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Feudal Law and the Unionist Writings of Thomas Craig¹

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When James VI succeeded to the English throne in 1603, he swiftly merged his Scots and English titles into a new style: King of Great Britain. It was an act that reflected his ambitions for the two kingdoms over which he now ruled. James seems to have believed that he could convert the dynastic union of Scotland and England into an authentic political and institutional union where both countries would share a single parliament, a single church, a single set of laws and, indeed, a single economy as part of a new quasi-imperial Kingdom of Great Britain.² One of the most enthusiastic advocates for British union was the celebrated Edinburgh jurist Thomas Craig.

Public opinion in the two kingdoms, however, was considerably less supportive. National identity, historical enmity and religious differences all conspired against James' dream of a united British state. Nevertheless, in deference to their monarch's wishes, in 1604 the two parliaments appointed commissions "to confer, treat and consult upoun a perfyte unioun of the realmes of Scotland and England" and one of those chosen to represent Scotland was none other than Thomas Craig.³ If Craig and his king genuinely expected a "perfyte unioun" to result from the negotiations, they were to be sorely disappointed. Both parliaments were suspicious of the entire idea and it is notable that the

¹ I must express my gratitude to the anonymous reviewers whose insights and advice have immeasurably strengthened this article. I am also very grateful to colleagues who have read over drafts: Lesley-Anne Barnes Macfarlane; Jonathan Brown; Mark Godfrey; Clare Frances Moran; James Wallace; and Richard Whitecross.

² A Harding, *Medieval Law and the Foundations of the State* (Oxford, 2002), 330-331. The possibility of creating a new Empire of Great Britain, of which the Scottish and English kingdoms would be constituent parts, had also been mooted: see B Galloway, *The Union of England and Scotland 1603-1608* (Edinburgh, 1986) 21.

³ RPS 1604/4/20

Scots legislation appointing the commission is replete with assurances that union would not prejudice or harm “the fundamentall lawes, ancient privilegeis, offices and liberteis of this kingdome” nor the Scottish people’s “securitie of thair landis and levingis, richtis, liberteis, officeis and digniteis”.⁴ If the Scots were suspicious of what a union augured for their rights and liberties, many English parliamentarians were overtly hostile to the entire concept.

Despite its unpopularity with the peoples and parliaments of both kingdoms, the union is a recurring theme in all of Craig’s extant writings. His unionism arguably had a deeper intellectual foundation than that of his king and many of his contemporaries. The centrality of unionism to Craig’s thought and worldview is obvious from even the most cursory inspection of his written works. Less obvious is the intellectual force that motivated his unionism and that, in the aftermath of his “chastening experience” as a union commissioner,⁵ impelled him to set down his arguments in favour of the union in a Latin treatise, the *De unione regnorum Britanniae tractatus* (“Treatise on the union of the kingdoms of Britain”). Although written in 1604-05 and revised in 1607, the text remained unpublished until Sanford Terry’s Latin edition and English translation of 1909.⁶

While the *De unione* was the longest and most sophisticated work of Jacobean unionism,⁷ it was ultimately only one of a number of unionist tracts and treatises written on both sides of the border in the aftermath of the Stuart accession.⁸ While these texts vary in length, literary quality, argumentation and even language,⁹ they all advocated for some form of British political union. It is natural that we would locate Craig’s work within that context. However, the *De unione* must also be understood within the context of the Treaty of London of 1604 which brought an end to two decades of Anglo-Spanish warfare.

⁴ The Scottish position has often been glossed over with the assumption that Scottish public opinion favoured the union for economic reasons. In fact, the Scots position was initially highly cautious but soon become resentful: see Galloway, *The Union*, 23-24.

⁵ R A Mason, *Kingship and the Commonweal Political Thought in Renaissance and Reformation Scotland* (East Linton, 1998) 268

⁶ T Craig (ed. and trans. S Terry), *De unione regnorum Britanniae* (Edinburgh, 1909). All future references in this article are to the page and folio numbers of that text. All translations are the present author’s own. In places, perceived errors in the Latin text have been corrected.

⁷ At about 95,000 words in the Latin, it is, in fact, roughly as long as every other contemporary Scottish unionist text combined: see Galloway, *The Union*, 56

⁸ On these, see Galloway, *The Union*, 30-53 and, for a catalogue of the tracts, see 56-57.

⁹ Most were written in English or Scots, but a few (such as those of Craig, Robert Pont and Alberico Gentili) were in Latin.

Scotland had remained uninvolved in the Armada war.¹⁰ Hence, one might assume that Spain was not something that exercised the minds of most Scots at the time of the Stuart accession.¹¹ This article, however, proposes that Craig's primary motivation for the union was his fear of an aggressive Catholic Spain that had spent the previous two decades endeavouring to undo the Reformation in the British Isles. By close analysis of the Latin text, it will be demonstrated that Craig's vision of a united Britain under the Stuart monarchy was founded upon the intersection of his Protestant religious convictions and his parallel faith in the idealised social bonds of loyalty and gratitude which he believed were created by feudal law.

Consequences of disunity: Craig's summary of British history

Craig began his treatise in defence of Jacobean unionism by declaring his hope that the union of the Scottish and English monarchies in the person of James VI and I would bring peace and security to Britain. "If ever there was a time when Britain had reason to be thankful for the course of events," he opines, "it is that which recently passed."¹² "For though [Britain] until this point had been tormented by so many miseries, assailed by so many civil wars, convulsed by so many internal rebellions, today, if she recognised her own good fortune, she appears to have emerged from all miseries and disasters and to rest in the most desired harbour of happiness and security."¹³

From the very first start of the text, therefore, Craig has signalled that it is security – and not, for example, economic prosperity – that is at the heart of his vision for the union. The very first reason articulated by Craig in the *De unione* in support of the uniting of Scotland and England into a single kingdom is the threat posed by foreign invasion. As he explains, "Due to its prosperity and abundance of all wealth, there is no part of the countries of the earth that has been assailed by foreign invasions as often as England"¹⁴. Thus, the security Craig has in mind is not simply an end to

¹⁰ In fact, at the time of his accession to the English throne, King James VI was hosting an emissary from the Hapsburg governor of the Netherlands, Archduke Albert VII, who was trying to put an end to the recruitment of Scottish volunteers to assist the Dutch rebels; see P Croft, "Rex Pacificus, Robert Cecil, and the 1604 Peace with Spain", in G Burgess, R Wymer & J Lawrences (eds.), *The Accession of James I: Historical and Cultural Consequences* (Basingstoke, 2006), 140-154, at 147.

¹¹ Cf. Croft, "Rex Pacificus", 140

¹² Craig, *De unione* 1 (fol. 1): *Quod si ullum fuit unquam tempus quo Britannia de rerum successu sibi merito gratulari potuit, hoc illud est quod nuper contigit.*

¹³ Craig, *De unione* 1 (fol. 1): *nam quae hactenus tot miseriis agitata, tot bellis civilibus conflictata, tot intestinis seditionibus convulsa fuit, hodie si suam felicitatem agnoverit ex omnibus miseriis et calamitatibus videtur emerisse et in optatissima felicitatis et securitatis statione conquiescere.*

¹⁴ Craig, *De unione*, 2 (fol 2): *Nulla pars orbis terrarum ob soli benignitatem et rerum omnium abundantiam saepius quam Angliam externis irruptionibus petita est.*

conflict between the two kingdoms of Britain, but security against foreign enemies. The first chapter of the *De unione* is a lengthy recounting of the various invasions to which Britain had been subject.

The first invaders of Britain were the Romans, first in the form of Julius Caesar, whose efforts ended in failure, and subsequently the emperor Claudius whose invasion was successful.¹⁵ Drawing on Caesar's account of the invasion in the *De bello Gallico*, Craig explains that Britain, in the first century BC, was divided into a number of different minor kingdoms and that "in Kent alone there were four kings".¹⁶ "Such was the condition of Britain at that time that there were individual kings ruling over their own states and, indeed, engaged in deadly rivalries and feuds with each other and intent upon the destruction of their neighbours. Some of these sought the friendship of the Romans so they might take vengeance on their enemies; others preferred to suffer any fate over voluntary submission to the Romans."¹⁷ Craig explains that these internal divisions were the ultimate cause of the Roman subjugation of Britain: "Thus, while the kings of Britain were divided, with some offering hostages and others offering tribute and submission, all were conquered because they preferred security over liberty and opened the island to the dictator."¹⁸ He asserts that, had Britain been united under the dominion of a single monarch, Caesar would never have attempted to attack so densely populated an island.¹⁹ He augments his argument with a quotation from Tacitus, the most ambiguously imperialistic of the Roman historians, who describes the situation in Britain on the eve of Roman conquest in the following terms: "They had once been ruled by kings, but now they are divided by chieftains into factions and parties. In facing nations of such strength, nothing was more advantageous to us than their failure to act in concert. Only rarely will two or three states unite to fend off a common danger. Thus, they were conquered collectively because they fought individually."²⁰ This contention that the failure of the Britons to unite was the ultimate cause of their conquest by Rome is a more developed version of the same argument made in the dedicatory

¹⁵ Craig, *De unione*, 2-3 (fols. 3-4)

¹⁶ Craig, *De unione*, 4 (fol. 4): *nam quatuor regum in solo Cantio meminit*. Cf. Caesar, *De bello Gallico*, 5.22.

