail, such as royal absolutism, overthrow of the Reformed religion, and wholesale rescinding of past laws.

The body of the 43-page tract recited grievances focused on Lauderdale, secretary of state. He had procured a parliament to consider union with England and arranged for himself to be named commissioner, at enormous salary—and then had prolonged that parliament beyond all reason, thus greatly enriching himself. He had 'ordered all things amongst us at his own pleasure'. He had procured a monopoly of salt for his friend the Earl of Kincardine and of tobacco for John Nicholson, each to his favourite's enrichment but the great expense of the Scottish people, and had obtained a ban on imports of brandy, seizures granted to Lord Elphinstone, who had married his niece (5, 7-9). He had interfered with liberty of speech and restricted information admitted to the king and 'cypherized' parliament by his control of the Lords of the Articles (10-11). He had arranged for his brother, Lord Hatton, to be

⁸Patrick, 'Origins', 1; Brown, *Kingdom*, 158. On the height of corruption in Lauderdale's administration, see Henry Hallam, *The Constitutional History of England from the Accession of Henry VII. to the Death of George II*, 5th ed., 3 vols. (New York, 1870), 3:313-14.

⁹Gardner, *Exile Community*, 185-6.

¹⁰Story, *Carstares*, 37.

¹¹Letter to Robert MacWard, 17 Sept. 1674; Story, *Carstares*, 40-43. Story summarizes the chief complaints of the *Accompt*, 37-9.

made general of the mint; Hatton had debased the coin; and Lauderdale had foiled royal attempts to investigate and rectify the wrong (13-14). He had filled the courts 'with ignorant and insufficient men' partial and beholden to Lauderdale (14-15). He had directed the crown's casualties (fees and fines) to others of his favourites; interfered, to the king's harm, in a legal case against a minister alleged to have offended parliament in a sermon; and arranged the purchase of the Bass Rock by the crown at exorbitant price from Andrew Ramsay, another dependent, whom Lauderdale then succeeded in getting placed on the privy council, though unqualified (16-19). He had accumulated to himself no fewer than eight offices,¹² with enormous combined income, had heaped multiple, lucrative offices on favourites, and had maladministered royal revenues, e.g., by taking to himself 'donatives' worth nearly £27,000 in 1669-1673 (20-22). The 'fountain' of all the other grievances was 'Lauderdales *excessive greatness*, far above what, either the Kingdom, or himself can bear' (23).

Into the *Accompt* Stewart incorporated an anonymous letter (probably by himself), dated 27 January 1674, that more briefly listed many of the same grievances and proposed some modest solutions: naming a new commissioner, calling parliament back into session, and concluding it; confirming Lauderdale as president of council and one of the commissioners of the treasury, and indemnifying him in parliament for all past acts; appointing two secretaries for Scotland, one to reside at court, the two to ensure free flow of information to the king; duly distributing all other offices; appointing new commissioners of treasury with power to 'consider the revenue'; appointing men 'knowing in the Law, and otherwise well qualified' to the courts, while removing those not fit; instructing the new commissioner 'for the due redress of all other grievances, and also for quieting and removing dissatisfactions, in matters Ecclesiastick'; and passing in parliament an

¹²President of privy council; secretary of state; a commissioner of treasury; captain of the castle of Edinburgh; captain of the Bass (which had been turned into a prison used mainly for nonconformist ministers); agent at court for the burghs; one of the four extraordinary Lords of the Session; high commissioner to parliament (by itself paying £16,350 sterling annually) (21-2).

‘act of oblivion and indemnity’ to reassure all ‘good subjects’ that they were not vulnerable to devious charges based on past behavior (28-9).

These charges were serious enough. The remedies proposed, though modest, must have infuriated Lauderdale. But ‘two more important remarques’ followed, and it is probable that these were foremost in Stewart’s mind. First, in its first act the current parliament had affirmed complete royal power over the church, including ‘*constitutions, acts, and orders, concerning all ecclesiastical persons, meetings and Matters* (a word infinitely extensive, comprehending the all of Religion) *as they in their royall wisdom shall think fit*’ (31, italics original). Lauderdale, Stewart averred, intended to use that royal supremacy in matters ecclesiastical to steer the church toward popery, and he reviewed actions that could be interpreted that way.

Second, and most important, Lauderdale’s church policy was insupportable. ‘It is not necessary to remember’, he wrote sarcastically, ‘how that Earl *Middleton* in his Parliament thought fit, to correct *the rigour* of Presbytery, by the *heights* of Prelacy, and what a *severe vengeance* of conformity, the Bishops did thereafter execute, upon the whole Countrey, for their former compliance with, and retained affection to their *brethren* of that ministry: O when shall Princes know, wherein the *true power*, and *peaceableness* of the Gospel doth lye; and deliver themselves and their people from the *pedantry* and *hypocrisie* of all Church-pretenders!’ Not only was this the only exclamation point in the *Accompt*, but also the discussion that ensued was far the longest devoted to any single grievance. A narrow indulgence having been granted to non-conforming ministers in 1669, Lauderdale had in 1670 pushed through parliament legislation for conformity enforced by measures ‘of a greater severity, than the highest points in Christianity could have allowed’—e.g., the death penalty for people participating in unauthorised gatherings for worship, forfeiture plus imprisonment or banishment of those who for a year absent themselves from parish worship, and measures that encouraged perjury for

vengeance' sake (34-5). When, in 1672, Charles had initiated a generous indulgence in England and sought to bestow a similar one on Scotland, Lauderdale had contrived to vitiate it, turning it into 'an universal confinement, of the whole non-conform Ministers', confining them to particular parishes and sometimes appointing several simultaneously to a poor parish incapable of supporting them. Lauderdale's intent, Stewart asserted, had been to provoke even stronger resistance among the non-conforming and thus to justify even harsher policies; the multiplied arrests, examinations, and reiterations of orders from the privy council necessitated by the policy were too much evidence 'to leave it in the least doubtful' (36-8).

Perhaps partly in response to such criticisms, and partly in light of the end of the second Dutch War in February, which must have relieved fears of an invasion, the government began relaxing its persecution of religious dissenters in the early months of 1674—though it did not repeal its laws against them.¹³ But on 20 May the king issued a letter approving of Lauderdale's conduct of Scottish affairs, and by the middle of the year, the privy council had resumed stringent efforts to eliminate conventicles. In a letter of 23 June the king urged the council to do all in its power to curb conventicles, and the council responded vigorously through the rest of the year with more arrests and the appointment of special commissions to suppress conventicles in shires where they were most common. The king thanked them but urged more.

On 27 February 1675 the king, through Lauderdale, sent the privy council a letter, apparently prompted by suspicions that Stewart had written the *Accompt*, calling for his arrest and the confiscation of all his papers. On 9 March the council issued an order for Stewart to surrender himself to imprisonment 'under the paine of rebellion'. The next day the council ordered the magistrates of Edinburgh to seize Stewart and two cabinets suspected of holding his papers, and a day later it ordered the archbishop of Glasgow and the lord treasurer deputy to open the one cabinet

¹³For initial examples of such relaxations, see *RPC*, Third Series, 4:164-8, 170-72.

successfully seized and to inspect the papers in it.¹⁴ The order for Stewart's arrest was too late. Receiving warning, he had fled the day before.

The council continued to increase pressure against conventicles throughout 1675 and into 1676.¹⁵ Stewart, meanwhile, was an active fugitive in England, mostly London, under the name of Lawson, occupied partly 'in the composition of religious homilies, and discourses on the theory of Government',¹⁶ partly in a covert and anonymous law practice, and partly in correspondence with leading Covenanters regarding issues of controversy among them.

Political Philosophy and Ecclesiastical Polity

A significant example of the latter survives in a lengthy letter of 19 April 1676 to the Protestant minister Robert MacWard in Rotterdam, arguing for the legitimacy of ordaining ministers without calls to specific congregations—a view opposed by some Presbyterians, who in their aversion to episcopacy, lay patronage, and presentation insisted that a candidate must have a specific call before being ordained.¹⁷ But if preaching faithful to the covenants were to continue, there must be preachers ordained to that end, and there could be none if their ordination depended upon specific calls from specific congregations under an Episcopal regime. After the passing of the remaining non-indulged ministers willing to preach despite government bans, conventicling would be impossible without ordination of ministers without call. What makes this letter relevant to a study of Stewart's

¹⁴*RPC*, Third Series, 4:195-7; 191-4, 197-213; Cowan, *Covenanters*, 83; *RPC*, Third Series, 4:211-12, 217-19, 254-6, 258-61, 283-4, 295, 379-80, 383.

¹⁵E.g., *RPC*, Third Series, 4:547-9.

¹⁶*Coltness Collections*, 366; 'Extracts from James Stewart's Bible', 241n. Little remains of whatever of this sort Stewart composed, and the only 'discourse on the theory of government' is a fragmentary draft of 21 folios thought to have been composed around 1670. I discovered this late in research and without opportunity to study the original; unfortunately, much of the microfilm is illegible, but what I have been able to read is largely prefatory and contains no advance on *Naphthali* and *Jus Populi*. Of 'religious homilies', the only surviving examples appear to be an essay on Roman Catholicism and a fragment of a verse-by-verse commentary on Isaiah, the two contained in 31 double sheets, with a single insert between the first and second, neither of particular significance for his political thought. These items are in the manuscripts collection of the library of the University of Edinburgh, MS 2291/30 and MS 2291/31, available on Mic. Dup. 653.10 and 11.

¹⁷The letter, in Stewart's own hand, is Wod.Mss.Fol.LIX. No. 45 (ff. 94-98) in the Wodrow Collection of the NLS. I am indebted to Dr. Louise Yeoman, curator of the Wodrow Collection, for authenticating Stewart's hand.

political thought is his application of the theory of political consent to ecclesiology.

Stewart carefully preserved the classic Presbyterian insistence that congregations must not be forced to submit to pastors without their own consent while arguing that ordination of ministers of the gospel without congregational call was Biblically legitimate and consistent with the practice of the early church and of Scottish Presbyterianism since the Reformation. First, he distinguished carefully between a preacher or minister, on the one hand, and an elder, pastor (shepherd), or ruler, on the other. The former office ‘relates to the Word and sacraments’, the latter ‘to the people or flock over which such an officer is set’. While ‘a presbyter elder or pastor cannot be set over a par[ticu]lar flock, either alone or in conjunction with others, to rule & feed them without their owne consent’, preaching or ministering is not ruling *per se* but the presentation of the Word and sacraments by God’s servant. Ordination to the ministry of the Word, therefore, is not identical to ordination (or in the case of those previously ordained, installation) to govern a congregation.

Second, he defined ordination as ‘no more than that ministerial mission wherby the lord’s authorative mission, is signified & declared & which is expressed by the apostles in thes termes[:] the things that thou hast heard of me—the same commit thou to faithfull men who shall be able etc.’ (2 Timothy 2:2). Therefore, for the sake of the present discussion, he favoured the term *sending* or *mission* over *ordaining*. The question thus became ‘whither a preacher . . . may not be sent forth to the work of the gospel without’ a specific call. Scripture indicated that while a man might be sent to the ministry of the Word and sacraments without a particular call, he could only be ordained to rule over a congregation on condition of its call. Indeed, ‘preaching . . . in the order of nature preceeded conversion & consequently preachers as such their converted people. . . . the apostles had their mission without either call or consent [of any congregation] and . . . this mission is the true patterne & warrant of all ministers missions’.

True, the ordinary practice in a Christian country like Scotland was to ordain men to the gospel ministry and simultaneously assign them to particular flocks as pastors, but this was not necessary, could not be established by Scripture, had not always been the practice of the church, and even during Presbyterianism's ascendancy it would have been more faithful to the example of Scripture to have 'sent out some whom the lord by prayer & more eminent endowments did forme to designe therto to be generall preachers and as it were evangelists'. Certainly, therefore, the extraordinary times in which the Covenanters found themselves after the Restoration justified departure from the custom of ordinary times; men could be ordained to preach without being called to pastor particular congregations. Stewart's reasoning reflected closely the distinction of functions attributed to the ministerial office in *The Form of Presbyterial Church-Government* crafted by the Westminster Assembly and adopted as constitutional law by the general assembly of the Church of Scotland 10 February 1645.¹⁸

Of particular interest in terms of his political philosophy was the rationale Stewart gave for insisting that while a man might be ordained to preach he could not be assigned to a church without a particular call: 'I take it to be founded in that just indulgence of god to man as a rational creature, that he should be under no dominion or rule bot with his owne consent, except either in the case [viz., of children to parents] where both nature & affection doe qualifie the subjection beyond all the ease that consent in other cases can give, or where guilt & desert make the dominion penal, and so justifie all the hardnes of its being involuntarie . . .'. Man's natural liberty extended, for Stewart, to matters ecclesiastical as well as civil. Except in filial and penal relationships, rule and submission always required consent. Stewart's position clashed with the government's, which demanded control of ordination and assignment of pastors, but it agreed with that

¹⁸*The Form of Presbyterial Church-Government* (1645), in *Westminster Confession of Faith* (Glasgow, 1976), 395-416, at 399-402.

of most Covenanters, as demonstrated by their actual practice throughout the Restoration period, when often they ordained men to preach whose only congregations were those who gathered for conventicles.

The Highland Host

That practice, in turn, elicited continued efforts by the government to suppress conventicles. Those efforts became the overwhelming concern of the government from July 1676 through August 1678; as the editor of the *Register of the Privy Council*, Hume Brown, pointed out, ‘Of the entries in . . . volume [five] of the Register’, which covers the two-year period, ‘fully three-fourths refer to the measures taken by the Council to suppress religious dissent. . . (1) those containing Acts and Proclamations directly intended to enforce attendance at the churches sanctioned by the State, and (2) those relating the efforts made by the Council to give effect to its legislation’. The period was ‘marked by increasingly stringent measures against the religious recusants, culminating in the quartering of the Highland Host in the western shires in February, 1678’. The council employed both civil and military means to enforce its acts against religious dissent.¹⁹

In the early autumn of 1677, however, Lauderdale briefly attempted some conciliatory measures, granting, through the privy council, remission of some fines and the release of some recusants from prison.²⁰ It was probably as part of this conciliatory policy that the privy council on 15 November granted an appeal by Kirkfield to be restored to possession of his son’s cabinet confiscated in February 1675. No papers found in it related to the exiled Stewart, and the whole was returned to Kirkfield.²¹ His gratitude appears not to have extended very far, since

¹⁹*RPC*, Third Series, 5:ix, v; cf. xii-xiii.