¹⁷ Craig, *De unione*, 4 (fol. 5): *Itaque, ea tum fuit conditio Britanniae ut singulis civitatibus sui essent reges, immo inter se capitalibus odiis, dissidentes, et in vicinorum exitium efferati, quorum alii amicitiam Romanorum ut hostes ulciscerentur ambiebant, alii quacumque fortunam subeundam maluerant quam voluntariam sub Romanis servitutem*.

¹⁸ Craig, *De unione*, 5, (fol. 5): *Itaque dum inter se reges Britanniae distrahuntur et alii obsides, alii tributum et imperata facere promittunt, securitatem libertati praeferentes omnes vincuntur et insulam dictatori aperuerunt*.

¹⁹ Craig, *De unione*, 5 (fol. 6)

²⁰ Tacitus, *Agricola*, 12: *Olim regibus parebant, nunc per principes factionibus et studiis trahuntur. Nec aliud adversus validissimas gentis pro nobis utilius quam quod in commune non consulunt. Rarus duabus tribusve civitatibus ad propulsandum commune periculum conventus: ita singuli pugnant, universi vincuntur*.

epistle to Craig's great legal treatise, the *Jus feudale*,²¹ where the same part of the *Agricola* is paraphrased for the same rhetorical ends.

Craig saw nothing unique in Britain's fate. He states that Gaul, Spain, Germany, Illyria and Greece had all been divided and all had eventually fallen beneath the Roman yoke. Ireland too had been divided in Tacitus' time and remained so for a thousand years after: "When Henry II invaded Ireland, he encountered many kings there, which made it all the easier for him to impose his rule."²² He summarises his essential point when he tells us that Britain became a province of the Roman empire because "as I said, the multitude of kings invited such an outcome".²³

As Craig understands it, this pattern of division leading to conquest repeats with the decline of Roman power over Britain: "For when the Roman empire fell, the Scots and Picts saw that Britain, which was a wealthy province, had been abandoned and was devoid of any hope of defence or aid (for their leaders were either vacillating or fighting among themselves over the government), and so they invaded in hope of acquiring plunder, reckoning that this was an advantageous time for their crime, and they spread the most terrible war from one end of the country to the other."²⁴ But there followed a worse calamity. "Having been abandoned by the Romans and with their forces divided, the Britons were beset by the Scots and Picts and driven to the coast and so, to their own great harm, they called upon Saxon mercenaries for assistance; for the Saxons recognised that the island was wealthy and the natives, who had long since abandoned the arts of war, were unable to resist them, so, trusting in the conflicts between the British kings, they made a plan to occupy the part of Britain that had formerly been a Roman province."²⁵ Craig's understanding of British history is thus defined by the repeating pattern of native disunity leading to foreign conquest, first by the Romans who merely subjugated them, then by the Picts and Scots, and finally by the Saxons who drove them into the mountains of Wales and took the greater and wealthier part of Britain for themselves.

²¹ *Epistola nuncupatoria*, in T Craig (ed. & trans. L Dodd) *Jus feudale tribus libris comprehensum* Book 1 (Edinburgh: 2017), lxxi

²² Craig, *De unione*, 5 (fol. 6): *Et Henricus secundus cum eam occuparet, plures reges ibi offendit et proinde facilius eam in suam redegit potestatem.*

²³ Craig, *De unione*, 7 (fol. 8): *cum occasionem, ut dixi, regum multitudo praebuit.*

²⁴ Craig, *De unione*, (fol. 8): *nam sub occasum Romani imperii, Britanniam, qua provincia fuit praedae, relictam et omne praesidii et auxilii spe destitutam (dominis sic de administratione ambigentibus aut inter se contententibus) Scoti et Picti cernentes et in partem praedae quasi acciti, eam suae injuriae opportunam rati, atrocissimo bello invaserant a fine ad terminum.*

²⁵ Craig, *De unione*, 8 (fol. 9): *Britanni enim a Scotis et Pictis vexati, et ad mare usque pulsati cum a Romanis destituerentur et viribus suis dissiderent in auxilium Saxones stipendarios advocarunt, sed magno cum suo malo, nam Saxones insulae benignitate cognita et incolarum in resistendo imbecillitate, quae longo tempore armorum studia intermiserat, et freti regum Britannorum dissidiis de occupanda ea parte Britanniae quae Romanorum erat provincia cogitarunt.*

The Saxons, however, learnt no lessons from the fate of the Britons. Craig tells us that governance of the Saxon kingdoms must be explained, “because it will make clear, as though in a mirror, how wretched is the condition of a people beneath a multitude of kings.”²⁶ Having driven the Britons out of what would become England, the Saxons did not unite under the leadership of a single monarch. Instead, “the Saxons established a heptarchy or seven kingdoms and whichever leader had occupied any given region with his people and warriors was said to be the king who reigned there.”²⁷ In fact, though, “there were in Britain at one and the same time eight kingdoms of the Anglo-Saxons, three of the Britons, and two of the Scots and Picts, differing from one another in power and authority”.²⁸ “But, returning to the heptarchy, what do we find within it other than endless butchery of kindred kings and, beneath the authority of each, a slaughterhouse of nations?”²⁹ This grim description of Saxon England is followed by an extensive account of the wars of the Anglo-Saxon kingdoms, including the Danish invasion of England and the battle of Degsastan in 603 between the Scots and Anglo-Saxons of Bernicia. As for the Picts, “I pass over the fact that, around this same time, the entire nation of the Picts was exterminated by the Scots, to such an extent that neither the name nor any remnants of that people, made so famous by the Roman and Saxon wars, is to be found anywhere on earth today.”³⁰ With the destruction of the Picts by the Scots, “πολυκοιρανία was ended in the northern part of Britain and an end was put to all the wars which each of these nations, the Picts and Scots, had waged most determinedly since their beginnings”.³¹ The use of the Greek word is interesting and demands comment. Its standard translation is “rule by many”,³² and its earliest provenance lies in Book 2 of the *Iliad*, where the hero Odysseus rallies the Greek army at Troy behind the leadership of Agamemnon saying οὐκ ἀγαθὸν πολυκοιρανίη: εἷς κοίρανος ἔστω,/ εἷς βασιλεύς, which can be translated as “A multitude of rulers is no good thing; let there be one ruler,/ one king.”³³

²⁶ Craig, *De unione*, 8 (fol. 10): *nam in ea tanquam in speculo quam misera sit sub pluribus regibus populi conditio facile apparebit.*

²⁷ Craig, *De unione*, 8 (fol. 10): *heptarchia sive septem regna inter Saxones erecta sunt, sic ut quamque regionem quilibet duxerit cum gente sua et copiis occuparat, in ea regnare et rex dici voluit.*

²⁸ Craig, *De unione*, 9 (fol. 10): *sic et uno et eodem tempore octo Anglo-Saxonum, tria Britonum, duo Scotorum et Pictorum regna in Britannia essent, inter se imperiis et ditionibus distincta.*

²⁹ Craig, *De unione*, 9 (fol. 10): *Sed ut ad heptarchiam redeamus, quid in ea nisi regum licet ejusdem gentis perpetuam carnificinam populorumque sub cujusque ditione macellum reperiemus?*

³⁰ Craig, *De unione*, 10 (fol. 11): *mitto eodem tempore, deletam totam Pictorum gentem a Scotis, adeo ut neque illius gentis, quae Romanis et Saxonibus bellis erat nobilissima, nomen aut reliquiae ubivis terrarum hodie reperiantur.*

³¹ Craig, *De unione*, 10 (fol. 11-12): *et sic in septentrionali parte Britanniae πολυκοιρανία extincta est et bellis omnibus finis impositus quae utramque Scotorum et Pictorum gentem ab earum primordiis gravissime exercuerant.*

³² H G Liddell and R Scott, *An Intermediate Greek–English Lexicon* (Oxford 1889) s.v. πολυκοιρανίη

³³ *Iliad*, 2.204-5

Whether Craig had read the Greek text himself or whether he was borrowing the quotation from a humanist author,³⁴ the Homeric ethos of unity beneath the leadership of a single king was very close to his own political and social inclinations. The core of his argumentation is the repeating historical cycle whereby disunity and internecine strife among the peoples of Britain lead inevitably to foreign invasion and subjugation. From that perspective, even the supposed extermination of the Picts is something to be welcomed as a step on the path towards perfect unity of a single people beneath the rule of a single monarch.