²⁰According to John Lauder of Fountainhall, Kirkfield was among those who prevailed on Lauderdale to adopt the policies; the others were President of the Session Sir James Dalrymple of Stair (1619-1695); the 9th Earl of Argyll (1629-1685); George, 1st Earl of Melville (1636-1707); and James Dundas, Lord Arniston (d. 1679). The middle three were to play important roles later in opposition to James VII. Sir John Lauder of Fountainhall, *Historical Notices of Scottish Affairs, Selected from the Manuscripts of Sir John Lauder of Fountainhall, Bart., One of the Senators of the College of Justice*, 2 vols. (Edinburgh, 1848), 1:177-8

²¹*RPC*, Third Series, 5:282.

on 31 May 1678 he and his wife were charged by the council with having attended conventicles in Edinburgh. Six days later, the council was to banish his wife to the Indies for failing to appear before it on another charge of conventicling. Kirkfield apparently was imprisoned on the conventicling charge, but on 14 August 1678 the council ordered his release on bond ‘in regard of his old age, sicknes and great infirmity’.²² Fountainhall tells us that the bishops, led by Sharp, saw the conciliatory policy as undermining their power. Through their English counterparts they appealed to the king, ‘who wrote peremptorly to my Lord Lauderdale to desist’.²³

The conciliatory policy having failed, Lauderdale swung yet again to a harder line. By 1 November the privy council, afraid that conventicles might join in arms, took its first step toward calling what became known as the Highland Host.²⁴ On 20 December the council received a letter from the king instructing the quartering of soldiers—mostly Highlanders—in private homes throughout the southwest. Some 9,000 troops—6,000 Highlanders and 3,000 lowland militia—were sent to crush a nonexistent Covenanter rebellion. According to Burnet, Lauderdale once told him, ‘Would to God they *would* rebel, that so he might bring over an army of Irish papists to cut all their throats’.²⁵ The king’s commission indemnified the soldiers ‘against all pursuits civil and criminal, which may at any time hereafter be intended against them, or any thing they shall do in our service, by killing, wounding, apprehending, or imprisoning such as shall make opposition to our authority, or by seizing such as they have reason to suspect, the same being always done by order of our privy council their committee, or of the superior officer’.²⁶ Such sweeping powers and indemnities were likely to lead to abuses with the best of commanders and soldiers. The Highland Host, however, were not the best.²⁷

²²RPC, Third Series, 5:463-5, 471-2, 492.

²³Lauder, *Historical Notices*, 1:177-8.

²⁴Mackenzie, *Memoirs*, 329-30; RPC, Third Series, 5:xiv.

²⁵Burnet, *Own Time*, 1:622.

²⁶The text of the commission appears in Wodrow, *History*, 2:379-80n.

²⁷Douglas, *Light*, 136-7.

Practising Law Incognito

Stewart meanwhile, rather than face imprisonment and probable death, was in hiding, mostly in England but sometimes, it seems, in Scotland. He practised law secretly, usually under the assumed name of Lawson. His notoriety making it unsafe for him to be seen, he seems to have tried the novel approach of preparing legal briefs anonymously, only his clerk meeting his clients. One such case, said to have been brought by Sir George Lockhart of Carnwath, himself a leading Scottish lawyer, involved settling a noble family's estate and was particularly intricate. After reading the brief Stewart had prepared, Lockhart, much impressed, reportedly said, 'Sir, tell me plainly, without shifting, is this your doing, or not, for, by G-d, if James Stewart is in Scotland, or alive, this is his draught'. The author of the *Coltness Collections* expresses some reservation as to the authenticity of that story, but another he says 'is certain and true'. Stewart, in London in 1678 or 1680, in a mere two hours prepared a marriage treaty for Lockhart with the daughter of Philip Lord Wharton that was 'so comprehensive, as all admired the propriety and succinctness, . . . and the English counsell said, that neither lawyer, attorney, or scrivener, that ply the Inns and Westminster-hall, could have execut such writing in a full week'.²⁸

Another event seems to have occurred that, if historical, illustrates the extent to which Stewart's ecclesiastical, historical, and legal knowledge, as well as his debating skills, were admired even by his most passionate enemies. It also illustrates well the difficulties the crown had in forcing its will on leading Scots, for often personal agendas interfered with royal allegiance and official duty. Sir George Mackenzie of Rosehaugh—who later in court called Stewart, his father Kirkfield, and the whole family 'damned M'Gregors'—sometime after he became lord advocate (September 1677) but before the crown's indictment against Stewart was lifted (sometime in 1679), was in London. Somehow he learned of Stewart's presence

²⁸*Coltness Collections*, 366-7.

there, and some motive overrode his duty, which must have been personally enticing as well, to see Stewart apprehended and brought to trial. A Scottish bishop and an English bishop having begun debating liturgy and prelacy, Mackenzie joined in on the Scot's side. No resolution coming, they arranged another debate, with three representatives for each side. The Scottish bishop confided to Mackenzie his fear that the English would best them, 'especially as to antiquity'. Mackenzie brought Stewart, meanly dressed and anonymous, as the third party on the Scots' side. One English bishop was prevailing over his Scottish counterpart until Mackenzie took over, who then was 'near defeat' at the hands of the second English bishop. 'Then Mr Steuart to[ok] up the argument, and fairly silenced him, and the third person. They wer all astonished at the stranger's learning and closs reasoning. Sir George behoved to go, and Mr Steuart went with him. Our Scots B[ishop] stayed. The English B[ishops] asked what that gentleman was? He did not knou. They said they had not seen his equall, and could he be gained, he deserved the highest post in the Church for his learning and good sense'.²⁹

About this time Stewart's personal life improved temporarily. Granted that their first child, Marion, was born in 1679, it was probably during 1677 or 1678, though perhaps in early 1679, that Stewart and Agnes Trail (d. 1690), daughter of the Rev. Robert Trail and sister of the younger Rev. Robert Trail, both zealous Covenanters, were married. They were to have at least two other children who survived infancy: a second daughter, Anna, born in May 1680, and an only son, James (1681-1727), who was to become a lawyer. Sometime in 1679, 'upon information of his peaceable behaviour,' the order for his arrest was lifted, and Stewart was able to return to Scotland for about two years.³⁰ But they were tumultuous years. The government's severities against religious dissent in Scotland not surprisingly backfired. Conventicling grew all the more common, and dangerous, as the faithful

²⁹Wodrow, *Analecta*, 3:257-8; Omond, *Lord Advocates*, 1:248-9.

³⁰'Extracts from James Steuart's Bible', 241n; *Coltness Collections*, 364; Omond, *Lord Advocates*, 1:250.

increasingly placed armed guards at outposts around their gatherings. Armed conflicts ensued, aggravated by the murder of Archbishop Sharp³¹ and by the radical Covenanters' issuing denunciations of the government, such as the Rutherglen Declaration of 29 May 1679.³²

The Gathering Storm

Three days later, on a sabbath morning, the Cameronians—followers of the radical Richard Cameron—were interrupted in the midst of a conventicle. Acting, as they saw it, on the principles of *Lex, Rex* and *Jus Populi*, in self-defence and the defence of religion, they sent out about forty horse and 150 to 200 foot, who defeated government troops under John Graham of Claverhouse—the 'Bloody Clavers' of Covenanting lore, later Viscount Dundee, faithful supporter of James VII after the Revolution—in the Battle of Drumclog. The next day, going beyond those principles, they attacked Glasgow but were turned back by government forces better commanded and equipped. Two days later, the government abandoned Glasgow, and the Cameronians took the city, burning and looting. This slight success hastened their undoing, as it drew to their side Covenanters less radical in their views, causing a serious split. The Cameronian radicals were determined to overthrow the government and condemn all who had submitted to its religious demands. The more moderate, led by the outed minister John Welsh, wished to demand only a free parliament and general assembly.³³ On 22 June the Covenanters were defeated at the Battle of Bothwell Bridge by royal forces under Monmouth, the king's illegitimate son (who six years later would himself lead an invasion of England—planned to coincide with one by Argyll in Scotland—in hopes of unseating his uncle, James VII).³⁴ Between 600 and 700 Covenanters were killed and about

³¹Buckroyd, *Sharp*, 106-19; Cowan, *Covenanters*, 93-4.

³²Text in Wodrow, *History*, 3:66-7. See Brown, *Kingdom*, 371; Cowan, *Covenanters*, 96.

³³Wodrow, *History*, 3:69-71, 91.

³⁴Stewart would defend the Bothwell Bridge insurgents as acting in self-defence in the *Declaration* that he was to write in 1685 to justify the simultaneous invasion of Scotland by the Earl of Argyll; text in Wodrow, *History*, 4:286-90.

1,200 taken captive. Monmouth's policy as field commander was mild. He prevented the execution of prisoners. His influence might have been responsible for the king's Third Indulgence, announced 29 June, and for the council's decision, 11 July, to remit all fines for ecclesiastical offences short of treason and to release all imprisoned ministers who had not taken part in the rebellion.³⁵ But his temperate policies were not to prevail. Prisoners were kept for months under desperate conditions, exposed to the weather, in Greyfriars kirkyard in Edinburgh, where some died from exposure. Two hundred fifty-seven were banished as slaves to the Barbadoes but never reached their destination; their ship wrecked in a storm off the Orkneys on 10 December, its captain locking them below decks and refusing to release them, while the crew reached shore safely. The few surviving exiles later were sent as slaves to Jamaica and New Jersey; few survived to the time of the Revolution.³⁶

On 4 December 1679 James, Duke of York, took his seat on the Scottish privy council without taking the oath, which would have bound him to defend Protestantism.³⁷ This alarmed not only the more radical but also the more moderate Scottish Presbyterians and even many Episcopalians, who saw his admittance to office without the oath as presaging outright approval of his Roman Catholicism and feared his eventual accession to the throne while embracing that faith as threatening the complete overthrow of the Scottish Reformation—indeed, possibly of the Reformation throughout Europe.³⁸ Monmouth's proposals for toleration came

³⁵Cowan, *Covenanters*, 99; Douglas, *Light*, 144.

³⁶Wodrow, *History*, 3:130-31; M'Crie, *Sketches*, 489.

³⁷Stewart, in Argyll's *Declaration*, would count this a ground for removing James from the throne; text in Wodrow, *History*, 4:286-90.

³⁸Most Scottish Presbyterians shared an apocalyptic vision of the Roman Catholic Church as Babylon, the harlot of the Book of Revelation, and the Reformed churches as the Israel of the New Covenant. Most also believed Scotland and England had a special role in providential history as protectors of the Reformed churches of the continent. See Burrell, 'Covenanting Idea' and 'Apocalyptic Vision', and R. A. Mason, 'Usable Pasts: History and Identity in Reformation Scotland', *Scottish History Review* lxxvi, 1:201 (April 1997), 54-68. Jonathan Scott points out that the Whig cause 'was in its basis, religious, and in its scope, European . . .', and that for men like Algernon Sidney the threat to Protestantism was enough by itself to justify resistance to the Restoration Stuart monarchy. Jonathan Scott, *Algernon Sidney and the Restoration Crisis, 1677-1683* (Cambridge and New York, 1991), 266. Precisely the same could be said of the thoughts of the more cosmopolitan among the Scots Covenanters, including Stewart.

to nought, all hopes dashed by Lauderdale's removal from office in October 1680.³⁹

Sometime before the end of May 1680 the aged Kirkfield showed the depth of his commitment to the covenanting cause. Although conventicles had become rare after Bothwell Bridge because of military action,⁴⁰ he opened his home at Goodtrees, within two miles of Edinburgh, for a house conventicle at which Rev. John Blackadder preached.⁴¹ It is possible, although there is no record, that Stewart was present. Certainly his sympathies were with his parents and the ousted minister. (Kirkfield was to move to Edinburgh in October 1680, where he would die about five months later.⁴²)

In May 1680 the privy council effectively revoked the Third Indulgence. Consequently many more deprived ministers joined the large number of others already in self-imposed exile in Holland,⁴³ where they preached with freedom and perhaps had more impact on Scotland, through publications and their influence on radicals involved in schemes first for the Monmouth and Argyll invasions in 1685 and then for that of William of Orange in 1688, than they could have had at home. In early June Henry Hall of Haughhead was seized with a draft paper, to become known as the Queensferry Paper, declaring that the ideal state would be ruled by 'an ecclesiastical oligarchy with no obligations to any king' and that the authority of any officeholder would be limited by his moral character—ideas set forth also by John Brown of Wamphray. Radical Covenanters associated with Donald Cargill and Richard Cameron made it a founding document of the Society People.⁴⁴ On 22 June Cargill, Cameron, and their followers issued the Sanquhar Declaration, which denounced Charles II for 'his perjury and usurpation in church matters, and tyranny in matters civil' and declared that God must have a controversy against the faithful in Scotland for their 'not having disowned him and the men of his practices . . . as

³⁹Cowan, *Covenanters*, 103.

⁴⁰Cowan, *Covenanters*, 104.

⁴¹Crichton, *Blackader*, 234-6.

⁴²*Coltness Collections*, 43.

⁴³Cowan, *Covenanters*, 107.

⁴⁴Douglas, *Light*, 145-6; Wodrow, *History*, 3:207-11, reproduces the paper.

enemies of our Lord and his crown, and the true protestant and presbyterian interest in their lands, our Lord's espoused bride and church'. It declared that Charles II, by his perjury and tyrannous rule, had forfeited the right to the crown; in Christ's name declared war on him and all who supported him; disowned and renounced James, 'that professed papist, as repugnant to our principles and vows to the most high God, and as that which is the great, though not alone, just reproach of our kirk and nation'; and protested 'against his succeeding to the crown'.⁴⁵ Precisely a month later, government troops defeated them at the Battle of Airds Moss, in which Cameron died. In September, Cargill, preaching on Ezekiel 21:26 ('Thus saith the Lord God, Remove the diadem and take off the crown'), excommunicated Charles, James, Monmouth, Rothes, Mackenzie, and Thomas Dalziel, the general in command of the Highland Host, in the Torwood Declaration.⁴⁶ Cargill, too, was soon captured and, with two Society People, executed at Edinburgh 27 July 1681.⁴⁷ The next month a bill to exclude James from the throne passed the House of Commons in England but by Charles II's fierce opposition failed in the House of Lords.

The Test Act of 1681 and Its Aftermath

In reaction to such opposition, the Scottish Parliament, opened on 28 July 1681 by James as the king's new commissioner, passed two momentous acts on 13 August. The first secured James's right of succession despite his Catholicism. This discomfited not only the more radical but also the more moderate Scottish Presbyterians and even Episcopalian conformists, who feared that upon inheriting the throne James would supplant Protestantism completely and reestablish popery. The second, a Test Act, required all office holders—except James—to swear an oath of allegiance to the Protestant faith as expressed in the long-forgotten Confession

⁴⁵Full text in Wodrow, *History*, 212-13n.

⁴⁶Douglas, *Light*, 149-50. Alexander Shields (perhaps with James Renwick?) gives the substance of the Torwood Declaration in *A Hind Let Loose* (Utrecht: 1687), 138-9.

⁴⁷Shields, *Hind Let Loose*, 141.

of 1560 *and* to the king as supreme in all matters ecclesiastical as well as civil. Because making a future Catholic king supreme in matters ecclesiastical implied the doom of Protestantism in Scotland, the oath was internally inconsistent. This was particularly so because, as Sir James Dalrymple of Stair (who, probably in hopes that it would kill the bill, had introduced the clause referring to the Confession) recognized, the Confession itself contradicted the oath by asserting that Christ was ‘the only head of [his] Kirk’ (Article XVI) and that subjects were obliged to obey civil authority—including the king—only insofar as he was ‘doing that thing quhilk appertains to his charge’, that is, only insofar as he was doing justice and promoting the true faith (Article XXIV).⁴⁸ ‘So “self-contradictory” were the terms of the Test, according to Michael Shields, that it was generally considered that he who took it implied that he was Presbyterian, Episcopalian, and Roman Catholic all at once’.⁴⁹ After several ministers objected to the oath, the synods of Aberdeen, historically subservient to the crown, and Dunkeld issued explanations in hopes of obscuring the inconsistencies. The privy council responded on 3 November that, as Cowan summarizes, ‘ministers who took the Test need not swear to every proposition or clause contained in the Confession “but only to the true protestant religion, founded on the word of God . . . as it is opposit to poperie and phanatisisme”’.⁵⁰ Yet the oath required by the Test (and those who refused it would be ‘esteemed persons disaffected to the protestant religion, and to his majesty’s government’) affirmed that it was taken ‘in the plain genuine sense and meaning of the words, without any equivocation, mental reservation, or any manner of evasion whatsoever’. It was, in short, impossible for an honest man, no matter what his politics, to swear it.

Eventually at least 30 ministers, probably closer to 80, including the eminent Laurence Charteris, professor of divinity at Edinburgh University, refused the Test

⁴⁸The text of the Confession of 1560, in both Latin and English, is in Philip Schaff, *The Creeds of Christendom, with a History and Explanatory Notes*, 4th ed., 3 vols. (1877; rep. Grand Rapids, MI, 1977), 3:437-79.

⁴⁹Douglas, *Light*, 154, citing Shields’s *Faithful Contendings*, 6.

⁵⁰Cowan, *Covenanters*, 108-9.

and were deprived. A large number of powerful nobles also refused. In addition to the Duke of Hamilton and the earls of Haddington, Nithsdale, Cassillis, and Sutherland, even some members of the privy council refused: Lord President Dalrymple, Lord Clerk-Register Murray, and the Earl of Argyll. Dalrymple was forced into exile in Holland. Argyll finally swore, but only with the explanation that he did so 'as far as it is consistent with itself and the Protestant Religion'. Although the reservation was no more than what the council permitted ministers to make, in his case it was deemed treasonable.⁵¹ Arrested and charged, he escaped and joined Dalrymple in Holland.⁵²

By the end of 1681, Stewart was ensnared in the confusions and conflicts arising from the Test. Apparently it was he who had advised Argyll to take the oath 'as far as it is consistent with itself and the Protestant Religion'. According to Lauder of Fountainhall, a memorandum by him 'reflecting on the Government' was found among Argyll's papers, and the council ordered him arrested, though 'he escaped, and went to Holland'. On Sunday, 24 January 1682, he read Psalm 62 and found parallels in it with his persecution under James. The next day, James ordered his arrest. Warned by, oddly enough, the royalist Sir George Mackenzie, through Stewart's brother Robert, he fled 'to Utrecht, attracted thither by a knot of his countrymen, who were compulsory or voluntary exiles on political or religious grounds. . . . A sentence of forfeiture in absence was now pronounced against him in the Justiciary Court'.⁵³

Plots Against the Crown

⁵¹Ironically, James, after becoming king, attempted in a letter of 21 Aug. 1686 (in Wodrow, *History*, 4:389-90), to persuade his Scottish subjects that an interpretation of the oath that was essentially the same as Argyll's was legitimate and should assuage their fears that to swear it meant repudiating Protestantism.

⁵²Cowan, *Covenanters*, 108-10.

⁵³*Coltness Collections*, 367-8; Lauder, *Historical Notices*, 1:344; Omond, *Lord Advocates*, 1:250; 'Extracts from James Steuart's Bible', 241. Later that year, living at Utrecht, Stewart began work on a minor legal handbook, *The Index or Abridgement, Of the Acts of Parliament*, the first edition (covering acts from 1424 through 1685) published in 1685 and a second (bringing the index up to the union of the parliaments) in Edinburgh by G. Mosman in 1707.

There now was growing in Holland an imposing group of Scots exiles—ministers, nobles, commoners—with reason to resent Charles and James. Among them were Argyll, the Earl of Loudoun, Lord Stair and his grandson John, Lord Melville, the Earl of Leven, the Earl of Marchmont, Denham of Westshield, Pringle of Torwoodlie, plus James and his brother Thomas Stewart.⁵⁴ Also exiled there were numerous English of similar station and interests, including Locke, soon to be joined by Monmouth, James’s rival for the throne.⁵⁵

In England there had been brewing two plots—intertwined—against Charles and James. The larger, led by long-time champion of religious toleration and backer of exclusion the Earl of Shaftesbury (1621-1683) before his flight to Holland in November 1682, was a plot to overthrow the government. After Shaftesbury, a ‘council of six’ was at the heart of this insurrection plot: Monmouth; leading opposition spokesman in the Commons Lord William Russell (1639-1683); Sir Algernon Sidney (1622-1683), a republican whose *Discourses Concerning Government* (1698) argued similarly to Stewart’s *Jus Populi* for resistance; John Hampden (1653-1696), exclusionist in whose home the first meeting of the Rye House conspiracy allegedly occurred; Lord William Howard (c. 1626-1694), Anabaptist, Leveller, and sometime spy in Holland for and against his king; and—perhaps least committed—the Earl of Essex (1631-1683), exclusionist and former lord of the treasury. Monmouth and Russell favored continuation of the monarchy but in Monmouth’s line. Essex and Sidney, probably joined by Hampden and Howard, favored an aristocratic republic. But two subordinates, Richard Rumbold (c. 1622-1685) and Col. John Rumsey (fl. 1660-1686), old Cromwellians, favored a republic along the lines of the Commonwealth. The smaller plot, in which the ‘council of six’ seem to have had no part and possibly no knowledge, was an assassination plot hatched probably by Shaftesbury’s unstable client Robert

⁵⁴*Short Genealogical and Historical Account*, 18.

⁵⁵Omond, *Lord Advocates*, 1:251.

Ferguson (d. 1714), an independent minister of Scottish origin, and Rumbold.⁵⁶

The insurrection plotters sought cooperation from Scotland. Monmouth's lenient policies there had made him a favourite, while the fierce persecutions under James's administration, combined with fears for the preservation of a Protestant Scotland, made many influential Scots his ready opponents. The plotters, building on Shaftesbury's prior correspondence with Argyll, sent emissaries to George, 4th Lord and 1st Earl of Melville (1636-1707), Sir John Cochrane, and some leading Campbells.⁵⁷ The contact soon led to ongoing negotiations, carried on in London for the Scots by Carstares, Robert Baillie of Jerviswoode (c. 1634-1684), Andrew Fletcher of Saltoun (1653-1716), and others, including Stewart. 'The communications with Argyll', according to Carstares biographer Story, 'were carried on through James Steuart and Carstares'. Negotiations between the English insurrectionists and the Scots nearly broke down, however, because the republican Sidney thought Argyll too 'attached to the existing constitution in Church and State to be a hearty rebel'. Carstares therefore returned to Holland, where he joined Argyll, Stair, Lord Loudoun, and Stewart at Utrecht. These were already planning their own insurrection, to be financed by the English. Stair and Stewart, however, thought the scheme impractical, although Stewart 'guided the conspiracy, as far as he could, with sage and moderate counsel' and devised a complex cipher that Carstares could use in carrying on communications between the Scots in Holland and the English in London. But the negotiations got nowhere, the English were incapable of raising enough money to support any invasion by Argyll, and Carstares persuaded the Scots that deep political divisions made it unlikely that the English conspirators would ever be ready to act in concert with them. They decided that they should suspend cooperation with the English until the latter were ready for action. Their notice to the 'council of six' of this decision, however, was prevented

⁵⁶See articles on all nine in *BDBR*.

⁵⁷Scott, *Sidney and the Restoration Crisis*, 284-5.

by the discovery beforehand, in June 1683, of the two English plots.

The discovery led to the trials and deaths of several of the principals not only in the assassination plot but also in the insurrection plot, including Russell and Sidney. Monmouth was pardoned but, on his refusal to make a full and explicit confession, banished from the court. Consequently, in 1684 he took refuge in Holland, where before long he came into the circle of Scots there.⁵⁸ Among them were Stewart's brother Thomas, who had been charged for treason for helping the Bothwell Bridge rebels, and Stewart, who had been indicted for treason by the privy council 11 January and proclaimed fugitive 27 January.⁵⁹

In mid-March 1683, Stewart wrote to Thomas, both to succour him and to advise him in his legal troubles. The letter is an arresting example of the close interconnection in Stewart's mind of heavenly and earthly matters. After reminding him that God was putting him to trial for his own spiritual edification, Stewart advised Thomas to agree secretly to a temporary conveyance of his estate to a trusted friend, thus protecting it before trial from forfeit, in hopes of recovering it later. He hinted that he anticipated more troubles for himself, yet assured his brother of God's goodness to all their family and that 'his mercy . . . endures for ever, and his faithfulness . . . never fails'.⁶⁰ But the letter failed to reach Thomas before his flight. The legal advice proved moot. Stewart's anticipation of further troubles was well grounded. On 2 April he and other Scots in Rotterdam were denounced fugitives, and some were forfeited *in absentia*.⁶¹

Throughout 1683 and 1684, the Scottish government's measures against nonconformists grew increasingly severe, with anyone denying royal supremacy subjected to 'summary executions' (of which there were about a hundred),

⁵⁸Story, *Carstares*, 65, 67, 69, 60; for Stewart and Carstares's part in the communications, see also Sir John Dalrymple, *Memoirs of Great Britain and Ireland; from the Dissolution of the last Parliament of Charles II. till the Capture of the French and Spanish Fleets at Vigo*, new ed., 3 vols. (London, 1790; rep., England, 1970), Part I, Book I, p. 39.

⁵⁹*Coltness Collections*, 75-6; *RPC*, Third Series, 8:20-21; Lauder, *Historical Notices*, 1:409.

⁶⁰*Coltness Collections*, 342-5.

⁶¹Lauder, *Historical Notices*, 1:434.

‘imprisonment, maiming, torture, transportation, billeting, heavy fines, and restrictions on movement’.⁶² In June 1683 the circuit court began its work, with Mackenzie as its prosecutor. People called before it were required to take the Test; those who refused could be accused, tried, condemned, and executed all on the same day. On 1 August 1684 the privy council ordered justices of the peace trying accused rebels to proceed and pronounce sentence of death immediately and execute it within six hours. ‘The . . . “killing times” had commenced’.⁶³

Such measures not surprisingly elicited countermeasures from the radical Covenanters. On 28 October 1684 the Cameronians issued their *Apologetical Declaration and Admonitory Vindication of the True Presbyterians of the Church of Scotland*, which they affixed to market crosses and church doors on 8 November. The *Declaration* announced that all who acted against them, whether government officers or ‘bishops and curates . . . shall be reputed by us enemies to God and the covenanted work of Reformation, and punished as such’. Soon two soldiers were killed in West Lothian. The privy council responded by requiring all who refused to disown the *Declaration* sentenced to death. It began deposing all indulged ministers, imprisoning those who refused to swear that they would no longer perform their ministerial duties.⁶⁴ It ordered burghal magistrates to exact the oath of abjuration from everyone south of the Tay. Some who refused were shot immediately by soldiers, some given time to reconsider and then shot if they failed to change their minds, and others given the semblance of a trial, often conducted by commanding officers rather than by justices, and then shot. Some who took the oath were still executed if they refused to take the Test as well.⁶⁵

Meanwhile, Stewart’s involvement in Argyll’s preparations for invasion went beyond discussions. He raised funds and might have been involved in some reconnoitering, for he returned clandestinely to Edinburgh at least twice, in May and

⁶²Brown, *Kingdom*, 162-3.

⁶³Cowan, *Covenanters*, 116-17, 119.

⁶⁴Cowan, *Covenanters*, 119-22.

⁶⁵Cowan, *Covenanters*, 124 (citing *RPC*, Third Series, 10:84), 125.

August 1684. Informed of these activities, the privy council on 3 December 1684 ordered Mackenzie to raise process of forfeiture against James and Thomas Stewart, Lord Mellivill, Hume, Pringle, Fletcher, Sir James Dalrymple, Hugh and George Campbell, and others. On 12-16 January 1685 the council ordered them denounced rebels and summoned to appear before it on or before 26 March. Stewart, however, was back in Holland, where his and Thomas's families had moved from Utrecht to Rotterdam.⁶⁶

His second visit to Edinburgh had coincided with the trials and interrogations of several other Scots who had been involved in the English insurrection plot—if not also in the assassination plot. Chief among them were Carstares and Baillie of Jerviswoode. Carstares had been arrested in July 1683 and charged with involvement in the assassination plot. In the course of investigations, William Spence, one of Argyll's servants, had agreed to decipher some of Argyll's letters written in an intricate cipher Stewart had devised. One of them implicated Carstares in Argyll's invasion plot. On 4 September 1684 the privy council indicted Jerviswoode for treason for corresponding with and conveying money to Argyll and aiding other Scots known or suspected of involvement in the plot to exclude James from the succession, including both Stewart and his brother Thomas. The next day Carstares was brought before the council for interrogation and, not responding, was tortured but still said nothing. Assured by Melfort that none of his testimony given in exchange for pardon would be used as evidence against anyone, he later answered the council's questions. He was duly pardoned, but, the assurance not being clearly stated in the paper drawn up by the council, some of his testimony was used later as evidence in condemning Jerviswoode to death. Carstares left Scotland 20 February 1685, going first to England and then to Holland. The same day the king wrote a letter to the council ordering the prosecution of persons plotting

⁶⁶Walter Macleod, ed., *Journal of the Hon. John Erskine of Carnock 1683-1687* (Edinburgh, 1893), 60, 76-7; *RPC*, Third Series, 10:46; Scott, *Fletcher*, 41; Lauder, *Historical Notices*, 2:600-601; *Coltness Collections*, 80.

Argyll's rebellion, including Stewart.⁶⁷

A Revolution that Failed

On 6 February 1685 Charles II, having received Roman Catholic absolution, died.⁶⁸ When James assumed the throne, he refused to take the Scottish coronation oath, its terms explicitly prohibiting the reestablishment of Roman Catholicism in the northern kingdom. That this was his intent, however debatable now, was widely believed by Scots and Englishmen at the time, and many were understandably alarmed.⁶⁹ His first year on the throne was, as Keith Brown writes, 'marked by greater severities against every form of Nonconformity than any period of the reign of Charles II. It was peculiarly "the black year, the killing time"'. James began his reign by issuing 'an Act of Indemnity, which, as it expressly excluded every recusant, left things precisely as they were'.⁷⁰ The act was sufficiently vague in wording that some Scots thought it meant Stewart and others like him in Holland would be included; that was not so, as Fountainhall recognized. That became clear with the king's instruction to the council 3 March to bring process against all associated with Argyll's rebellion, the imminency of which the council suspected. The council's refusal 5 March to include indulged ministers imprisoned for violating conditions of their indulgence on the ground that the act could not apply to ministers since they were above the rank of burgesses drove home the point.⁷¹

The process against the suspected rebels included testimony from Scots who had

⁶⁷Story, *Carstares*, 74, 76n, 77-8, 80-82, 93-6, 98, 102-3, 107; *RPC*, Third Series, 9:135-8, 159-60, 10:96-7. The Council's breach of such promises to Carstares and others figured among the justifications cited by Stewart in Argyll's *Declaration* in 1685.

⁶⁸Hutton, *Charles II*, 443; Douglas, *Light*, 155, citing O. Airy, *Charles II* (1904), 411-14; Kirkton, *History*, 133. Paul Barrillon, Marquis de Brange, the French ambassador to England, told of Charles's deathbed conversion in a letter to Louis XIV, specifying that Charles confessed the Catholic faith and received absolution, communion, and extreme unction, after promising 'in case of his recovering, to declare himself openly to be a Catholic'. The letter appears in James Holly Hanford, ed., *A Restoration Reader* (Indianapolis and New York, 1954), 98-102.