The next catastrophe to befall Britain is the Danish invasion, which is assigned to 790. England at this point was still divided into multiple kingdoms and this is given as the cause of the invasion: "The multitude of kings on the islands encouraged the Danes, who assumed they would be able to deal with each one separately, and that, among people who were divided by such bitter hatred, perhaps, with the lure of war or plunder, they might even recruits allies who hoped to bring about the destruction of their rivals."³⁵ The English and Scots were mutually antagonistic, as Craig tells it, because the English had aided the Picts in their wars with the Scots and this aid may have been provided because the Picts had assisted the Saxons against the Britons. While the picture painted by Craig is clearly very similar to his description of Britain on the eve of the Roman invasion, the eventual outcome is quite different. Despite their hostility to one another, the peoples of Britain actually united against the Danes, their common religious enemy: "At length, [the Scots] formed an alliance with the Saxons, who by that time had assumed the Christian faith. The main reason for the alliance was that the Danes were then most bitterly assailing the Christians."³⁶ In consequence of the Anglo-Scottish alliance, Danish ambitions were checked and Christianity was preserved in Britain. This story was to prove a key intellectual frame and religious touchstone for Craig's unionism and, indeed, for his worldview in general, namely that, notwithstanding the political disputes and historical antagonism, co-religionists could come together in the face of a common threat.

Following the Danish invasion, Craig enters into a description of the Norman Conquest and the many subsequent wars to which medieval England was subject, including the Wars of the Roses. His narrative transitions from a stark warning about disunity in the face of foreign threat to the idea that disunity at home has been an obstacle to English expansion abroad. It is claimed that Henry VIII

³⁴ On Craig's enthusiastic but sometimes imperfect use of Greek, see L Dodd, "Thomas Craig's Aetiology of Law and Society: Literary Dependence and Independence in the *Jus feudale*", *Journal of Legal History* 37 (2016) 121–179, 136–139

³⁵ Craig, *De unione*, 10 (fol. 12): *fecit animos Danis regum in insula multitudo, quod cum singulis tantum rem futuram sibi sperarent, fortasse etiam in parte, sive belli sive praedae accessuros, qui tam atrocibus odiis inter se dissidebant et auxiliaria arma iuncturos ut aemulis exitium parerent.*

³⁶ Craig, *De unione*, 11 (fol. 13): *Socia tandem cum Saxonibus, qui tum Christianam religionem induerant, arma conjunxerant: maxime quod Dani tum Christianos acerrime persequerentur.*

might have conquered France completely following his crushing victory at the Battle of the Spurs in 1513, but his progress was checked when James IV invaded England, leading to disaster for both Scotland and England. The Scots were disastrously defeated at Flodden,³⁷ but the English invasion of France was thwarted and Henry forced to sue for peace.³⁸ Thus, the argument seems to run that, even where Britain is not in immediate danger of foreign invasion, disunity served only the French while leading to disaster for the Scots.³⁹

As Craig moves to nearer contemporary events, he brings us to the relationship between Scotland and England which is one defined by mutual animosity. He introduces modern Britain with a description of Greece: “The ancient Greeks were accustomed to call Boeotia the dancing ground of Mars, because it was there, as though on a dancing stage or in a theatre, that Mars was accustomed to exhibit his spectacles to the public. Nor was this unfair, for noble Boeotia was the site of the bloodiest battles.”⁴⁰

These remarks are largely identical to comments found in the dedicatory epistle to Craig’s great legal treatise, the *Jus feudale*.⁴¹ We can safely assume that the Greek motif was duplicated in both sources because it pleased Craig. Greek was uncommon in 16th century Scotland, especially when compared to the ubiquity of Latin, and Craig, as has been observed, was self-evidently proud of his knowledge of the language.⁴² James Melville’s claim that, prior to the arrival of Pierre de Marsilliers at Montrose Grammar School in 1534, the Greek language had been “a rare thing in the countrey, nocht hard of before” was probably not much of an exaggeration.⁴³ By Craig’s day, it was less rare, but still far from common. By utilising examples taken from Greek history, Craig emphasised the depth of his learning.⁴⁴ However, he would not have used the Greek motif unless, from his point of view, it was also apposite. In both texts, he concludes his comparison of Britain to Boeotia with a reference to the conquest of Greece by Philip of Macedon. In the *De unione*, he says:

³⁷ Cf. Craig, *Jus feudale*, 1.13.12.

³⁸ Craig, *De unione*, 13 (fol. 15)

³⁹ This, of course, is an interesting perspective given that the Scots and French traditionally saw one another – and were seen by the English – as natural allies sharing a common foe in England; cf. Galloway, *The Union*, 163.

⁴⁰ Craig, *De unione*, 13 (fol. 16): *Veteres Graeci Boeotiam soliti sunt Martis orchestram appellare, quod in ea tanquam scena saltatoria sive in theatro Mars spectacula sua solitus sit publico exhibere, nec injuria erat enim Boeotia multis cruentissimis praeliis nobilis.*

⁴¹ *Epistola nuncupatoria*, in T Craig (ed. & trans. L Dodd) *Jus feudale tribus libris comprehensum* Book 1 (Edinburgh: 2017), lxix ff.

⁴² J W Cairns, T D Fergus and H L MacQueen, “Legal Humanism in Renaissance Scotland”, *Journal of Legal History* 11 (1990) 40–69, 50

⁴³ J Melville, *The Diary of Mr James Melville 1556-1601* (Edinburgh, 1829) 31

⁴⁴ Dodd, “Craig’s Aetiology of Law and Society”, 138-139

“The Athenians and Thebans were undone by King Philip of Macedon at the famous battle of Chaeronea and the liberty of Greece from that time was greatly diminished.”⁴⁵

In the *epistola nuncupatoria* to the *Jus feudale*, he says much the same thing:

“And the Athenians and Thebans were undone there too by King Philip of Macedon at the famous battle of Chaeronea, leaving to the Greeks only the name or shadow of liberty.”⁴⁶

Boeotia thus served as a vast killing ground where, for centuries, the Greeks slaughtered one another until they were finally conquered by an external enemy and all liberty was extinguished. Again, we see the theme of peoples weakening themselves through needless conflict while ignoring a looming common enemy. This is the heart of Craig’s unionism. However, Britain’s situation is worse than that of Boeotia. In both the *De unione* and the *Epistola*, we find the identical statement that “if someone turned his eyes from ancient Boeotia to our Britain, he would call it not only the dancing-ground or theatre of Mars but the native soil of Mars himself, the temple and sanctum and even the very altar of Mars upon which our ancestors were accustomed to offer up human sacrifices.”⁴⁷

This blood-soaked depiction of 16th century Britain is a far cry from the sceptered isle, other Eden and, as the case may be, demi-paradise of Shakespeare’s *Richard II*. Craig’s language is heavily rhetorical, but it serves a specific semiotic and religious function. The metaphor of the war god’s dancing-ground transitions to an altar upon which Britons of past generations have sacrificed humans in honour of Mars. Those killed are *victimae*, a word describing the animals picked for sacrifice and decorated with garlands of flowers around their head. The verb to describe the act is *litare*, a word created by borrowing the Greek noun λιτή (prayer) and adding a Latin verbal ending.⁴⁸ Its meaning in classical Latin is to make an offering with the aim of receiving favourable omens from the gods.⁴⁹ The language drips with overtly pagan meaning.

For the humanist reader, steeped in the literary conventions of Latin antiquity, Craig’s language recalls the abhorrence with which the Romans viewed human sacrifice.⁵⁰ Notwithstanding their own

⁴⁵ Craig, *De unione* 13 (fol. 16): *ad Cheroneam in Boeotia Athenienses et Thebani memorabili praelio a Philippo Macedonum rege fusi et Graeciae libertas ab eo tempore valde imminuta.*

⁴⁶ Craig, *Epistola nuncupatoria*, lxviii: *et Athenienses et Thebani memorabili praelio ad Cheronaeam in Boeotia a Philippo Macedonum rege fusi sunt, libertatisque tantum nomen seu umbra Graeciae relicta.*

⁴⁷ Craig, *De unione* 13-14 (fol. 16): *si quis a veteri illa Boeotia in nostram Britanniam oculos convertat, non solum eam Martis orchestram aut theatrum dicet sed et ipsius Martis natale solum, aedes, penetralia, denique et ipsam Martis aram in qua parentes nostri victimis humanis soliti sunt litare.*

⁴⁸ M De Vaan, *Etymological Dictionary of Latin and the Other Italic Languages* (Leiden, 2008), s.v. *lito* [=p.346].

⁴⁹ C T Lewis and C Short, *A Latin Dictionary* (Oxford, 1879), s.v. *lito*.

⁵⁰ For a summary of classical Greek and Latin sources which mention human sacrifice, see S Farron, “Aeneas’ Human Sacrifice”, *Acta Classica* 28 (1985) 21-33.

tendency to engage in ritual killings,⁵¹ Romans considered human sacrifice to be repugnant, the antithesis of civilisation and religious propriety. The Anglo-Scottish wars are thus rhetorically construed in opposition to the dominant cultural frame of the 16th century, humanism, which above all sought to emulate the intellectual values of the classical world. However, for a contemporary Christian reader (which, in effect, meant all his readers), the association of these wars with pagan sacrificial rites served another rhetorical function. It conveyed Craig's deep dismay at the idea of co-religionists (as he understood the Scots and English to be) killing one another in wars that ultimately achieved and settled nothing. It makes the waging of war between Scotland and England into a pagan and therefore un-Christian – or even anti-Christian – act: for Protestant Briton to kill Protestant Briton was morally equivalent to making a human sacrifice to a pagan god. This clever use of metaphor and language conveys both an emotional effect (Craig's horror at the bloodshed, which he would have hoped his readers would share) and a specific argument (that fellow Christians should not be waging war against one another). Furthermore, a very real shift in the focus of Craig's argumentation can be detected. In his treatment of the Roman invasion, Craig presented things in terms of common security against an external foe. His logic is simply that lack of unity made Britain vulnerable to invasion. In his discussion of the heptarchy, a moral element is added, namely the horror of "kindred kings" – *regum licet ejusdem gentis* – warring against one another.⁵² By the end of the chapter, he has developed the moral element into an explicitly religious one: it is not only wrong for co-religionists to kill one another but, as we shall see below, actually risks provoking divine wrath.

To modern eyes, the Greek comparison may seem overwrought, but we cannot doubt that it authentically articulates how Craig perceived Scotland's relationship with England, as defined by unnecessary bloodshed and ruin. In his own lifetime, he had lived through war between the two kingdoms, including the burning of Edinburgh in 1544,⁵³ during the conflict called the Rough Wooing by the English and the Eight Years War by the Scots. When the last great pitched battle between Scottish and English armies was fought at Pinkie Cleugh in 1547, Craig was old enough to understand what was happening.⁵⁴ Thus, from his earliest years, he had direct awareness of how war with England had affected Scotland and there is the ring of authenticity about his claim that those who

⁵¹ On which see C E Schulz, "The Romans and Ritual Murder", *Journal of the American Academy of Religion* 78:2 (2010) 516-541.

⁵² One could argue that "kindred kings" does not go far enough. A more literal translation would be "kings, indeed, of the very same race", which again underlines the fratricidal nature of the conflict.

⁵³ The orders given to the English commander, the Earl of Hertford, were stark in their brutality: "There to put all to fire and sword, to burn Edinburgh town, to raze and destroy when you have sacked and gotten what you can out of it, as there may remain for ever a perpetual memory of the vengeance of God lighted upon it." [J Bain, *The Hamilton Papers* (Edinburgh: 1892) vol. 2, p.326]

⁵⁴ He mentions Pinkie Cleugh at *JF* 1.13.13 and uses it a marker of time at *JF* 1.16.21.

have fed the rivalries between the kingdoms are those “who, being scattered far from the borders of either kingdom, have themselves never experienced these disasters and instead grow old at home in their own little nests, in leisure and ease, safe from all peril.”⁵⁵

The English perspective on the union

Craig conceptualised the new Great Britain as a union founded entirely on the parity of status that Scotland and England shared as equal partners in the project.⁵⁶ This was, in his mind, a non-negotiable prerequisite for a successful union. But such an opinion was not popular in England, where Scotland was seen as something of a poor relation, if not simply a recalcitrant vassal state. As late as the 17th century, Galfridian fantasies were still being peddled as proof that the Scottish kings had been vassals of the English (whether Anglo-Saxon or Norman),⁵⁷ while the claim that John Balliol, as payment for the favour shown to him in the Great Cause, had done homage to Edward I was perennially raised as evidence of Scotland’s subordinate status.⁵⁸ Craig heard such claims from English parliamentarians during his time in London in 1604 and responded by penning a comprehensive refutation in the form of the *De hominio* (“On homage”), which was eventually translated into English by George Ridpath in 1695 under the provocative but not inaccurate title *Scotland’s Sovereignty Asserted*.⁵⁹ Craig was not the first Scottish writer to deal with the English claim to suzerainty. John Mair, for example, in his 1521 *Historia Majoris Britanniae*, also refuted many of the same English claims and, like Craig, he did so within the context of a peaceful dynastic union between Scotland and England.⁶⁰ Craig’s situation differed from Mair’s in that, at the time of

⁵⁵ *Epistola nuncupatoria*, lxx: *qui longe a finibus utriusque regni dissiti, has calamitates nunquam ipsi senserant, in otio et voluptate, et ab omni periculo securi, domi et in nidulis suis consenescentes.*

⁵⁶ L A M Stewart, *Rethinking the Scottish Revolution: Covenanted Scotland 1637–1651* (2016) 150. Cf. also R A Mason, “1603: Multiple Monarchy and Scottish Identity”, *History* vol. 105, issue 366 (July, 2020), 402-421, at 404-405.

⁵⁷ It has been claimed that “one of James’s leading hopes was to restore the ancient realm of Britain, that fictive entity made familiar by the history of Geoffrey of Monmouth”: J M Richards, “The English Accession of James VI: ‘National’ Identity, Gender and the Personal Monarchy of England”, *English Historical Review* 117:372 (2002), 513-535, 514. It is unlikely Craig would have agreed with such a characterisation.

⁵⁸ John Balliol, of course, had given homage to Edward at Newcastle on 26th December 1292 and Edward, in turn, interpreted their relationship as one of genuine feudal subordination, to the point of expecting the King of Scots to provide military service in France: see A D M Barrell, *Medieval Scotland* (Cambridge, 2000) 103-104. The Scottish perspective was quite different and viewed Scotland as a free and independent country and, indeed, as an empire of its own: see R A Mason, “This realm of Scotland is an empire? Imperial ideas and iconography in early Renaissance Scotland”, in B Crawford (ed.), *Church, Chronicle and Learning in Medieval and Early Renaissance Scotland* (Edinburgh, 1999), 73-91.

⁵⁹ Dodd, “Historical Introduction”, xxiii-xxv

⁶⁰ J H Burns, *The True Law of Kingship: Concepts of Monarchy in Early Modern Scotland* (Oxford, 1996) 61-66. For the refutation of the “silly comments” (*deliris...commentis*) of English historiography in the form of William Caxton, see *Historia Majoris Britanniae* 4.13 [=pp. 158-161 in the 1740 Edinburgh edition; quote from p.160].

writing, the issue was more pressing because the uniting of the English and Scottish crowns in the same person was no longer something that might one day occur but something that had already happened.

Scotland was England's closest and most ancient enemy and the object of much hostility in northern England,⁶¹ but, to the English parliamentarians Craig met in London, the Scots were not a genuine threat to English security. The Anglo-Scottish wars did not appear quite as apocalyptic when viewed from London as they did from Edinburgh. Far from feeling threatened by the prospect of war, the English insisted, to Craig's chagrin, that Scotland was not a particularly important place and contained nothing that would make it worth the trouble of conquering.⁶² This posed a significant dilemma for Craig's unionist argumentation which was predicated on the idea that Scotland and England had both suffered from the wars and would both benefit from union and peace.

Unionist or not, Craig nevertheless retained a patriotic devotion to the idea of Scottish defiance in the face of English aggression. He therefore dismisses these English claims as pitiful attempts to cover their shame that their efforts to subjugate Scotland over the centuries had ended so miserably. The English kings, he explained, had always sought a union with Scotland because they feared the threat posed by a hostile neighbour: "The wisest kings of England very often anticipated that the greatness, dignity and wellbeing of Britain depended upon the association and union of the two kingdoms, for never would England enjoy peace at home or achieve glory abroad while having permanently affixed to her so troublesome a neighbour that could, within the space of three days, invade and harass England with an army that is not to be despised. Accordingly, the kings of England have bent all their efforts to unite Scotland with England and draw them together into a single body or empire."⁶³

As Craig saw it, the only union to which the Scots would acquiesce was the joining together of two realms to create an entirely new quasi-imperial Protestant monarchy, not the annexation of one by the other.⁶⁴ This was something James VI understood well, as we see from, for example, his Privy Chamber of May 1603 which was divided equally between twenty-four Scots and twenty-four

⁶¹ J M Richards, "The English Accession of James VI: 'National' Identity, Gender and the Personal Monarchy of England", *English Historical Review* 117:372 (2002), 513-535, 515

⁶² Craig, *De unione*, 26-27 (fol. 32-33)

⁶³ Craig, *De unione* 25-26 (fol. 31): *Praeviderunt sapientissimi Anglorum reges saepissime Britanniae magnitudinem dignitatem et salutem in utriusque regni consociatione et unione consistere, neque unquam Angliam, vel domi quieturam, vel foris claram evasuram, quamdiu tam infestum vicinum haberet ita lateri perpetuo inhaerentem ut trium dierum spatio Angliam cum non contemnendis copiis ingredi et vexare possit, itaque omne ope et studio Anglorum reges enixi sunt ut Scotiam Angliae conjungerent et in unum corpus sive imperium contraherent.*

⁶⁴ Cf. Mason, "1603: Multiple Monarchy and Scottish Identity", 403-404.