⁶⁹Douglas, *Light*, 158; Story, *Carstares*, 139-40; Donald Maclean, *The Counter-Reformation in Scotland 1560-1930* (London, [1931]), 161-3, 165-6, 170; Brown, *History*, 2:332-3. One of the most thorough studies of the lead-up to the Revolution of 1688, Ashcraft's *Politics*, provides strong evidence that James intended to re-establish Catholicism.

⁷⁰Brown, *History*, 2:335.

⁷¹*RPC*, Third Series, 10:554; Wodrow, *History*, 4:285; Lauder, *Historical Notices*, 2:621-2, 625.

been in Holland and observed some of them in company. On 9 April Anna Stewart, wife of James Trail, factor in Rotterdam, testified that while living there she had observed James Stewart often in company with the son of Sir John Cochrane in Rotterdam. But to the government's disappointment, she also testified that she knew of no written communication between Stewart and Argyll or other suspects.⁷²

Eight days later, Argyll and his compatriots, including Stewart,⁷³ meeting in Rotterdam, determined to invade Scotland in conjunction with an invasion of England led by Monmouth. They gave Stewart the task of writing their *Declaration and Apology*,⁷⁴ designed to justify their acts and persuade other Scots to join them. On 28 April the council wrote to the lord justices of Ireland, informing them that they believed Argyll's party had departed from Holland; it published a proclamation calling on all Scots to prepare to defend their land. The next day it commissioned the Marquis of Atholl to lead defending forces.⁷⁵ Argyll's expedition—bearing the standard, 'For God and Religion, against Poperie, Tyrannie, Arbitrary Government, and Errestianisme'⁷⁶—actually left Holland 2 May,⁷⁷ but the government had prepared well, and it 'was a fiasco', lacking support even among Cameronians, because Argyll 'was not himself a covenanter',⁷⁸ though they did vocally oppose the new king, issuing on 28 May their *Sanquhar Proclamation* that James was not truly king but 'a murderer . . . who [had] shed the blood of the saints of God' and that to recognise him was 'the height of confederacy with an idolater, . . . forbidden by the law of God'. They called on the faithful throughout Britain to stand to the Solemn League and Covenant against James and in aid of their persecuted brethren in Scotland.⁷⁹ But by now they were few, isolated, and ill equipped, and their aid would probably have made little difference to the invasion. Argyll, after false starts

⁷²*RPC*, Third Series, 11:17.

⁷³Wodrow, *History*, 4:283.

⁷⁴Text in Wodrow, *History*, 4:286-90n.

⁷⁵Wodrow, *History*, 4:285-6.

⁷⁶Hewison, *Covenanters*, 2:488.

⁷⁷Wodrow, *History*, 4:284, gives 1 May; Cowan, *Covenanters*, 128, gives 2 May, with which Veitch, *Memoirs*, 293, and Gardner, *Exile Community*, 201, agree.

⁷⁸Donaldson, *Scotland*, 380.

⁷⁹Gordon Donaldson, ed., *Scottish Historical Documents* (Edinburgh and London, 1970), 242-3.

in the northern isles, was captured 18 June, quickly sentenced to death for his earlier reservations in swearing the Test, and executed on 30 June.

Although he had written the *Declaration* and been deeply involved in planning the invasion and coordinating it with Monmouth's effort, at the last moment Stewart declined to accompany the earl to Scotland. Lauder reports that Rumbold (owner of the Rye House), brought to Edinburgh 22 June to testify to Parliament, explained that Stewart had both advised Monmouth to style himself king (which he did at Taunton) and predicted Argyll's failure.⁸⁰ Stewart's last-minute decision, which he explained to Erskine of Carnock in October, apparently caused a rift between him and Argyll, but Stewart nonetheless was accused of high treason and, tried *in absentia*, sentenced to death.⁸¹ Although Thomas, with him in Rotterdam, also declined to go, Thomas's son David did go, was captured and sentenced to death, but later was reprieved.⁸²

During May and June the Scottish parliament conducted proceedings of forfeiture of the estates of those involved in the invasion. Much of Thomas Stewart's estate went to Atholl—who on 8 August was made president of the privy council. Both brothers remained in Holland at least through the first half of 1686, where they were in frequent concourse with Erskine and other Scots exiles there, including Carstares, who had protected the Prince of Orange by his silence under torture and so gained William's confidence.⁸³ There they and other Scots exiles were frequently endangered by attempts by James's agents to apprehend or assassinate them. Dutch authorities protected the exiles by warning them—as they did Stewart—when searchers were near.⁸⁴

⁸⁰Scott, *Fletcher*, 40; Sir John Lauder, of Fountainhall, *Historical Selections from the Manuscripts of Sir John Lauder of Fountainhall, One of the Senators of the College of Justice*, vol. 1, *Historical Observations, 1680-1686* (Edinburgh, 1838), 1:190.

⁸¹Gardner, *Exile Community*, 205-6.

⁸²Macleod, ed., *Journal of Erskine*, 163; *Coltness Collections*, 86; Charles A. Malcolm, ed., *Minutes of the Justices of the Peace for Lanarkshire, 1707-1723* (Edinburgh, 1931), xxxi; Gardner, *Exile Community*, 221, citing SRO, RH15/106/611/uncat.

⁸³APS, 8 (1670-86), App. pp. 32-75; *Coltness Collections*, 342; *RPC*, Third Series, 11:153-4; Macleod, ed., *Journal of Erskine*, 163-5, 172, 179, 181, 183-4, 196; Story, *Carstares*, 135-6.

⁸⁴Memoirs of James Nimmo, councillor and treasurer of Edinburgh, in Wodrow, *History*, Appendix VIII, 4:511-13, at 513.

The Climax of Stuart Absolutism

Stuart absolutism reached its apex in James, who was determined that in him *rex* would be *lex*. Ignoring laws barring Catholics from civil and military office, he appointed many. Challenged by the English parliament, he first prorogued it and then packed the court with favourites and sent it the case of one of his Catholic officers, Sir Edward Hales, who pleaded the king's dispensation from the Test Act. In deciding for Hales, and therefore for James's assertion of royal prerogative and supremacy, Lord Chief Justice Herbert wrote:

the laws of England are the laws of the King of England . . . the king of England or any sovereign prince upon urgent occasions & necessities may dispense with any penall laws of their dominion . . . the king is sole judge of the necessities & urgency of these occasions upon qch they may dispense with the lawes . . . the king's power is in himself independent of any & not entrusted of any & not entrusted to thm [sic] fra the people of England.⁸⁵

In effect, the court affirmed the contrary of all contractual theories of monarchy, made the king utterly independent of people, estates, and parliament, and made the courts utterly dependent on the king. Further appointments of Catholics to military and civil offices followed, reinforced by a publishing offensive that included Catholic sermons delivered in the chapel royal. When Bishop Henry Compton failed to fulfill the king's order to silence a rector for endeavoring to steel his parishioners against Catholic proselytizing, James promptly appointed some of his 'most loyal servants', including 'Sunderland—now moving towards Catholicism—and the absolutist lawyers Jeffreys and Herbert', who in September 1686 suspended Compton.⁸⁶ Appointments of Catholics to positions in the universities of Oxford and Cambridge ensued.

James's dealings with Scotland were similar. In November 1685 he had

⁸⁵NLS, Wodrow Mss.Fol. XXVII, No. 91. Wodrow paraphrases the court's ruling in *History*, 4:388. See also Michael Mullett, *James II and English Politics 1678-1688* (London and New York, 1994), 53.

⁸⁶Mullett, *James II*, 55.

instructed the privy council to dispense twenty-six people, mostly Catholics, from taking ‘the oaths and test appointed by law’ (which excluded Catholics) for commissioners to Parliament.⁸⁷ A riot in Edinburgh 31 January 1686 against Catholic services in the house of Lord Chancellor Perth was not actually ‘the first sign of disaffection in the capital since 1660’, as Donaldson put it,⁸⁸ but it certainly was one of the clearest signs, early in James’s reign, that disaffection, already strong, was mounting. James showed no patience with ministers who preached against Catholicism. In April, George Sheills “‘was sharply reprov’d” for “preaching rudely against Popery” in the Abbey Church, Edinburgh’.⁸⁹ The Bishop of Dunkeld was deprived of his see for saying that ‘old constitutions are, for their salubrity compared to old-lived men, and not rashly to be altered’, defending laws against popery; his dismissal was followed by that of the Bishop of Ross after the latter preached a sermon ‘which scandalized the Papists’; ‘Robert Douglas the bishop of Dunblane was forbidden to preach because he refused to promise not to preach against popery; and Archbishop Alexander Cairncross of Glasgow met the same fate in early 1687 for failing to punish ministers who preached against Catholicism.’⁹⁰ Such were strong signs that James intended ‘to change the religion of the country’ to Catholicism.⁹¹

In April 1686 the king wrote to the Scottish parliament a letter clearly implying that he intended to rescind penal laws against Catholics, in place but almost entirely unenforced since the Restoration, and to remove all barriers to their serving in civil and military offices. He demanded parliament’s cooperation. He tried to sweeten the letter by saying that he also intended to pass an indemnity for all persons formerly charged in the rebellions, but that was never done.⁹² Parliament refused.

⁸⁷Wodrow, *History*, 4:347.

⁸⁸Donaldson, *Scotland*, 383.

⁸⁹Maclean, *Counter-Reformation*, 168, citing Lauder, *Historical Notices*, 2:717.

⁹⁰Ian B. Cowan, ‘The Reluctant Revolutionaries: Scotland in 1688’, in *By Force or By Default? The Revolution of 1688-1689*, ed. Eveline Cruickshanks (Edinburgh, 1989), 65-81, at 72, citing Lauder, *Historical Notices*, 2:722, 726, 728, 735, 775-6.

⁹¹Brown, *History*, 2:341-2.

⁹²APS, 8:579-81; Wodrow, *History*, 4:359-60n, 362; Cowan, ‘Reluctant Revolutionaries’; Maclean, *Counter-Reformation*, 174.

The closest it would come to compliance was an act drafted by the lords of the articles that, while noting that out of Christian charity the penal laws had gone largely unenforced, nevertheless declared that parliament was ‘firmly resolved to adhere to the true protestant religion by law established within this kingdom, and which is, and always shall be dearer to them than all their worldly concerns; yet . . . those of his majesty’s subjects, who are of the Romish religion, are, and shall be, under the protection of his majesty’s government and laws, for their private and civil interests, and shall not, for the exercise of their religion in their private houses’, be punished. The act provided that this lenience should ‘noways import any allowance or approbation of their religion’ or overturn laws favouring Protestantism or against popery, specifying that the Test must continue to apply to ‘all persons in offices of public trust, civil, ecclesiastic, or military’.⁹³ Such an act the king’s commissioner could by no means approve. Not only did it come far short of what James had demanded, but also the reservation expressed—‘so far as their religion and conscience will allow’—was a slap at royal supremacy, as were its repeated references to laws and acts of parliament and its insistence that the Test and oath of allegiance must ‘continue in their full force’. Moray, king’s commissioner, dropped it entirely.

Informed of parliament’s intransigence, James ordered it prorogued. On 21 August he wrote a letter to the privy council granting Catholics the toleration and protection he had demanded from parliament and announcing that Catholic worship would be established in the chapel at Holyrood. In February 1687 came James’s first indulgence, which left conditions for Presbyterians essentially unchanged (moderates could meet privately to hear indulged ministers, but conventicling was to continue to be punished ‘to the utmost severity of law’) but abolished ‘all laws, customs, and constitutions against Roman Catholics’ and made them ‘free to exercise their religion and eligible for all public offices’. This prompted such

⁹³Text in Wodrow, *History*, 4:366-7n; cf. 4:364-5; Cowan, ‘Reluctant Revolutionaries’, 67.

mistrust that in July, in a second indulgence, James removed almost all restrictions on Presbyterians, except that field meetings were still banned.⁹⁴

Toleration and, more important, the opening of government offices to Catholics alarmed Protestants of every stripe in Britain. They recalled the suffering of Protestants under the Catholic queen Mary of England and of Presbyterians in Scotland throughout Charles II's reign, and the massacre of Protestants, especially Scots, in the Irish rebellion of 1641. In the latter, an 'event, memorable in the annals of human kind, and worthy to be held in perpetual detestation and abhorrence', as David Hume described it, some claims put the numbers slaughtered in the hundreds of thousands, others around 40,000, though the real number was probably under 10,000, with additional thousands dying of starvation or exposure.⁹⁵ What occurred was, as Lang put it, 'less important than what was believed. Horrible cruelties and outrages were attributed to the Irish'.⁹⁶ Recent, powerful memories included the Scottish Presbyterians' sufferings under the Catholic Duke of York's administration in the 'killing time' and Louis XIV's persecution of French Protestants, which began in 1661 and climaxed in and after his revocation, in October 1685, of the Edict of Nantes (1598),⁹⁷ which had given the Huguenots liberty of worship for nearly a century. The revocation prohibited Protestants to worship publicly and to baptize and educate their children as Protestants, required their ministers to leave the country within fifteen days or convert to Catholicism, and forbade Protestant laymen to leave France. It also required all Protestant French refugees abroad to

⁹⁴Lauder, *Historical Notices*, 2:735-6; *Reports of the Royal Commission on Historical Manuscripts* (London, 1870-): *MSS of the Earl of Mar and Kellie* (1904), 217-19, cited in Cowan, 'Reluctant Revolutionaries', 67, 79; Wodrow, *History*, 4:389-90; Cowan, *Covenanters*, 130; Story, *Carstares*, 147. Texts are in Wodrow, *History*, 4:417-19n, 426-7n.

⁹⁵David Hume, *The History of England from the Invasion of Julius Caesar to The Revolution of 1688*, 6 vols. (1778; rep. Indianapolis, 1983), 5:341-5.

⁹⁶Andrew Lang, *A History of Scotland from the Roman Occupation*, 4 vols. (Edinburgh and London, 1907), 3:101; M'Crië, *Sketches*, 274; George Macaulay Trevelyan, *England Under the Stuarts*, 2d. ed. (London, 1905), 219.

⁹⁷The strong impact of the revocation on Scottish Presbyterians' minds is illustrated in an anonymous pamphlet, apparently originating in England, critical of James's first indulgence, which mentions the revocation and its fruits repeatedly as evidence that Protestants can expect no charity from Catholics in power. Wodrow, *History*, 4:420-22.

return or lose their property.⁹⁸ Charles II's secret treaties with Louis, which in part committed him to restoring Catholicism,⁹⁹ had become widely known, as were his deathbed conversion and James's conversion some nine years earlier.¹⁰⁰ To many in Britain, 'the threat from France and Popery to both liberty and property was all too real.'¹⁰¹

Collective memory, confirmed by what many understood to be James's current actions, convinced many British Protestants, especially the Presbyterians, that Catholics would always, given opportunity, use government office to force their faith on others and to persecute, even kill, those who resisted. One anonymous pamphlet, apparently originating in England and critical of James's first indulgence, pointed out that the proclamation's provision that vacated Protestant churches could be brought into use by Catholics implied, given the parish system, 'that all the laws made against such as go not to their parish churches, will be severely turned upon those that will not come to mass'.¹⁰²

The old fear of Catholicism was exacerbated, of course, by the fear of royal absolutism (thought to be axiomatically connected to Catholicism)¹⁰³ newly provoked not only by the manner (bypassing parliament) but also by the text of James's first indulgence. In it James asserted 'our sovereign authority, prerogative royal, and absolute power, which all our subjects are to obey without reserve' and prescribed a new oath to be taken by 'all our good subjects, or such of them as we,

⁹⁸Eugen Lachenmann, 'Huguenots', in *The New Schaff-Herzog Encyclopedia of Religious Knowledge*, 15 vols., ed. Samuel Macauley Jackson, et al. [Grand Rapids, 1907] 1977), 5:393-400, at 398. An English translation of Louis's revocation edict appears in Wodrow, *History*, 4:349-51, followed by the text of articles of the Catholic faith and abjuration of the Reformed faith that Protestant converts to Catholicism were required to sign.

⁹⁹Brown, *Kingdom*, 155; Trevelyan, *England Under the Stuarts*, 365-6, 396; and generally John Miller, *Popery and Politics in England 1660-1688* (Cambridge, 1973), and Richard L. Greaves, *Secrets of the Kingdom: British Radicals from the Popish Plot to the Revolution of 1688-89* (Stanford, 1992).

¹⁰⁰Although it did not become public knowledge until about thirty years later, 'a letter from a jesuit at Liege, to a brother of his at Friburg', dated 2 Feb. 1687, 'contains a very full account of the expectations and designs of papists at this juncture'. Among the Catholics' reasons for confidence was James's reportedly telling a priest 'That he would either convert England or die a martyr, and he had rather die the next day and convert it, than reign twenty years piously and happily, and not effect it'. See the letter, in translation, in Wodrow, *History*, 4:402-4.

¹⁰¹John Carswell, *The Old Cause: Three Biographical Studies in Whiggism* (London, 1954), 7.

¹⁰²Wodrow, *History*, 4:416, 420-22.

¹⁰³John Miller, *James II: A Study in Kingship* (London, 1978, 1989), 66.

or our privy council shall require so to do':

I, A. B. do acknowledge, testify, and declare, that James VII. by the grace of God, king . . . is rightful king, and supreme governor of these realms, and over all persons therein, and that it is unlawful for subjects, on any pretence, or for any cause whatsoever, to rise in arms against him, or any commissioned by him, and that I shall never so rise in arms, nor assist any who shall so do, and that I shall never resist his power or authority, nor ever oppose his authority, to his person, as I shall answer to God, but shall to the utmost of my power, assist, defend, and maintain him, his heirs and lawful successors, in the exercise of their absolute power and authority, against all deadly. So help me God.¹⁰⁴

Three privy councilors refused to sign the proclamation—the Duke of Hamilton and the earls of Panmure and Dundonald. Hamilton's power in Scotland was too great for the king to take the risk of turning him out of office, but he expressed his 'resentments for his carriage' and ordered the removal of Panmure and Dundonald. He also instructed the council 'to take care that there be no disorder, nor that any of the presbyterians be suffered to preach, except such only as shall have your allowance for the same, and that they at the receiving of the said indulgence, shall take the oath contained' in the proclamation.¹⁰⁵ Since taking the oath would be impossible for many Presbyterian ministers of principle, the practical effect would be greatly to restrict preaching by Presbyterians. In a letter of 31 March James appeared to soften the restriction on the Presbyterians, saying that he had meant to require only those who had not previously taken the test to take the new oath; but 'never one of them had taken the test, neither was it once supposed they would'.¹⁰⁶ The practical effect was to leave things to the discretion of a purged council that had, in its reply to the 12 February proclamation, shown itself utterly subservient

¹⁰⁴Wodrow, *History*, 4:417-19n, at 418-19n.

¹⁰⁵Wodrow, *History*, 4:423.

¹⁰⁶Wodrow, *History*, 4:424.

to the Catholic king.

James followed his first Scottish indulgence with a more sweeping one in England, proclaimed 4 April, granting to all his subjects ‘the free exercise of their religion for the time to come’, declaring ‘that conscience ought not to be constrained, nor people forced in matters of mere religion’, and citing the troubles of the last four reigns ensuing from efforts to force conformity as caution against doing so.¹⁰⁷ On 28 June and again on 5 July James issued proclamations that extended essentially the same toleration to Scotland, promising to ‘protect . . . all our subjects of the protestant religion, in the free exercise of their protestant religion’, though still banning outdoor conventicles. This he did, he said, ‘by our sovereign authority, prerogative royal, and absolute power’.¹⁰⁸

Trimmer or Double Agent?

A Covenanter in King James’s Court

The sincerity of the king’s commitment to religious toleration in principle is open to debate.¹⁰⁹ His use of it as policy to strengthen his hold on the crown is undoubted. In that policy James Stewart played a puzzling role.

Near the end of 1686, following the failure of the Argyll and Monmouth invasions in the planning of which he had participated deeply, Stewart was in close association with Carstares and other Scots exiles at the court of William of Orange. William Penn (1644-1718), the Quaker champion of religious liberty and favourite of James VII, sought at James’s bidding to persuade William that his father-in-law’s toleration policy proceeded from ‘unlimited charity for Christians of all denominations’ and a determination to make Britain prosper through open trade, possible only without serious religious conflict. Penn explained the policy to Stewart in Holland. Stewart ‘seemed to approve this scheme’, and on returning to

¹⁰⁷Wodrow, *History*, 4:424-6.

¹⁰⁸Wodrow, *History*, 4:426-7n.

¹⁰⁹Miller, *James II*, especially chapter 5.

England Penn persuaded the king that Stewart could help quiet religious opposition in Scotland. James offered Stewart a pardon for his part in Argyll's rebellion if he would join the government and promote toleration. Stewart seems to have heard of the offer first by rumour in early March, when he agonized in a letter to Carstares over whether to accept it.¹¹⁰ Like many other exiles, he finally accepted the pardon and returned. But before leaving Holland 'he went to kiss the Statholder's hands . . . and promised all fidelity to the Prince of Orange's interests, consistent with his allegiance to his sovereign'. In the same conversation Stewart promised 'to be an ingenuous correspondent with the Pensionary Fagell, if he should know anything in earnest tending to introduce the Romish religion'.¹¹¹

Stewart's agreement with James and promise to William led to what Carstares's principal biographer called 'one of the many moral enigmas of that unhappy time'.¹¹² His conduct puzzled both some contemporary friends and his nephew Archibald Denham Stewart, author of the *Coltness Collections*, who wrote:

. . . whether he foresaw the consequence, and that this might be an expedient to bring home all banished, to be at hand in case a bigoted Prince should drive hard to Rome, or if Penn's large promises to him, and his low family

¹¹⁰Stewart, letter to Carstares, 8 Mar. 1687, in NLS Wodrow MSS Oct. XXX, fol. 41-2. John Carswell, *The Descent on England: A Study of the English Revolution of 1688 and Its Background* (New York, 1969), 84, mistakenly writes that Stewart announced in this letter 'that he too had decided to accept favour at home'. On the contrary, Stewart wrote then only of his inner turmoil: 'from Scotland they write that all my friends great and small . . . do desire that I should at this Time Apply for favour. So. Wat writes from London that David Lindsay assures him, that I may have a pardon for the demanding, and that without any conditions, and therfor entreats that I may write him (Mr. Lindsay) such a Letter as he may show E. of Melfort, and E. of Melfort may show to the King. . . . Dalz: hath spoke to him to the same purpose, and told him he heard E. Melfort speaking very favourably of me . . . In Truth I have no Inclination for a pardon, tho I must say not so much from Distrust as Dislike; for to Tell you as my friend neither can my Innocence so well Digest it, nor can I overcome the fears I have of the Tentations to qch it may expose me; and yet to refuse it would be accounted obstinacy, both by freinds and foes, and probably lay me under Severall ill consequences, and difficultys as you may easily judge. . . . worst of all I doubt if they will a pardon on me unles I come home and own it. So yt all the length I can at present bring my[?] thôts is yt I am sure I had been much better content not to have had this offer made me'. Almost certainly he had no expectation of pardon as late as 29 Jan., when he wrote to Carstares that, because his wife planned to return to Scotland, he needed advice as to where he should live afterward—mentioning only Dutch cities as possibilities (*ibid.*, fol. 37-38). Stewart apparently wrote no more to Carstares after 8 Mar. until after accepting the pardon and joining James's government; his next extant letter is dated 9 July from London. See footnote 134.

¹¹¹*Coltness Collections*, 88-9; Burnet, *Own Time*, 3:213-14; Omond, *Lord Advocates*, 252-3; Story, *Carstares*, 150-52.

¹¹²Story, *Carstares*, 151.

circumstances influenced him, or if in order to get home to follow business,—which of these was his motive, 'tis hard to judge, but certainly he lost many of his friends by his consultations and close connection with this quaker.¹¹³

Yet the broken friendships—if broken they were (see footnote 110)—certainly seem to have been robust a few years later, as Stewart first acted as king's solicitor under the newly enthroned William and Mary in various cases in 1689-1690 and then was appointed lord advocate (1692), maintained steady friendships with Carstares and both James and John Dalrymple, and stood in the highest esteem of the established Presbyterian Church of Scotland, whose general assembly, meeting when he died, dismissed to attend the burial.

Yet some understandably thought he had converted to James's side, not for principle but for pragmatics.¹¹⁴ Early in 1688 he wrote to Fagel in defence of James's toleration policy, which included admitting Catholics to public office:

if the Repeal of the Test and Admission of *Roman Catholicks* to Publick Employments do take away all the Security of the *Protestant Religion*, and expose it to Ruin, then no true *Protestant* ought to consent to it: But on the other hand it follows no less evidently, That if it can be shewed that the *Protestant Religion* may be sufficiently secured without the Law of the Test, and moreover that the Legal Establishment of the present Liberty (as designed by his *Majesty*) doth in all probability tend more to the Advantage than prejudice of the *Protestant Religion*; then they both may, and ought to do it.¹¹⁵

This seemed an impassioned attempt to defend the throne of a king whose religious convictions and political principles and intentions he had long detested and feared

¹¹³ *Coltness Collections*, 88-9.

¹¹⁴ Burnet, *Own Time*, 3:215.

¹¹⁵ James Stewart, *James Steuarts Answer To a Letter Writ by Mijn Her Fagel Pensioner to the States of Holland and West-Friesland, Concerning the Repeal of the Penal Laws and Tests* (London and Edinburgh, 1688), 12.

against an impending challenge by a prince to whom he was devoted as the great defender of his own fiercely held faith. Having spent more than twenty years as an implacable critic first of Charles II and then of James VII, Stewart found himself in the paradoxical position of defending his enemy against his ally. How had this reversal come about?

The easy explanation is that Stewart was an unscrupulous trimmer. ‘The appellation of “Jamie Wylie” was often conferred upon him in common parlance, and the tradition of the Scotch bar is that he merited it’.¹¹⁶ Macaulay called him the most unprincipled of lawyers, who had been deeply concerned in Argyle’s insurrection, who had changed sides and supported the dispensing power, who had then changed sides a second time and concurred in the Revolution, and who had now [in the time of the new Scottish Parliament after the Glorious Revolution] changed sides a third time, and was scheming to bring about a Restoration

He added insult to injury by saying that by late 1696 he ‘had been so often a Whig and so often a Jacobite that it is difficult to keep an account of his apostasies’.¹¹⁷ Andrew Lang—probably influenced by Macaulay—minced no words, describing Stewart as ‘that fickle politician’, that ‘versatile turncoat’, and ‘the shifty Lord Advocate Stewart, who through so many years had played so many parts’.¹¹⁸ Such epithets, used in the post-Revolutionary period, had been flung not only at him but also at Thomas and (indirectly) their father when the brothers, living in exile in Holland, were forfeited in 1684 and Lord Advocate Mackenzie said in open court, ‘This family are not Stewarts; their father Provost Stewart was a pair-arsed [sic]

¹¹⁶Willcock, *Scots Earl*, 357; citing Lauder, *Chronological Notes* [sic], 57n, Lauder, *Historical Notices*, 190, and Macleod, *Journal of Erskine*, 163. It is unclear why ‘Jamie Wylie’ was applied to him. Perhaps it harks back to Richard Bannatyne’s calling William Maitland of Lethington the ‘Mitchell Wylie of Scotland’, ‘by which name he meant’, according to W. C. MacKenzie, biographer Lethington’s grand-nephew John Maitland, duke of Lauderdale, Machiavelli (MacKenzie, *Maitland*, 11, note 1; note the phonetic similarities between ‘Machiavelli’ and ‘Mitchell Wylie’). Granted Stewart’s radical opposition to royal absolutism and royal manipulation of the church for reasons of state, the association would be ironic indeed.

¹¹⁷Thomas Babington Macaulay, *The History of England from the Accession of James II*, 5 vols. (Chicago, 1889), 4:83-4; 5:227.

¹¹⁸Lang, *History*, 4:56, 161, 133.

M'Gregor, and changed his name when he came to town, because of the act of Parliament, and these forfault Stewarts were all damned M'Gregors'.¹¹⁹ The bad reputation follows Stewart into modern times, John Carswell calling him 'that devious man' and P. W. J. Riley writing that at the time of Anne's succession to the throne and the early negotiations for the union of the parliaments Stewart 'had a thoroughly deserved reputation for venality and shiftiness'.¹²⁰ Though refraining from the moral condemnation in Riley's words, Georgina Jan Gardner expresses essentially the same conclusion when she writes that Stewart's 'move was in direct contrast to the Scot's entire political career during the Restoration and was a clean break from his viewpoint in the first half of 1687' and that by the end of that year his 'attitude had undertaken a dramatic change'.¹²¹

But there are other ways to explain the apparent shifts that so perturbed Macaulay, Lang, and others. Stewart's character takes on a different complexion if we recall seven things: that (a) his support of Argyll's invasion in 1685 was the continuance of a firm resistance to Stuart absolutism that stretched back over two decades, even at enormous personal cost including risk of death, and had won for him James VII's estimate, according to Burnet, as 'the chief manager of all the rebellions and plots that had been on foot these twenty years past';¹²² (b) he had often been with the cagey Fagel and 'had a great measure of his confidence';¹²³ (c) his support for 'the dispensing power' two and three years later can be read instead as support for toleration it brought Scottish Presbyterians persecuted since the

¹¹⁹*Coltness Collections*, 80; compare Omond, *Lord Advocates*, 1:252. Alexander Ferguson, in *The Laird of Lag: A Life-Sketch* (Edinburgh, 1886), 24n, confusedly placed this outburst during Kirkfield's lifetime and thought he and Goodtrees were the objects of the forfeiture.

¹²⁰Carswell, *Descent*, 229; P. W. J. Riley, *The Union of England and Scotland: A Study in Anglo-Scottish Politics of the Eighteenth Century* (Manchester, 1978), 53.

¹²¹Gardner, *Exile Community*, 219, 220. Gardner's treatment of Stewart is the most extensive accomplished to that time and is worth careful study. Her interpretation of Stewart's actions is quite plausible in light of the isolated and ambiguous details she has brought to light. The focus of this dissertation on Stewart's political philosophy in *Naphtali* and *Jus Populi* precludes a point-by-point response. Let it suffice to say that her arguments seem unpersuasive in light of intimate familiarity with Stewart's character especially indicated in those two books, in his costly choices from 1666 through 1687, in his entire religious life, and in the attitudes toward him of faithful Presbyterians following the Revolution.