Englishmen as “visible embodiments of even-handed Union”.⁶⁵ There could be no true union if Scotland were simply to be absorbed into an enlarged England, notwithstanding that this was, from an English perspective, the perfect solution to the entire issue.⁶⁶ But a union of equals was not something that the English parliament or people wanted.⁶⁷ The new Union Jack, created by laying the English flag across the Scottish saltire, served as “a royal standard not a national one”.⁶⁸ Even James’ attempts to style himself King of Great Britain met with hostility from English parliamentarians, chief amongst them Edwin Sandys, as did his attempts at naturalising his Scots subjects in England.⁶⁹ As Craig put it, the single greatest obstacle to the union between Scotland and England was that while “the one could not accept an equal, the other could not bear a superior”.⁷⁰

By presenting the union as a long-standing English ambition – indeed, as the goal of every English monarch since William the Conqueror – Craig tried to rebut the dismissive attitude of his English colleagues.⁷¹ He casts English desire for union with Scotland as the driving force behind centuries of Anglo-Scottish conflict. Scotland, in this narrative, is to be seen as a genuine military threat to England. In a later title Craig reinforces the idea that the English perceive Scotland as a threat by claiming that the Scots still served as bogeymen for English children: “The English, when they train their children in the use of bows, tend to encourage them to take aim by saying ‘Look! There’s a Scotsman! Shoot him!’ And the child brags that he carries around as many Scottish lives as there are arrows in his quiver.”⁷²

⁶⁵ N Cuddy, “Anglo-Scottish Union and the Court of James I, 1603-1625”, *Transactions of the Royal Historical Society* 39 (1989) 107-124, 109-110

⁶⁶ B Levack, *The Formation of the British State: England, Scotland, and the Union, 1603–1707* (1987) 29, 44; cf. also J J Epstein, “Francis Bacon and the Issue of Union, 1603-1608”, *Huntington Library Quarterly* 33(2) 1970, 121-132, 124, on Sir Edwin Sandys’ speech, of April 19th 1604, attacking the union. It has been suggested that Sandys’ proposal, which amounted to “totally subjugating Scots to English law” had been made precisely because “the Scots would certainly reject [it]”; see Cuddy, “Anglo-Scottish Union”, 115

⁶⁷ J Wormald, “Confidence and Perplexity: the Seventeenth Century”, in J Wormald (ed.), *Scotland: A History* (2005) 123–49, 126-127. One could equally argue that a union, of any kind, was not something that the Scottish parliament wanted either.

⁶⁸ J Sumption, “The Disunited Kingdom: England, Ireland and Scotland”, *CJICL* 3:1 (2014), 139-158, 146. The new flag was unpopular in both kingdoms, but the Scots took particular offence to the superimposition of the English cross of St George over the Scottish cross of St Andrew and came up with a variant reversing this: see Galloway, *The Union*, 83-84.

⁶⁹ J C White, “Militant Protestants: British Identity in the Jacobean Period, 1603-1624”, *History* 94:2 (2009), 154-175, 157; Cuddy, “Anglo-Scottish Union”, 112-113

⁷⁰ *Epistola nuncupatoria*, lxx: *et hic parem, ille superiorem non posset ferre.*

⁷¹ Craig actually mentions that when Sweyn and Cnut sat on the English throne, they too made failed attempts to conquer Scotland, but the kingdom remained independent: see *De unione*, 11 (fol.13).

⁷² Craig, *De unione* 141 (fol. 178): *Et Angli cum liberos suos in sagittarum usu exercent et ad metam collimanti sic liberos solent animare en illic est Scotus, fige eum, et quot iacula in pharetra quisque gestat tot Scotorum mortes se circumferre jactitet.* Cf. Galloway, *The Union*, 164 on the “traditional opposition of the two nations in children’s games”.

In Craig's assessment, the English ought to have welcomed union, because it guaranteed the domestic security that he believed they had sought for nearly six hundred years. Since Craig understood security at home as a prerequisite for victory abroad, it followed that the union was therefore a comprehensively positive thing for England. Yet, because the union was under the auspices of a Scottish monarch, Scottish honour was also satisfied and the union would be an authentic joining together of peers, not mere conquest or annexation. But union was sought by few on either side of the border. Indeed, it is not clear that the English parliament would have accepted union even if it had come about through the outright annexation of Scotland. This must have been a perplexing experience for Craig, for whom union was not merely a desirable political outcome but a religious imperative.

Religion and union

If Christianity in early modern northern Europe is divided dichotomously into Catholic and Protestant parts, then both England and Scotland were Protestant, meaning simply that they were not Catholic and adhered instead to articulations of religious faith that emerged from the Reformation.⁷³ For Craig, that was enough to indicate that the two kingdoms shared what was fundamentally the same religion. Moreover, this shared religion was the reason why, since the end of the Rough Wooing, there had been peace in Britain: "But now, for fifty years during which each nation has united in the true faith and has undertaken its profession publicly, there has been a peace so long and unbroken, without interruption, as to be unknown in human memory, for such is the power of agreement in religion and faith in drawing the souls of men together and uniting them."⁷⁴ This echoes the contention that the Scots and English, though historic enemies, had united against the invading Danes. Such was Craig's aspiration, though with Spanish Catholics taking the place of Danish pagans. It has been suggested that Craig believed that "a common British patriotism would unite the whole

⁷³ There is an unhelpful tendency in some quarters to treat Protestants as a monolithic bloc and Protestantism as a single continuum, with the "moderate view of Luther" at one end and the "more extreme doctrinal position" of John Calvin at the other (quotes from Barrell, *Medieval Scotland*, 259 and 229 respectively). Apart from the implicit bias, whereby extremism and moderateness are measured by perceived deviation from Catholic doctrine, it overlooks the reality the Protestant denominations had a variety of theological perspectives and that the only thing they can all be said to have shared is the fact that they emerged in the 16th century and rejected Catholicism.

⁷⁴ Craig, *De unione*, 60 (fol. 73-74): *at postquam a quinquaginta annis uterque populus in veram pietatem consenserat et eam publice profiteri ceperat, in nulla ulla hominum memoria tam longa tam continua pax sine interruptione lecta est, adeo hominum animos religionis et pietatis consensus ad se trahit et astringit.*

island against a potential invader.”⁷⁵ In fact, it was religion and a shared threat to that religion that were to provide the cement that would bind Scotland and England together.

The shared identity of not being Catholic did little to elide the doctrinal and philosophical differences between episcopalian Anglicanism and Scottish presbyterianism. Craig dismissed these supposed differences out of hand: “I waste no time on the fact that there is a difference in the form of religious worship today in each of the two nations, nor on the fact that our neighbours still widely employ vestments and titles of rank, for there is nevertheless solid and comprehensive agreement on the essentials of the actual doctrine. It is certain that there is no fundamental point of Christian doctrine on which there is disagreement between us or any point which is asserted by one and called into question by the other.”⁷⁶ Later, in the sixth chapter, he recapitulates his point: “I said before regarding religion that there is no difference between us on the essentials of doctrine, for neither denies what the other affirms. Admittedly, there is something of a difference in form and rites, but that should not dissolve the peace and unity of the church.”⁷⁷ Few on either side of the border would have agreed with the contention that the differences between the two churches were superficial or that they were “united in the true faith” on the essential issues of theology and doctrine.⁷⁸

Issues of national and political identity had become wrapped up in religion. Anglican writers construed Scottish presbyterianism as seditious and its exponents, like Andrew Melville and George Buchanan, as populist traitors and demagogues aiming at the subversion of the English church and monarchy.⁷⁹ Scottish presbyterians, meanwhile, saw Anglican practice as a clear threat to the purity of their reformed faith.⁸⁰ Even Craig’s king, to whom he was obviously devoted, found himself at

⁷⁵ D Daiches, *Scotland and the Union* (London, 1977) 19

⁷⁶ Craig, *De unione*, 60 (fol. 74): *nec illud moror, quod forma pietatis exercendae hodie inter utramque gentem sit diversa, et quod in vestitu et dignitatibus nominibus multum vicini nostril reponant[sic], cum in ipsius doctrinae capitibus tam solidus et uniformis sit consensus, certum enim est, nullum caput Christianae doctrinae contraverti inter nos, aut id in quaestionem vocari quod ab alteris asseritur.*

⁷⁷ Craig, *De unione*, 74 (fol. 91): *antea in religione dixi, in capitibus doctrinae inter nos esse dissidium, neque alteri negant alteros affirmare. In forma tamen et ritibus aliquod esse differentiae quod tamen pacem et unionem ecclesiae dissolvere non debeat.*

⁷⁸ It must be noted that the Edinburgh minister and jurist, Robert Pont, in his 1604 *De unione Britanniae* was strident in insisting, like Craig, that no doctrinal differences existed between the Churches of Scotland and England. On this, see L A Ferrell, *Government By Polemic: James I, the King’s Preachers, and the Rhetorics of Conformity, 1603–1625* (Stanford, 1998) 32-33. Galloway, *The Union*, 164 notes the shared “Calvinist theology” of the English and Scottish churches, but this is to overstate the common ground between them.