¹²²Burnet, *Own Time*, 3:213; cf. Gardner, *Exile Community*, chapters 5-6, which document Stewart's important role among the exiles.

¹²³Burnet, *Own Time*, 3:214.

Restoration; (d) his correspondence with Carstares after joining James's government was, as Gardner put it, '[in] reality . . . from the king to the Dutch court', meaning that 'the increasingly desperate tone of his missives indicating James's growing frustrations at the prince's refusal to agree to repeal of the Tests'¹²⁴ might have revealed James's desperation, not Stewart's; (e) his support for the Revolution of 1688 was consistent with that concern; (f) the 'Restoration' he sought in 1690 was not of James VII but of Presbyterian dominance in Scotland; and (g) while all of these endeavors are consistent with his having been an unswerving Whig and Presbyterian—as he was to his death in 1713—none requires his having been even so much as a most timid Jacobite. Macaulay wrote that

When the Indulgence [under James VII] appeared, Stewart conceived that he had an opportunity of obtaining, not only pardon, but reward. He offered his services to the government of which he had been the enemy: they were accepted.¹²⁵

But the initiative had come from the king and his Scottish governors, not from Stewart, and had been prompted by Penn's hopes of persuading the staunch Presbyterian to help pacify the Presbyterians when the throne itself was at stake.¹²⁶ Practical politician Stewart might have been by then (though his earlier actions in opposition might lead some to judge the opposite of them); he knew what he was after, and he deftly schemed and compromised to achieve it. But unprincipled?

Some of his long-term enemies suspected no real change despite his accepting the pardon and joining the government. The Jacobite Earl of Balcarres, in his *Memoirs*, said that Stewart 'was looked upon [by the Episcopal clergy and other supporters of James in the months leading up to the Revolution] as an inveterate enemy to the established government, both in Church and State'.¹²⁷ In his *Account of the Affairs of Scotland* addressed to James VII in France, Balcarres said that at

¹²⁴Gardner, *Exile Community*, 220.

¹²⁵Macaulay, *History of England*, 2:241.

¹²⁶*Coltness Collections*, 88-9; Omond, *Lord Advocates*, 252-3; Story, *Carstares*, 150-52.

¹²⁷Balcarres, *Memoirs*, 3.

James's court before the Revolution Stewart had been 'generally believed *at that time* by all that wished well to your majesty's government, to be underhand betraying it; nor has their apprehensions been false, for since the revolution he has bragged to hundreds, that he gave several advices, designedly to ruin it, and to advance the interests of his friends'.¹²⁸ As we have seen, his Presbyterian allies regarded him highly after the Revolution (see page 269). James Erskine (1679-1754), Lord Grange, lord justice clerk in 1710, after evaluating various possible alternatives to replace David Dalrymple after his brief term as lord advocate, wrote that it would be hard to fill the post,

for Scotland was never so destitute of able Lawyers as it is at present
[B]ut as for skill in publick affairs I'm afraid we have wondrous few if any at all who have endeavour'd to acquire it or who have had opportunity to do it. [F]or this & for the Criminal Law old Sr Ja: Stewart among all our Advcts is *non pareille*.¹²⁹

How best can we understand the great reversal apparent in Stewart's attacking the Stuart monarchs from the Restoration until the eve of the Revolution, then in 1687 becoming James's defender? To view the difficulty from a different angle, how best can we explain his having favour with the Scottish political establishment, especially the triumphant Presbyterians, so soon after the Revolution as to enter parliament by July 1689 and have a hand in drafting and managing church settlement legislation in 1690? And how did he regain favour with William so soon (if he ever lost it) as to be appointed solicitor and then, in 1692, lord advocate, in which position he became the principal architect of much of the ecclesiastical settlement?¹³⁰

¹²⁸Cited in Burnet, *Own Times*, 3:214, editor's note, emphasis added.

¹²⁹Letter from Lord Grange to the Earl of Mar, June 1710; in NAS, GD124/15/981. He has fared poorly in history of Scots law, warranting barely three references in David M. Walker, ed., *Stair Tercentenary Studies* (Edinburgh, 1981), 211, 215, 216, and none in Lord Normand's *Introduction to Scottish Legal History* (Edinburgh, 1958). This should be corrected. His role in Scots law after the Revolution deserves study but is beyond the scope of this work.

¹³⁰Wodrow, *Analecta*, 2:205.

Even if Stewart really switched sides temporarily at this time, his actions would not be inexplicable assuming continued strong Whig convictions in favour of religious liberty. As J. R. Jones has shown, many of the most radical Whigs (including even William Sacheverel) joined temporarily with James during the last two years of his reign, some claiming ‘that they were consistent in supporting anyone who would institute toleration, James now as Shaftesbury in the past’. In Sacheverel’s case, Jones argues that his readiness to collaborate with James

may be explained in two ways. Sacheverel was a shrewd judge of events, as he had shown in 1680 when he had been the first to see that Exclusion was doomed to defeat, and so had deserted Shaftesbury and begun to trim before the end of the second Whig Parliament. Now he may have wished to reinsure himself, thinking that James had some chances of success. The second reason is that James had a hold over him. Sacheverel, although he deserted Whigs in 1680, had tried to preserve his royal interest, and for opposing the surrender of the Nottingham charter had been heavily fined.

The like applied to many other collaborators. Both explanations could have applied to Stewart as well. Even if, as Jones claims, ‘Few of the Whig collaborators . . . were men of reputation or integrity’,¹³¹ neither explanation requires moral condemnation. Is it wrong for a man to offer his services to a cause that he thinks is rising in hopes that his involvement will temper its policies to the advantage of both his principles and his allies? That his doing so might relieve him of legal disabilities might give observers reason to question his motives, but it is not morally decisive.

Yet despite Sir Archibald’s own puzzlement—in which he was joined not only by Carstares biographer Story but also by Omond¹³²—there is a more likely explanation for Stewart’s decision and ensuing conduct. It is that Stewart was

¹³¹J. R. Jones, ‘James II’s Whig Collaborators’, *Historical Journal* 3:1 (1960): 65-73, at 68, 69-70.

¹³²Omond, *Lord Advocates*, 1:253-4.

positioning himself simultaneously to make the best not only for himself but also for his fellow Presbyterians in Scotland regardless whether James retained the throne or William supplanted him. By accepting a place at the heart of James's Scottish ministry, Stewart could both keep his allies in Holland informed of royal intentions and influence the king's policies toward Scotland to make them as friendly to Presbyterianism as possible.

Perhaps he could do more for the prince's cause, and certainly—intentionally or otherwise—he did. Throughout 1687 Stewart wrote to Carstares, January through March under the pseudonym Strachan from his residence in Amsterdam, the remainder, beginning 12 July and under his own name, from Britain (mostly London, Windsor, and Edinburgh) after his pardon in May¹³³ and placement in government as secretary to Melfort. The earlier letters overtly warned of James's intent to establish Catholicism and progress in that direction, and the later ones, on the surface at least, appeared to strive unrelentingly to justify James's toleration policies, including most importantly the lifting of the Test that restricted Catholics' holding public office.¹³⁴ But it is possible to discern in these letters various hints that Stewart was providing to the Prince and his ministers an easy target for their

¹³³The king granted the remission on or about 12 May, and the warrant for it was issued on 19 May. Lauder, *Historical Notices*, 2:795; *RPC*, Third Series, 13:xvi.

¹³⁴Copies of letters (beginning with a 'Memorial for the Prince of Orange' dated simply January 1687) dated (apparently Old Style) 29 Jan.; 1, 7, 15, 16, 22, and 24 Feb.; 8 Mar.; 12, ? [undated], 18, and 29 July; 12, 22, and 26 Aug.; 24 Sept.; 8 Oct.; 6 and 8 Nov.; and 9 Dec. 1687, and 17 Apr. 1688 are in NLS Wodrow MSS Oct. XXX, fol. 34-53. Two dated 26 July and 6 Sept. 1687, not in the Wodrow MSS, are in *CSP Domestic James II*, 35-6 (S.P. 8/2, pt. 2, fols. 26-7) and 68-9 (S.P. 8/1, pt. 2, fol. 157). One dated 5 Aug. 1687 is now missing, but excerpts from it were published by Gilbert Burnet in *Some Extracts out of Mr. James Stewart's letters, which were communicated to Mijn Heer Fagel* (Gardner, *Exile Community*, 236). All but one of Carstares's replies seem to have been lost. Stewart's letters mention thirteen replies (plus one letter to Coltness) from Carstares: 29 Jan. mentions an undated letter from Carstares; 1 Feb. mentions one dated '30 Inst.' (= 20 Jan. Old Style); 7 and 15 Feb. mention undated ones; 22 Feb. mentions one dated 20 Feb. (= 10 Feb. OS). The only surviving letter by Carstares was written in July but not specifically dated (in *CSP Domestic James II*, 40-41, S.P. 8/2, pt. 2, fol. 28) and replies to Stewart's of 26 July. Stewart's of 12 Aug. mentions one from Carstares dated '5/15 Instant', which, Stewart said, reported that Carstares had Stewart's of 26 July and that Carstares had written 'none betwixt the 31 of July and the 15 of August', apparently Old Style. Stewart's of 22 Aug. mentions one from Carstares of 16 Aug. (=10 Aug. OS); that of 24 Sept. mentions one from Carstares of 30 Aug. (=20 Aug. OS); those of 8 Oct., 6 Nov., and 9 Dec. mention one each from Carstares but give no dates; that of 8 Nov. mentions one from Carstares 'of the 1st of Nov: I suppose old stile for I received it only the 5th Instant'. That of 17 Apr. 1688 replies to one from Carstares to Stewart's brother Thomas dated 3 Apr.

own propaganda machine—‘useful combustible material’, as Carswell puts it.¹³⁵ For example, Stewart had written, on James’s behalf, that what James sought in Britain—admission of Catholics to offices of public trust—was nothing more than William already permitted in Holland.¹³⁶ But Stewart, after all his years in Holland, must have known, and Carstares and Fagel must have known that he knew, that this was not true. Therefore they cannot have taken his claim at face value. But his asserting it ‘hopelessly misinformed James about the religious constitution of the United Provinces’, as Carswell writes, where Catholics were not admitted to civil offices. Consequently, when Fagel pointed out the error in his reply, ‘At a stroke one of James’s favourite arguments for his policy—that the Dutch owed their prosperity to the absence of religious discrimination—was shown to be based on a falsehood’.¹³⁷

Certainly the letters wound up easy targets when on 4 November 1687 Fagel wrote to Stewart ‘A Letter . . . Giving an Account of the Prince and Princess of Orange’s thoughts concerning the Repeal of the Test, and the Penal Laws’, thoroughly refuting Stewart’s arguments for James’s policies. In January 1688 the letter was published, and it ‘was eventually available throughout Europe in French, Dutch, Latin and English’.¹³⁸ Its impact, as described in a note from the Earl of Devonshire to William, can hardly have been more to the prince’s advantage:

People are in raptures to find the sentiments of your Highness and of the Princess in matters of religion, not only so equitable, but so agreeable to the interest, and to the taste of all the nation¹³⁹

The whole episode was a crucial step in distinguishing William’s toleration policies

¹³⁵Carswell, *Descent*, 100.

¹³⁶Letter to Carstares, 12 Aug. 1687, in NLS Wodrow MSS Oct. XXX, fols. 47-8.

¹³⁷Carswell, *Descent*, 110.

¹³⁸Gardner, *Exile Community*, 220, 230. The letter, together with ‘Reflexions on Monsieur Fagel’s Letter’ (12 Jan. 1688), ‘Fagel’s Second Letter to Mr. Stewart’ (9 and 10 Apr. 1688), and ‘Some Extracts, out of Mr. Stewart’s Letters, which were communicated to Mijn Heer Fagel. Together with some References to Mr. Stewart’s printed Letter’, was printed again as *Their Highness the Prince & Princess of Orange’s Opinion About a General Liberty of Conscience, &c. Being a Collection of Four Select Papers* (London, 1689).

¹³⁹Dalrymple, *Memoirs*, Appendix to Part I, Book V, pp. 88-9.

from those put forth by James perhaps—in his critics’ opinion, certainly—only as a temporary measure for winning the favour of dissenters long enough to pack parliament and other offices with Catholics who would then cooperate in reestablishing Catholicism. By stressing James’s intent not only to grant religious toleration to Catholic worship but also to admit Catholics to government service by repealing the Test, Stewart in his letters highlighted the differences between James and William that made the latter beloved and the former loathed by most Britons north and south of the border.¹⁴⁰

In short, there is good reason to think Stewart was doing what John Dalrymple of Stair had done. According to his grandson’s *Memoirs*, Dalrymple, whose father James VII had ruined before he became king, was appointed lord advocate, lord justice clerk, and privy councilor, coming ‘into the King’s service resolved to take vengeance if ever it should offer: Impenetrable in his designs, but open, prompt, and daring in execution’. The grandson, who not only had his father’s and grandfather’s witness on the matter but also probably knew Stewart’s descendants well himself (the families being connected by marriage), made precisely this connection:

Stuart, who had been driven from Scotland by the Duke of York, had been engaged in the Ryehouse-plot, and had assisted Monmouth in his attempt, was pardoned for all his treasons, and, as secretary to Lord Mellfort, who was Secretary of State for Scotland, was intrusted with all the secrets of government in that kingdom. His office obliging him to draw the state-papers, he filled them with high strains of the absolute power of the King, either from the affectation of loyalty natural to a new convert, or, by a refinement of revenge, to throw odium upon the sovereign he had formerly

¹⁴⁰Omond, *Lord Advocates*, 1:253-4, offered as evidence for this possibility statements from two letters, namely, ‘I am certainly told the King cannot trust his Forces at present either in England or Scotland’, and ‘I cannot but think that great confusions are coming upon England, and do also much fear this land [Holland, whence he wrote] shall not escape’ (brackets added). He then wrote, ‘These letters were a genuine service to the Prince of Orange’. The trouble is that while these evidence Stewart’s hopes and his willingness to pass on information possibly helpful to the prince’s cause when written, they are not evidence of his thinking after his pardon and entry into government, for they were written 15 and 16 Feb. 1687 (NLS Wodrow MSS. Oct. XXX fol. 40).

opposed.

Granted Stewart's earlier writings and activities, the latter is much more likely. Indeed, Dalrymple thought the 'state-papers drawn by Stuart, were contrived to offend those whom they pretended to oblige.'¹⁴¹

This leads to a difficulty in chronology. Both Burnet and Dalrymple assigned authorship of the February indulgence, or at least a strong advisory role in it, to Stewart.¹⁴² While it is conceivable that by that time Stewart was advising James's government in some way, it is improbable, especially that he would actually have had a hand in drafting the declaration, since by then he seems not yet even to have heard that a pardon was likely, let alone to have received one or been given his place in government. Yet the likelihood that both Burnet and Dalrymple were mistaken as to Stewart's having some role in crafting one or the other of the indulgences of that year is also small. It seems more probable that Dalrymple, writing nearly a century later and based on second- or third-hand reminiscences, and Burnet, who wrote his *History of His Own Time* over three decades later, were mistaken as to dates, that is, as to which indulgence Stewart drafted, but not as to his having drafted one of them.¹⁴³ Though his having a part in the February indulgence is very improbable, his having a part in the July indulgence would be natural granted his pardon in May. The great contrast between them in their treatment of Presbyterians also supports this conclusion.

What is important to understanding Stewart's aims in joining the government is the predictable impact of the declarations' wording on the Scottish people. The February indulgence rested the action on James's 'sovereign authority, prerogative royal, and absolute power [these phrases repeated later in the Declaration], which all our subjects are to obey without reserve', and required an oath acknowledging James

¹⁴¹Dalrymple, *Memoirs*, Part I, Book IV, pp. 72-3, 86.

¹⁴²Burnet, *Own Time*, 3:183n; Dalrymple, *Memoirs*, Part I, Book IV, p. 86.

¹⁴³Interestingly enough, Dalrymple wrote, 'I have never tried Burnet's facts by the tests of dates, and of original papers, without finding them wrong'; *Memoirs*, Part I, Book I, pp. 49-50n.

supreme governor of these realms, and over all persons therein, and that it is unlawful for subjects, on any pretence, or for any cause whatsoever, to rise in arms against him, or any commissioned by him, and that I shall never so rise in arms, nor assist any who shall so do, and that I shall never resist his power or authority, nor ever oppose his authority, to his person, as I shall answer to God, but shall to the utmost of my power, assist, defend, and maintain him, his heirs and lawful successors, in the exercise of their absolute power and authority, against all deadly.¹⁴⁴

Both Burnet and Dalrymple remarked that such language cannot possibly have been understood by Scottish Presbyterians and other defenders of ancient Scottish parliamentary rights as anything but an assertion—utterly unacceptable to them—of absolute, unlimited, irresistible power and authority in the throne—the very theory of monarchy Stewart had so strenuously criticized and condemned in *Naphthali*, *Jus Populi*, and Argyll’s *Declaration*. Dalrymple explained the words that way right after asserting Stewart’s intent to use his position in government to gain vengeance against the king. Wodrow confirmed that Presbyterians at the time understood them that way.¹⁴⁵

That James or his Scottish advisors would have used such language in the first indulgence, with or without Stewart’s support, was predictable, since it expressed precisely his theory of government. That it should have appeared again in the July indulgence, by which time Stewart’s advice is more likely to have been available, is more interesting. Stewart of all men would have understood its likely impact, and had he intended to shield James from the predictable hostile reaction he could have advised removing that language. Yet the July indulgence repeated the assertion of ‘our sovereign authority, prerogative royal, and absolute power’ as the basis for setting aside all previous laws to the contrary and added as a condition of

¹⁴⁴Wodrow, *History*, 4:418-19n.

¹⁴⁵Wodrow, *History*, 4:418-20.

dissenters' worship services' being permitted 'that they take care that nothing be preached or taught among them, which may any ways tend to alienate the hearts of our people from us or our government'.¹⁴⁶ The July indulgence also greatly broadened the freedoms enjoyed by Presbyterians, for whom, as remarked above, the February indulgence had made no material difference. That is precisely what Stewart would have desired; so was sustaining Scots' resentment of James's royal absolutism. The July indulgence, on which Stewart's influence is very likely, did both; the February indulgence, on which his influence is very unlikely, did only the latter.

Further, when at James's instruction Stewart replied to Fagel in May 1688¹⁴⁷ saying that his own correspondence of the previous year with Carstares had not been authorized by the king, he wrote, as Dalrymple put it, 'in a way which betrayed that it was.' According to Dalrymple, Stewart also privately advised Dykvelt, the Dutch ambassador to England, on the drafting of the prince's declaration justifying his invasion—something he certainly could not have done had the Dutch not trusted him then.¹⁴⁸ That is consistent with the fact that as late as 2 August 1687—over two months after the pardon and about a month after Stewart had joined James's government—Carstares had written to William Bentinck (1649-1709), among the prince's most trusted advisors, that he still trusted Stewart.¹⁴⁹

It appears, then, that his homage to the prince of Orange before Stewart's return to England was sincere and his promise well kept. The man called 'Jamie Wylie' was more wily than such as Willcock, Lauder, Macaulay, and Lang recognized. Rather than selling out his principles and friends, as those writers charged, he grasped an opportunity to insinuate himself into his enemy's government in a

¹⁴⁶Wodrow, *History*, 4:426-7n.

¹⁴⁷James Stewart, *James Steuarts Answer To a Letter Writ by Mijn Heer Fagel Pensioner to the States of Holland and West-Frisland, Concerning the Repeal of the Penal Laws and Tests* (London and Edinburgh, 1688).

¹⁴⁸Dalrymple, *Memoirs*, Part I, Book IV, p. 73; Book V, pp. 18, 40; Part III, Book VI, p. 129.

¹⁴⁹Carstares, letter to Bentinck, 2 Aug. 1687, in N. Japikse, ed., *Correspondentie van Willem III en van Hans Willem Bentinck, Eersten Graaf van Portland* ('S-Gravenhage, 1935), 758-61.

position in which he could make the latter's absolutist principles transparent even to the most obtuse. Nothing could have been better calculated to undermine James's reign than for his leading subjects to see in crystalline clarity the fundamental principle of his rule. No wonder the 'Episcopal clergy . . . regarded [Stewart] as a traitor in their midst' when he was appointed secretary to Melfort!¹⁵⁰ They were right—if a man can be a traitor to a king and a cause he never had embraced. Those who thought him a traitor to the Whig and Presbyterian causes (and who seem to have been few among Whigs and Presbyterians) were mistaken. As Story put it, some 'like Dalrymple and Steuart, who had hitherto been among the persecuted, now saw the turning of the tide, and came forward to take advantage of it; understanding well that when the issue came to lie between Popery and Presbytery in Scotland the decision would be sharp and quick, and probably not caring much how it should fare in the meantime with the Episcopal establishment, which stood perplexed and disarmed between the two.'¹⁵¹

Although religious toleration was a burning issue of the day, and religious liberty was on its way to becoming one, sovereignty was more widely debated. While there was, particularly among Anglicans, widespread belief in monarchical absolutism, belief in the sovereignty of the people represented by parliament had a long and illustrious past in both kingdoms by this time. Belief in wide and thorough religious liberty was still largely alien and would remain so for more than a century. The sad experiences of dissenters of all stripes—for all had been at various times—were paving the way to broad religious toleration, and beyond it religious freedom, but that recognition was yet far in the future. But belief that the king's authority was limited by law and derived from the people through parliament was already widespread and firm among dissenters and even many conformists. Georgina Gardner has written, 'Arguably it was James's unwillingness to back

¹⁵⁰Omond, *Lord Advocates*, 1:255.

¹⁵¹Story, *Carstares*, 149.

down on' the abrogation of the Tests, 'publicised through the printing of "Fagel's Letter" and Stewart's correspondence, which "made the invasion of England inevitable and cost him his throne".¹⁵² The argument here, though contrary to Gardner's general interpretation of Stewart's actions and correspondence in 1687-1688, is that precisely that might have been Stewart's hope all along. To force toleration or liberty—especially when the principal beneficiaries would be the feared and hated papists—by asserting absolute royal sovereignty was the surest way to provoke implacable opposition not only to absolutism but also to the prince who asserted it.

Stewart, long-time resistance theorist, opponent of royal absolutism, and ally to Shaftesbury, Sidney, and the rest of the radical Whigs, cannot have overlooked this. By promoting James's (probably pragmatic and temporary) religious liberty policy—a cause for which, with some restrictions, he had strong sympathy—he could subvert James's more fundamental cause, royal absolutism, which he opposed. If he could contribute to circumscribing James's power, or perhaps even his removal from the throne, he could also help prevent the eventual re-establishment of Catholicism. This is how he could have written to Carstares throughout 1687 even with considerable sincerity in support of James's indulgence and liberty policies, as preferable to the *status quo* under which the Protestant dissenters suffered, while still intending to undermine James's reign and what he conceived to be its fundamental principle. James's religious liberty policy was designed in part to drive a wedge between the Anglicans, who previously had benefited from intolerance, and the Protestant dissenters, who had been its victims, leaving the Catholics the unmixed beneficiaries. Stewart's aim was to reunite Scottish Episcopalians and dissenters against what at last even the Episcopalians could perceive as their more immediate common enemy—not Catholicism but royal absolutism (support for which was, in the Whigs' and Presbyterians' judgment, one of the errors of

¹⁵²Gardner, *Exile Community*, 239, citing Carswell, *Descent*, 109.

Romanism). Failing that, at least he could urge his friends back in Holland, by his letter to Carstares of 24 Sept., ‘Mistake not for God’s sake a providence, that ever our Adversarys [bishops of the Church of England] think miraculous, and be not deceived by their cajollings, who never had the least Kindly thought for us in their prosperity, and are only waiting for the Return of their opportunity. I know the same, may be said for the [Roman Catholics], but they are small and out of Hopes and would gladly componse for their security, unless we reduce them to dispair’.¹⁵³

Whatever is the best explanation of this correspondence, the publication of Fagel’s response, setting forth in no uncertain terms William and Mary’s position in contrast with James’s, set the stage for what eventually came to be called the Glorious Revolution. While they could support a broad religious toleration for Protestant dissenters and Roman Catholics and the repeal of penal laws, they could not support repeal of the Test and the opening of offices of public trust, civil and military, to Catholics. That would be too much of a threat to the Protestant cause not only in Britain but also throughout Europe, a cause of which William saw himself as the chief guardian.

The publication of excerpts from his letters to Carstares and of Fagel’s response added to reasons some, at least, had for suspecting Stewart’s integrity from the moment he had accepted the pardon—or before.¹⁵⁴ Consequently, his fate was uncertain during the remainder of 1688 and in the early months after the Revolution. Yet, as we have seen (p. 269), soon after it he was trusted by William’s government and in favour with his old Presbyterian friends, perhaps influenced in part by Coltness’s pleadings in his favour.¹⁵⁵

James’s government had restored Stewart to the Scottish bar on 17 January

¹⁵³NLS, Wodrow MSS Oct. XXX, f. 50.

¹⁵⁴Gardner, *Exile Community*, 228-30. Indeed, ‘As early as February 1686, the Haarlem gazette had printed that he had been pardoned and there were reports of his “discoveries knaveries and preferment” at Whitehall’ (*ibid.*, 220-21, citing SRO, RH15/106/611/uncat., a letter from Stewart to his friend Andrew Russell), but as the report of the pardon was at least fifteen months premature, the gazette’s other reports have no more historical credibility than rumours.

¹⁵⁵Thomas Stewart of Coltness, letter to Sir Patrick Hume of Polwarth, 25 Dec. 1688, in NAS, GD158/10/36.

1688, and in ensuing months he had prosecuted cases alongside Mackenzie, much to the latter's disgust (and probably his own).¹⁵⁶ He had been in London at the critical point of the Revolution, in December 1688, but early in 1689 had returned to Scotland. That Stewart was aware that his actions over the past two years might at least have *appeared* unfaithful to William may be seen by a letter he wrote 24 May 1689, two weeks after the coronation of William and Mary, to George, Lord Melville (1636-1707), newly appointed secretary of state for Scotland who had been among Scottish exiles in Holland, 'for removing of mistakes that I lye under'. He confessed 'that never was any man better satisfied to be confuted of his errorrs than I am to find myself so happily reprov'd by the change that God hath wrought'. But he insisted that his mistakes, such as they were, had been 'only in the midses', he having remained 'sound in the ends'. Assuming that he had fallen under the new king's displeasure, he assured him that he hoped that 'under so good a King and by so good a hand we shall have good men set over us, which will be our countries happiest restitution'.¹⁵⁷ This could be read as evidence that Stewart had abandoned William's cause but may be evidence of no more than that he knew others might suspect that. It might be easier to concede what they assumed and ask for mercy than to persuade them otherwise and demand justice. Regardless, either William had never really doubted him, or that letter and other efforts were effective, for by 3 July he would, after taking the oath of allegiance, swear the oath of parliament and take his seat, just in time to hear a reading of an act abolishing the prelacy he had so long opposed.¹⁵⁸ Beginning less than two months after William and Mary accepted the Scottish crown, then, he was to serve in government almost without interruption until his death over twenty years later.

¹⁵⁶Lauder, *Historical Notices*, 846; Omond, *Lord Advocates*, 1:255.

¹⁵⁷*Leven and Melville Papers. Letters and State Papers Chiefly Addressed to George Earl of Melville Secretary of State for Scotland 1689-1691* (Edinburgh, 1843), 25.

¹⁵⁸*An Account of the Proceedings of the Estates in Scotland 1689-1690*, 2 vols., ed. E. W. M. Balfour-Melville (Edinburgh, 1954), 1:153.

Chapter 7

His Majesty's Advocate: Stewart's Life, 1689-1713

After the Revolution, Stewart continued his religious and political activities. In 1690 he drafted an act for church settlement that abolished patronage and restored Presbyterian church government. His brother Thomas introduced it in parliament, which adopted it after some revisions. On 19 February he became a burgess of Edinburgh. On 17 July parliament repealed forfeitures against him and Coltness. He advised the Whig party and served the crown as solicitor in various causes.¹ By 1691 he had built a busy law practice in Edinburgh, the *Register of Privy Council* listing him active in at least twenty-two appearances representing clients, winning all but two.² On 5 January 1692 he was appointed a member of the council of the dean of the faculty of advocates, on which he was to serve regularly in coming years.³

On 8 November 1692 William and Mary named him lord advocate, the appointment consummated twenty days later. He would fill that post for nearly twenty years, until his death in 1713, except during a hiatus between May 1709 and October 1711. Stewart presented his commission, took the oaths of the judiciary

¹Coltness Collections, 94; Kenneth W. H. Howard, *Marion Veitch: The Memoirs, Life & Times of a Scots Covenanting Family (1639-1732) in Scotland, England and the Americas* (Ossett, W. Yorks, 1992) 367; Grant, *Faculty of Advocates*, 198; *Proceedings of the Estates*, 2:241; Omond, *Lord Advocates*, 1:255-6.

²RPC, Third Series, 16:53, 113, 135-7, 174-5, 224-5, 318, 333-4, 342, 346-7, 347-55, 382, 388-9, 400-407, 432-3, 445-6, 461-2, 475, 478, 511, 523-5, 534-5, 642.

³Pinkerton, *Minute Book*, 107.

court, and began prosecuting a case for the first time as lord advocate on 26 December. During the next session of parliament he introduced successful bills to require civil and criminal trials to be held in open court, ending the practise of secret trials frequently used during the Restoration monarchies. Late in 1693 he worked at enlarging the Advocates' Library. At the start of 1694 he was elected dean of the faculty of advocates.⁴

Over his early years in office he was, unsurprisingly, occasionally involved in prosecutions for treason against those who continued to support James or in enforcing the oath of allegiance to William and Mary. He became actively involved in the affairs of the Church of Scotland—e.g., conferring with Carstares on scheduling a general assembly, serving as a ruling elder on a committee to revise procedures of church discipline, and, in 1700, introducing legislation ratifying laws against popery and profanity and in favour of presbytery. His duties also involved raising troops and funds for William's military endeavours. In 1701 he again contributed to reform of criminal laws, this time drafting and pushing through parliament what became known as the Habeas Corpus Act for Scotland, for the first time restricting how long the lord advocate could keep someone imprisoned without bringing him to trial. Following the union he would effect legal reform again, this time with respect to the circuit courts.⁵ All his legal reforms reflected his political philosophy, restricting government and making it more accountable.