⁷⁹ R A Mason, “George Buchanan, James VI and the Presbyterians” in R A Mason (ed.) *Scots and Britons: Scottish Political Thought and the Union of 1603* (Cambridge, 1994) 112-137, 131-132

⁸⁰ J Wormald, “Confidence and Perplexity”, 128; J Wormald, “The Union of 1603”, in R A Mason (ed.), *Scots and Britons: Scottish Political Thought and the Union of 1603* (Cambridge, 1994) 17–40, 27-30

odds with the Scottish Kirk.⁸¹ The populist presbyterianism articulated by the likes of Melville and Buchanan was stained by its association with French Monarchomachism and therefore posed an ideological and conceptual – if not actual and political – threat to the foundations of Stuart monarchic absolutism.⁸² By the time he wrote the *True Law of Free Monarchies* in 1598, James had become aware that the Reformation in England was “an act of state, king and parliament” while the Scottish Reformation has been “achieved by noble and popular rebellion”.⁸³ The English Reformation thus could be construed as an expression of royal authority and traditional hierarchy where the Scottish Reformation represents precisely the opposite. The Anglicans – and, indeed, James himself – came to see Scottish populist presbyterianism as something threatening to monarchy in general; the Scots had come, perhaps unfairly, to see Anglicanism as a diluted version of Catholicism.

Andrew Melville articulated this point very neatly in an epigram on the rites of the Anglican church composed after he attended a Michaelmas service at the Chapel Royal in Windsor:

*Cur stant clausi Anglis libri duo regia in ara,
lumina caeca duo, pallubra sicca duo?
Num sensum cultumque Dei tenet Anglia clausum,
lumine caeca suo, sorde sepulta sua?
Romano an ritu dum regalem instruit aram,
purpuream pingit religiosa lupam?*

Why do two books stand closed to the English upon the royal altar,
two unlit candles, two dry basins?
Does England hold closed the knowledge and worship of God,
blind in her own sight, buried by her own filth?
As she furnishes the royal altar with Roman ritual,
does she portray the sacred as a purpled whore?⁸⁴

⁸¹ It has been rightly observed that the conflicts between James and the Scottish church and, indeed, the doctrinal issues that arose from any proposed ecclesiastical union have not always been well understood by modern writers: L A Ferrell, *Government By Polemic: James I, the King's Preachers, and the Rhetorics of Conformity, 1603–1625* (Stanford, 1998), 184, n.16.

⁸² Cf. Dodd, “Craig’s Aetiology of Law and Society”, 161-162

⁸³ J G A Pocock, “Two Kingdoms and Three Histories? Political Thought in British Contexts”, in R A Mason (ed.) *Scots and Britons: Scottish Political Thought and the Union of 1603* (Cambridge, 1994) 293-312, 301

⁸⁴ Note that *lumen* can mean both a candle and the eye, thus creating an elegant conceit whereby the unlit candles on the altar are indicative of wilful blindness. A radically different, and wholly incorrect, translation of Melville’s epigram is provided in J Doelman, *Kings James I and the Religious Culture of England* (Cambridge, 2000) 66, n.39.

It is significant that Melville uses the word *lupa*. In Latin slang, the word described a prostitute,⁸⁵ but its literal meaning is “she-wolf”, thus creating obvious semiotic links with Rome, the traditional symbol of which is the she-wolf which nursed Romulus and Remus. The reference to purple, which had long been a metonym for Roman imperial status, reinforces this association. For Melville, and probably for a great many Scottish presbyterians, the Church of England was little different from the Church of Rome.

Whether for this poem specifically or for his general impudence before his monarch, whom he described as “God’s sillie vassal”, Melville was imprisoned and many of his supporters exiled. Predictably, this did little to allay the underlying Scottish presbyterian suspicion that Anglicanism was tainted by Popery and that James’ apparent preference for Anglican practice posed a threat to the Scottish Reformation as a whole.⁸⁶ James, who conceived of his royal authority as linked with an episcopal church governance presided over by the monarch, construed the unrelenting presbyterian hostility towards the liturgy, rites and episcopal structures of Anglicanism as a threat to himself and in time came to believe that “his crown was menaced by Jesuits and puritans in an unholy alliance”.⁸⁷ Given that Jesuits like Persons and presbyterians like Buchanan equally insisted upon the popular right to assassinate the king, James’ opinion is understandable.⁸⁸ However, the presbyterian desire for reform of Anglican practice was ultimately born from the honest belief that these things were at odds with Scripture.⁸⁹

This is all a long way from the pan-British, pan-Protestant harmony of Craig’s imaginings.⁹⁰ With only the written text to guide us, we have no way of ascertaining whether Craig genuinely believed what he was writing. It is certainly possible to treat the *De unione* as a rhetorical exercise rather than a literal expression of the author’s beliefs. It is certainly inconceivable that Craig was unaware of

⁸⁵ Aurelius Victor, *Origo gentis Romanae*, 21.1-2: ...mulierem, eo quod pretio corpus sit vulgare solita, lupam dictam. Notum quippe ita appellari mulieres quaestum corpore facientes, unde et eiusmodi loci, in quibus hae consistant, lupanaria dicta. (“...and the woman, because she was accustomed to make her body available to anyone for a price, was called a she-wolf. It is noted that because women who make a profit from their body in this way are so named, the places in which they work are called dens of the she-wolves.”)

⁸⁶ Calvin himself believed that the various theological defects of the Church of England, though real, were permissible: D G Hart, *Calvinism: a History* (London, 2013) 38. It must be observed that the Forty-two Articles of 1553 and the Thirty-Nine Articles of 1571 brought a degree of Calvinist thinking, though admittedly diluted, into Anglican theology (and this is presumably the basis for Galloway’s reference to the shared Calvinist theology of the Scottish and English churches: see Galloway, *The Union*, 164).

⁸⁷ Pocock, “Two Kingdoms”, 301

⁸⁸ Cf. Dodd, “Historical Introduction”, xxii-xxiii

⁸⁹ L A Ferrell, *Government By Polemic: James I, the King’s Preachers, and the Rhetorics of Conformity, 1603–1625* (Stanford, 1998) 33-34

⁹⁰ The erroneous assumption that the Scots and English had, by virtue of not being Catholic, a “common Protestant ideology” is still a common one: Sumption, “The Disunited Kingdom”, 146.

conflicts between the partisans of the Scottish and English churches, which in turn makes it seem unlikely that he truly believed that Presbyterians would make common cause with Anglicans.

However, if we accept that Craig understood British history as essentially a cycle of disunity followed by invasion, repeated century after century, and that he was genuinely afraid that Spain intended to invade England, having attempted to do so in 1588 and 1596, his religious position is explicable. He simply did not care about differences in ritual, clerical title or liturgy. Neither the Scottish nor English churches were Catholic and therefore they were united in opposition to (and, more importantly, were equally threatened by) Catholic Rome which, in contemporary Protestant thinking, was literally the seat of the Antichrist. In Craig's mind, common opposition to Rome made Scottish and English Protestants co-religionists and, thus, the union of Scotland and England is analogous to the union of Israel and Judah.⁹¹ The disparate Protestant theologies of the 16th century had been reduced, in Craig's mind, to their simplest form: they were not Catholic. The most obvious consequence of British co-religionists slaying one another is the one Craig alludes to throughout his summary of British history: by fighting each other, the two realms leave themselves vulnerable to external foes. For the Greeks, that was Philip of Macedon; for the ancient Britons, it was Rome; for Britain in 1604, it is the supreme Catholic power of the era, Hapsburg Spain. Of central importance is the fact that the Spanish foe is not merely a political enemy, but a spiritual one.

Beyond this, there is a further theological consequence, one which suggests that Craig's position on the similarities of the English and Scottish churches was authentically held. Craig feared God's anger when co-religionists are at odds with one another. James' accession to the English throne is described as freeing Britain from the "curse that has long overhung her".⁹² Craig refers to sections of the Gospel of John and to Psalm 133,⁹³ explaining that "through these words He shows how pleasing to the Lord is unity among humans; and He promises His blessing to those living together in the unity of brotherly friendship, which He has commended with praises."⁹⁴ For fellow Christians (which, in this context, means non-Catholics) to unite peacefully under the rule of a single prince is pleasing to God and will be rewarded; for these same Christians to make war on each other is to provoke God to anger: "If anyone does not take this seriously, let him at least obey and fear God's curse, for He curses the land on which human blood is spilled. But how many armies have been butchered to the last man in Britain? How often has the land, stained by human blood, cried out to God for vengeance? The Lord, moreover, despises the man who has shed blood and threatens that the slayer

⁹¹ Craig, *De unione*, 16 (fol. 19) and 23 (fol. 28)

⁹² Craig, *De unione* 42 (fol. 51): *et execrationis praeteritae liberationem possit suae iam Britanniae procurare.*

⁹³ John 13, 17:20; Psalms 133

⁹⁴ Craig, *De unione* 42 (fol. 51): *quibus verbis quam haec unitas hominum Domino grata sit commonstrat, hinc fraternae amicitiae in unum cohabitanti, cum eam laudibus extulisset, se benedicturum promittit.*

of men shall not live half his days upon the earth. Indeed, the Lord curses all those whose feet are swift to spill human blood and the Lord threatens those nations with ruin for their impieties and wickedness.”⁹⁵ It would be a mistake to underestimate the fear that Craig felt or to treat it as a literary or rhetorical device. Divine wrath and divine favour were literal and real to Craig and his belief in them shaped his understanding of the union. Thus, for Thomas Craig, the union was not primarily a political event and still less was it economic; it was, instead, a religious phenomenon.⁹⁶

The Legal Dimension

Law and law-making were always going to be at the heart of any discussion of union and, as a lawyer, Craig was acutely aware of this and of the way in which national identities were bound up with law. The English would not accept any infringement upon their common law, which was construed as wholly autochthonous, reflective of the peculiar genius of the English nation, and unrelated to the European *ius commune*.⁹⁷ The Scots, conversely, had drunk deeply from the intellectual well of the *ius commune* and were no more willing than the English to give up their legal traditions. Law, then as now, was an integral part of national identity and jealously guarded, which leads to a seeming ambiguity in Craig’s argumentation.

The entire sixth chapter of the *De unione* is dedicated to law. Craig begins by explaining that “those who are governed by different institutes and customs also conceive and pursue different ends. For every man applauds his own institutions and proclaims their fairness while rejecting those of other people, which we see has very often led to serious disagreements. I, however, do not accept that there is such power in laws and customs that they can turn the souls of men away from their own unity and from the strengthening of perpetual friendship; and shared laws are certainly not to be compared with the power of faith and religion in this respect.”⁹⁸ Although Craig considers a legal

⁹⁵ Craig, *De unione*, 42-42 (fol. 51): *si haec quasi levia quis contemnat, saltem Domini execrationem audiat and metuat, is enim terram in qua sanguis humanus funditur execratur. At quot in Britannia ad interneccionem exercitus caesi, quoties polluta sanguine humano terra ad Deum ut ulciscatur clamavit, praeterea hominem qui sanguinem effuderit abominatur Dominus, nec dimidiaturos dies suos in terras homicidas minatur. Immo execratur Dominus omnes eos quorum pedes ad effundendum sanguinem humanum sunt veloces et gentes propter impietates et scelera sua evertendas minatur Dominus.*

⁹⁶ Cf. B Galloway & B P Levack (eds.), *The Jacobean Union: Six Tracts of 1604* (Edinburgh, 1985) xxix-xxx

⁹⁷ Cf. R H Heimholz, *The Ius Commune in England* (Oxford, 2001); Galloway, *The Union*, 38-39; and J G A Pocock, *The Ancient Constitution and the Feudal Law* (Cambridge, 1957) 70-90.

⁹⁸ Craig, *De unione*, 68 (fol. 84): *qui diversis institutis et moribus reguntur, diversa etiam sentiant et sequantur. quisque enim sibi applaudit sua instituta et eorum aequitatem praedicat, aliorum aversatur, unde et graves contentiones nasci videmus, saepissime; ego sane non eam vim in legibus et institutis pono ut hominum animos a societate sua et perpetua firmanda amicitia queant avertere, neque enim in hoc cum pietate et religione legum societas* conferenda est. [The 1909 edition has *antiquitus* which Terry recognised as clearly wrong. The present translate suggests that *societas* is more likely and definitely captures Craig’s overall sense.]*

union beneficial for the union project, he considers natural prejudice in favour of one's own national law to be an insuperable obstacle; but religious unity will cure the legal defect. Again, we see that it is religion, rather than economic, legal or even simple political considerations, that drive Craig's idea of a union.

To prove that union can survive diversity of legal custom, Craig presents a brief survey of a number of European states. In France, he assures his read that Normandy, Aquitaine and Brittany all have their own distinct laws and customs, as do the constituent parts of the Empire. The Kalmar Union likewise left intact the separate laws and legal system of each of the three Scandinavian kingdoms; and similar things are reported for the unions of Poland with Lithuania and Portugal with Spain.⁹⁹ However, of particular interest are the examples Craig takes from Britain itself. In Scotland, he observes that "[i]n this our Scotland, it is remarkable to note that the Orcadians used Norwegian law, until it was decreed by the three estates that all subjects of the Kingdom of Scotland were to be governed by the same laws".¹⁰⁰ The attempt to displace Norwegian law failed, because the Orcadians preferred their own customs over those that were imposed on them, even though Scots law was considerably more lenient. There are implications here for Craig's understanding of the power of customary law to thwart statutory law, but, for the purposes of this article, the central points are simply that any people will prefer their own laws over those of foreigners and that a diversity of law, as illustrated by Orkney, does not prevent union. Different parts of England also have distinct regional laws while "both Wales and Ireland employ customs and institutes that are separate from those of England, which has not stopped the coming together of these provinces into a single empire or union."¹⁰¹ These are interesting remarks in view of the juristic annexation of Wales to England through the Laws in Wales Acts of 1535 and 1542.

On the English side, probably the single most important advocate for union was Francis Bacon who, in 1603, dedicated to King James I of England his *Brief Discourse touching the Happy Union of the Kingdoms of Scotland and England*. Bacon had served as a union commissioner in 1604 and, as a result, had come into close contact with Craig. This may explain the similarities in their perspectives on law and union. Like Craig, Bacon recognised that there had to be some degree of union of laws,

⁹⁹ Craig, *De unione*, 68-73 (fol. 84-90)

¹⁰⁰ Craig, *De unione*, 70 (fol. 86): *Immo in hac nostra Scotia quod mirum est Orcades iure Norvegorum utebantur, donec publica sanctione trium ordinum promulgatam est ut omnes regni Scotiae subditi eisdem legibus gubernarentur*. The act in question is identified by Sanford Terry as RPS 1587/7/67.

¹⁰¹ Craig, *De unione*, 69 (fol. 86): *Immo et Wallia et Hibernia aliis ab Anglorum moribus institutis utitur, quod tamen omnium harum provinciarum in unum imperium transitionem sive unionem non impedit*.

for laws were the “the principal sinews of government”,¹⁰² but he also grasped that law was a core component of national identity and that “to seek either to extirpate all particular customs, or to draw all subjects to one place or resort of judicature or session” was a matter of “curiosity, and inconveniency”, for “nothing amongst people breedeth so much pertinacy in holding their customs, as suddain and violent offer to remove them.”¹⁰³ This definitely distinguishes Bacon from most other English unionist writers, who generally assumed that legal union would be accomplished “by Scots submission to English law”.¹⁰⁴ If complete assimilation of the laws of the two kingdoms was impossible, then Bacon concedes that “it sufficeth there be an uniformity in the principal and fundamental laws, both ecclesiastical and civil”.¹⁰⁵

Bacon never explained what he meant by this,¹⁰⁶ but it is close to Craig’s contention in the *De unione*: “I assert that there are no two countries with less difference in their laws and institutes than England and Scotland today. Indeed, in the fundamental principles and sources of law, they agree most amicably, although they differ in the form of their procedures; but that is no obstacle, given the congruence of justice and laws.”¹⁰⁷ Both Craig and Bacon envisioned a union that was more than merely dynastic, but they were aware that national identity and its attendant resentments and antagonism were serious obstacles. They appeared to reach the same conclusion, that political union did not require uniform or even shared law,¹⁰⁸ provided that there was no real difference in the underlying juristic principles of both kingdoms. Bacon was content to leave the issue there; Craig went much further by attempting to show that the laws of the two kingdoms were not only uncontradictory but actually converged in a way that made union both possible and desirable.¹⁰⁹

Criminal law, as Craig saw it, not only shared the same principles in both kingdoms but even took the same form, “though in crimes which are not capital the penalties are perhaps not always the same,

¹⁰² Sir F Bacon, *A Brief Discourse touching the Happy Union of the Kingdoms of Scotland and England* [p.9 in the 1700 London edition]. The present author has avoided Spedding’s multiple volume edition of Bacon’s works, which alters Bacon’s language in places.