On 9 April 1695 Stewart was named to the commission to investigate the Glencoe Massacre. He was the principal author of the commission's report to parliament and prosecuted those responsible. He played a small role in drafting legislation leading to the formation of the Darien Company and its ill-fated

⁴APS 9:243; Omond, *Lord Advocates*, 1:242 (James Grant, ed., *Seafield Correspondence From 1685 to 1708* [Edinburgh, 1912], 114, wrongly dates the appointment to 20 Dec.); Omond, *Lord Advocates*, 1:277, 295, 256, 258-9; Pinkerton, *Minute Book*, 126, 128-30.

⁵E.g., *Seafield Correspondence*, 132, 138-9, 142-3; APS 9, Appendix, 112-17; *Acts of the General Assembly of the Church of Scotland M.DC.XXXVIII.-M.DCCC.XLII* (Edinburgh, 1843), 272-3; Sir David Hume of Crossrigg, *A Diary of the Proceedings in the Parliament and Privy Council of Scotland. May 21, MDCC.-March 7, MDCCVII* (Edinburgh, 1828), 5, 86; Story, *Carstares*, 292; *Carstares State Papers*, 200-201, 290-91, 555-6; APS 10:28; Omond, *Lord Advocates*, 1:263-5; NAS, mss. GD124/6/169, nos. 7-10.

settlement in Central America. In December 1696 he prosecuted, as required by statute, an eighteen-year-old Edinburgh student, Thomas Aikenhead, for blasphemy for flippantly denying the Trinity, calling Christ an impostor, espousing ‘a blend of pantheism and deism’, and denying the inspiration of Scripture. Aikenhead was convicted and, after the privy council denied him clemency, was executed on 8 January 1697. Stewart also prosecuted alleged witches, though it appears that he strove to ensure their humane treatment while incarcerated, and was called upon to enforce laws restricting Catholicism. Later that year Stewart wrote to Carstares that he was frequently accused of ‘takings’—profiting from fees received as lord advocate—and protested not only his own innocence but also that he wished such fees were prohibited and that his own financial distress (he had earned more as a private advocate than in office) was evidence that he was not abusing his office. He seems to have prospered soon enough, however, for by November 1699 he was able to lend the city of Edinburgh £10,000 Scots to enable it to pay overdue bills; he loaned it another £12,000 on 28 March 1707.⁶

Stewart’s religious fervour remained, and as before it had both private and public applications. On 13 September 1698, ‘the Lord’s day, and a violent frost’, he wrote in his Bible, after a general fast called in Edinburgh because of drought and famine and having heard a sermon on Jeremiah 14:3,

It . . . occurred to me, with great regret and confusion, that a backward misgiving season is certainly a wrathful affliction; yet it is certain, that the half of the superfluties even in food, which are at present used amongst us, would do more than relieve all the poor and indigent in Scotland; and if men would give in charity but a small quota of what they throw out in

⁶APS 9, Appendix, 98; Omond, *Lord Advocates*, 1:259-61, 262-3; *Papers Illustrative of the Political Condition of the Highlands of Scotland from the Year M.DC.LXXXIX to M.DC.XCVI* [1689-1696] (Glasgow, 1845), 99ff; *Seafield Correspondence*, 177-9; Lang, *History*, 4:56-7, 61; D. F. Wright, ‘Aikenhead, Thomas’, in *DSCHT*, 7; L. W. Sharp, ed., *Early Letters of Robert Wodrow: 1698-1709* (Edinburgh, 1937), 5n, 6; *Miscellany of the Maitland Club*, 3:2:392-5, 404; *Carstares State Papers*, 330-32; Helen Armet, ed., *Extracts from the Records of the Burgh of Edinburgh 1689 to 1701* (Edinburgh, 1962), 256, 133.

prodigality, were it but the price of their fine wigs and laces, it would afford an abundant sufficiency for all our necessities. How then should the Lord hear the prayer of such as have, and are uncharitable on such occasions? or do such indeed seriously pray to God in this matter? It is nowise likely.

He thought the government should remedy matters ‘by bringing all regularly to market, and lowering prices, and private men may also be very assistant, by restraining their superfluities, and giving the same, or value thereof, to the poor’. Six months later, in good Covenanter fashion, he wrote a covenant with God, giving his heart, fear, and obedience to Christ. On 23 September 1699 he attended communion sermons at the West Kirk in Edinburgh and then wrote, ‘but oh! the mercy and grace of our God, that offers his salvation at so easy a rate, as look unto me, and be ye saved. But this look must be, and when right, will be a convincing, transforming, rejoicing, and *establishing look*; and the Lord grant that I may so look, and behold the glory of God in the face of Christ Jesus’.⁷

On hearing news of William’s death (8 March 1702), Stewart, sitting with the general assembly, wept. The great Protestant hero to whom he had sworn ‘all fidelity’ was gone. His duties required him to ensure a smooth transition to the government of the new queen, Anne, and he pursued them vigorously, acting against a group of advocates who had questioned the legitimacy of parliament after William’s death and, ironically, introducing legislation making it treason to question Anne’s succession. In 1704, the year he was knighted, he was called on to push through parliament an act ensuring the right of succession of Sophia, Electress of Hanover.⁸ He was heavily involved in debates over the union of parliaments, which he personally opposed, tepidly promoted as an officer of the crown, yet tried to hinder, even cooperating with ministers of the kirk who argued against the union

⁷‘Extracts from Sir James Steuart’s Bible’, 241-3.

⁸Wodrow, *Analecta*, 1:13; Omond, *Lord Advocates*, 1:266-9; Hume, *Diary*, 90, 92-4; William Law Mathieson, *Scotland and the Union: A History of Scotland from 1695 to 1747* (Glasgow, 1905), 81-2; *Coltness Collections*, 52; P. Hume Brown, ed., *Letters Relating to Scotland in the Reign of Queen Anne by James Ogilvy, First Earl of Seafield, and Others* (Edinburgh, 1915), xix.

from the National Covenant.⁹ His nephew wrote that the ‘last time ever he was out on his own feet—and it was even then much for him to move them, and was supported by two—was when the first article of the Union was voted in Parliament [4 November 1706]. He was putt upon to speak upon it, but declined; and after that night he fell very ill, and every body expected that winter he should have dyed; yet it pleased the Lord he recovered some sort of health, but never his limbs’. When on 7-9 February 1707 parliament debated the crucial article 22 of the Treaty of Union, opponents prepared to walk out *en masse* and circulate a protestation, said to have been written by Stewart, to obtain as many citizens’ signatures as possible, which they would then forward to the queen, but the plan fizzled when Hamilton failed to take the lead.¹⁰

After the union, he understandably fell out of favour with the queen, sometimes requiring direct orders before he would act on her policies, and in 1709 he was removed from office, prompting Wodrow to write to Stewart’s brother Robert, ‘I was much vexed when I heard of the Advocate’s losing his place. I hoped he should have died in that post. I am persuaded this change is a great loss to this Church, and I fear we shall feel it sensibly. I have nobody now at Edinburgh . . . that I can depend on for news’. But by June 1710 there were rumours that his successor, Sir David Dalrymple, would resign, and James Erskine ruminated in a letter to the Earl of Mar on who might replace him, Scotland being ‘never so destitute of able Lawyers as it is at present’. He pointed out why each likely candidate was unqualified. Though two were possibilities, he concluded that for skill in public affairs and the criminal law ‘old Sr Ja: Stewart among all our Advctes is *non pareille*’—and added, ‘but you know the manner of the man’, apparently implying

⁹APS 11:69; Hume, *Diary*, 119-20; Riley, *Union*, 58, 275, 319n; Scott, *Fletcher*, 85-6, 173, 177, 255n, 256nn.; *Correspondence of George Baillie of Jerviswood, 1702-1708* (Edinburgh, 1842) 101, 153-4, 165-7, 169; letter from James Erskine to Earl of Mar, 3 Aug. 1706, ms. in NAS, GD124/15/413; letter from Mar to Sir David Nairn, 21 Sept. 1706, ms. in NAS, GD124/15/449 [#19]; letter from Mar to Godolphin, 21 Sept. 1706, ms. in NAS, GD124/15/462.

¹⁰*Coltness Collections*, 369-70; Scott, *Fletcher*, 205; Lang, *History*, 4:133-4; Omond, *Lord Advocates*, 1:270-71.

that his appointment would bring difficulties. Sure enough, in September 1711 Stewart was restored to office, in which he took stern measures against Episcopal ministers who had refused the oath of allegiance and would not pray for the queen. He was to take the other side, reluctantly, the following year, when many Presbyterian ministers opposed an oath of abjuration (designed to secure the Protestant religion and a Protestant succession, but worded so as to imply favour specifically to the Church of England). At first opposing it himself, he then sought to take a middle course, took the oath, wrote in defence of it, and even helped his old friend Carstares to construct an argument for it. But later, when he saw how many ministers opposed it, he reconsidered and said he 'wished all had refused', reasoning that the government would not risk a repeat of the troubles of the 1660s by turning the majority of the clergy out of office. At last he prepared a declaration for ministers to sign in taking the oath that cleared their consciences of any implication of unfaithfulness to the Presbyterian church.¹¹

As early as September 1695 Stewart's health began to fail. He wrote to Seafield that he had been 'eight dayes lame of both my feet by the gout, and . . . not yet able to walk' and to Carstares that he was suffering from gout and gravel (kidney stones). 'Old sinners, many sores', he wrote to Carstares 'but mercy is a sweat refuge; and I hope I shall long for, and find rest'. The gout continued to plague him for the rest of his life. By 1700 his health seems to have become very poor, but in that year George Meldrum, minister of the Tron Kirk and later professor of divinity at Edinburgh University, prayed for him, and he recovered. He participated in quarterly Saturday prayer meetings of the Society for Christian Fellowship and Reformation of Manners, usually lasting four to five hours, at the home of John Erskine of Carnock. In November 1701 it was rumoured that he had 'printed a commentary on the Revelation', a copy of which Wodrow sought from Stewart's

¹¹Correspondence between Stewart and Mar, mss. in NAS, GD124/15/747, 761; Thomas M'Crie, ed., *The Correspondence of the Rev. Robert Wodrow*, 3 vols. (Edinburgh, 1842-1843), 1:18-20; NAS, GD/124/15/981; Story, *Carstares*, 347-8; Wodrow, *Analecta*, 2:95-6, 205; *Coltness Collections*, 371-2; NAS GD/150/254/423.

nephew Robert, son of Coltness. Through the years his Presbyterian convictions grew stronger, and in 1703 he assisted the church in resisting an attempt, associated with the move toward parliamentary union, to force it to accept Episcopal ministers.¹²

During the winter of 1706-1707, ‘when he was so long ill, [Stewart] was in strange raptures in his prayers, sometimes, in his family’. His health continued to deteriorate, but his mind remained sharp enough to make a strong impression on a visiting minister, the English nonconformist Edmund Calamy (1671-1732), in Scotland in April 1709. Calamy wrote that Carstares took him

to old Sir James Steuart’s—the wonder of his age for vivacity and spirit, briskness of parts and readiness of memory, considering his years. . . . We found him sitting in an elbow-chair, to which he was confined. He embraced me, and intimated how well pleased he was that I would pay a visit to an old man worn-out and just going off the stage. . . . Sir James entered into free discourse about the civil and religious interests of this island, the great necessity and difficulty of the union between England and Scotland, &c. He showed it impossible to have secured their Church settlement, or kept out the Pretender without it, and how it might be best improved. On all which heads he offered a great many very noble thoughts, which showed a wonderful and uncommon knowledge of men and things. . . . I cannot remember I ever spent a couple of hours in free conversation with more satisfaction in my whole life.

But it is appointed to everyone once to die (Hebrews 9:27). On 22 April 1713 Carstares wrote in a letter, ‘The honest old advocate seems to be a-dying, and longs to be at home. He will make a great gap, and we shall miss him greatly’. He died on 1 May, at age 77, and was buried in his father’s plot in Greyfriar’s Kirkyard.¹³

¹²*Seafield Correspondence*, 169-70; *Carstares State Papers*, 262, 338; *Coltness Collections*, 370; *Journal of Erskine*, 236; Wodrow, *Early Letters*, 181-2 (Wodrow’s editor noted of this commentary, ‘I have found no trace of this either in print or manuscript’.), 255; Riley, *Union*, 53.

¹³Wodrow, *Analecta*, 2:202-8; Story, *Carstares*, 310-11, 354; *Coltness Collections*, 44.

Elegies (not the most credible sources of facts but suggestive indicators of reputation) called him ‘a man of *Peace*, and yet a man of *Strife*’; of ‘unaffected *Piety*, and *Patience*’; of ‘*universal Reading*’, unparalleled knowledge of the law, ‘*deep Politick Reach*’, conscience and honesty, orthodox and good, with deep views of faith and mysteries; friend and benefactor of lawyers and ministers alike. He was a pillar of state and church, profound in wisdom,

But that which Crowned all, his PIETY,
Unshaken Steadfastness and PROBITY;
His Perseverance in the way of GRACE
And Active Diligence in ev’ry CASE
To Prosecute the Welfare of his NATION,
And CANDOR in so High a Post or Station,
Surpass all that can be Express’d, or said,
His Shining TALENTS, not in Hoords uplaid
But Vig’rously with much Activity
Exerted were, ev’n to a PRODIGY.¹⁴

Conclusion

This is the first in-depth study to describe and interpret Sir James Stewart of Goodtrees’ political thought as expressed in *Naphtali*, *Jus Populi Vindicatum*, and lesser writings, to locate his thought within the stream of Calvinist resistance and broader political theories, and to explore his life and career. It has shown that his writings form a significant segment in the line from such early Calvinist political writers as Ponet, Beza, Knox, Buchanan, the author(s) of the *Vindiciæ Contra Tyrannos*, Althusius, and Rutherford, on the one hand, and the later Locke, on the other, who, as we have seen, was a co-conspirator with Stewart in exile. Stewart’s political philosophy is covenantal, viewing every government as founded and

¹⁴NLS, Pamphlet Series, 1.10, Nos. 94, 95.

conditioned on an agreement, tacit or explicit, between rulers and people, the chief ends of which are the safety of the people and the honour of Christ by the enforcement of God's laws and true worship. He differed from earlier writers by asserting for private persons a greater liberty to resist tyranny without leadership from lesser magistrates. He differed from Locke by retaining great emphasis on maintenance of orthodox religion as an important end of government policy and reason to resist a government that threatened it. The principles on which he rested his case for resistance were, however, largely the same as those Locke would use when writing the *Second Treatise of Government* in the early 1680s and are reflected in the American *Declaration of Independence*.

For twenty-seven years as private lawyer, political pamphleteer, and plotter against kings he considered tyrants, James Stewart sought to further the cause of King Jesus. For twenty-four years as lord advocate, parliamentarian, and churchman, he did the same. Whether in exile or in office for the crown, he sought the peace and purity of the church and the liberty and security of the people while—even by—opposing royal policy that he thought threatened them. To the end of his life he remained His Majesty's advocate.

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