¹⁰³ Ibid.

¹⁰⁴ Galloway, *The Union*, 39.

¹⁰⁵ Bacon, *A Brief Discourse*, p.9 (1700 London edition)

¹⁰⁶ Indeed, though the concept of “fundamental law” appears often in unionist tracts, it remains “a powerful, ill-defined term” (Galloway, *The Union*, 39) and one rather suspects that it meant whatever the particular author wished it to mean rather than having a useful objective definition.

¹⁰⁷ Craig, *De unione*, 74 (fol. 91): *iam in legibus et statutis affirmo nullas esse gentes quae minus in legibus et institutis hodie different quam Angli hodie et Scoti. Immo in praecipuis iuris fundamentis et capitibus consentire amicissime, in forma autem iudiciorum dissidere, nec tamen nob id consonantiam juris et legum impedire.*

¹⁰⁸ This was also the policy of James VI: J D Ford, “Four Models of Union”, in H L MacQueen (ed.), *Stair Society Miscellany VII* (Edinburgh, 2015), 179–215, 208-209

¹⁰⁹ Cf. C W Brooks, ‘Contemporary Views of “Feudal” Social and Political Relationships in Sixteenth and Seventeenth Century England’, in N Fryde, P Monnet and O G Oexle (eds.) *Die Gegenwart des Feudalismus* (Göttingen, 2002), 109-136, 121

for non-capital crimes are punished more severely by our neighbours than in our country; for some reason, we favour milder punishments and never do the guilty and condemned face such harsh punishments as they do in England.”¹¹⁰ In private law and the law of persons, Craig discerns no meaningful differences between English and Scots practice, notwithstanding the influence of Roman law over the latter.¹¹¹ After an historical excursus, he claims that the laws governing heritable property in both kingdoms are identical. English property law is, in any case, not really English but an imposition of William the Conqueror: “Sparing the English no humiliation, he supplanted their ancient laws with his own. The Normans, at that time, used French law, for Normandy was part of France”.¹¹² William’s new system of law is the feudal law, which was not French but Lombard in origin, having been adopted into the Frankish kingdom by Charlemagne. An unspoken implication of this is that English property law is not truly autochthonous but merely a transplanted Continental juridical construct “by which all European countries are nowadays governed, due to its fairness”.¹¹³ One of the most striking elements of this discussion is Craig’s casual reference to the possibility that Scotland may have taken the feudal law from England: “Whether we actually received the feudal law from the English, in favour of which a number of arguments can be marshalled, or whether it came from French custom or arose in some other way, I am entirely uncertain.”¹¹⁴ This is a significant deviation from Craig’s position in the *Jus feudale* where he asserts that “It is, thus, manifestly clear that the feudal law was employed in our country before the time of the Conqueror, and therefore before it was used in England, and either that we received it from the French as result of our friendly relations and the interaction of our customs or that it was introduced by our kings in imitation of other kings”.¹¹⁵

It is possible that Craig had genuinely rethought his position on the origins of Scots feudal practice and that the *Jus feudale* no longer represented his thinking, but, by providing an English provenance for Scots feudal law, he may have been endeavouring to make a union based on shared feudal

¹¹⁰ Craig, *De unione*, 75, (fol. 92-93): *at in criminibus non capitalibus non semper eadem fortasse utrisque poena est, sed haec non capitalia severius a vicinis nostris vindicantur quam apud nostrates; nobis enim nescio quo pacto mitiores poenae placuerunt, nec semper tam severis suppliciis in reos* et damnatos animadvertitur quam apud Anglos.*

¹¹¹ Craig, *De unione*, 76-77 (fol. 94-95)

¹¹² Craig, *De unione*, 78 (fol. 97): *Itaque ne quid indignitatis in eos omitteret, leges suas priscis antiquitatis Angliae intulit, Normanni tum iure Gallico utebantur, cum Galliae essent pars.*

¹¹³ Craig, *De unione*, 79 (fol. 97): *immo quod ab omnibus Europaeis gentibus quae hodie regnantur ob suam aequitatem receptum est.* See also Galloway, *The Union*, 40.

¹¹⁴ Craig, *De unione*, 79 (fol. 98): *utrum vero nos ab Anglis ius feudale recepimus, quod nonnullis ex causis colligi potest, an vero ex consuetudine Gallorum aut alia nata occasione, incertus pene sum.*

¹¹⁵ Craig, *JF*, 1.8.3: *Apparet igitur manifeste nostros hoc jure feudali usos ante ipsius Conquaestoris tempora et proinde ante ipsos Anglos, sed ex contracta cum Gallis amicitia, et morum frequentia, primum jus hoc ab eis recepisse; vel a regibus nostris introductum ad aemulationem aliorum regum, ut proni omnes sunt reges ad ea introducenda.*

principles more palatable to the English. In Craig's opinion, however, it is not merely the law governing heritable property which is fundamentally the same in both countries. The most important English jurists – and Craig identifies Dyer, Plowden and Bracton by name – are implied to be dependent on the civil law, which is unlikely to have been well-received by an English readership: "With all due respect to our neighbours, I have noted a great deal in these writers settled by arguments from the civil law and its learned commentators. But they prefer to take the credit for themselves rather than ascribe it to the civil law, the authority of which is so great among all nations."¹¹⁶

This observation is followed by an extensive survey of feudal practice in both countries, which Craig concludes is largely the same, primarily because it proceeds from the same Franco-Norman basis on both sides of the border, and a short account of the sources of law in England which covers similar ground to Title 7 of the first book of the *Jus feudale*.¹¹⁷ Precisely because Scots and English feudal practice are perceived as sharing an origin, any disputes arising in consequence of the union will easily be solved by referring back to first principles: "If therefore, when some difficulty arises, matters are referred back to their original nature (as happens with watercourses, where we seek the source when the flow is blocked)...then the truth may easily emerge."¹¹⁸

In the end, Craig summarises his findings in these words: "If, as I understand it, there is not such a difference between the laws of each nation as is popularly believed, then we need not despair that, from the differing legal system of each nation, a single system can be constituted by which each nation might one day come together in a single body and state."¹¹⁹ Fierce opposition in both kingdoms led fellow unionists like Bacon to abandon the idea of a shared legal system; Craig, however, revised what a legal union might mean and, instead of assimilation, aimed for harmonisation.¹²⁰ As we shall see, the essence of this was to be feudal law.

¹¹⁶ Craig, *De unione*, 79 (fol. 98): *sed pace vicinorum* dixerim, multa in eis annotavi quae rationibus a jure civili et ejus doctoribus deductis definita sunt; sed maluerunt illi potius sibi quam iuri civili cujus tanta apud omnes gentes auctoritas* et ea debere.* Cf. JF 1.7.22 where Craig also claims that the civil law permeates English law.

¹¹⁷ Craig, *De unione*, 79-89 (fol. 98-111)

¹¹⁸ Craig, *De unione*, 80-81 (fol. 100): *si ergo res (cum difficultas oritur) ad suam primogeniam revocentur naturam (ut in canalibus fieri solet, si quando vitientur, ad fontem ipsum recurritur)...facile possit veritas emergere.*

¹¹⁹ Craig, *De unione*, 90 (fol. 112): *Itaque si quid ego intelligo, non tanta in legibus inter utrumque populum differentia quanta vulgo creditur neque desperandum ex diverso utriusque gentis iure, unum posse constitui quo uterque populus in unum corpus et quasi civitatem possit aliquando coalescere.*

¹²⁰ Not for nothing was Craig described as the "Jean Monnet of the British Union": C Russell, "1603: The End of English National Sovereignty", in G Burgess, R Wymer & J Lawrences (eds.), *The Accession of James I: Historical and Cultural Consequences* (Basingstoke, 2006), 1-14, at 6.

Feudal Law and National Identity

Craig has been accused of creating the idea of “feudalism”, by which is meant a pyramid-shaped social structure.¹²¹ This is not the place to address the specifics of that argument, but we can say that there existed in Scotland during Craig’s lifetime – and, in one form or another, until 28th November 2004 – a type of heritable tenure that was founded on legal systems and obligations we can reasonably describe as feudal and which were certainly described as such by legal practitioners. Tenures of this kind were governed by feudal law, which was neither theory nor abstraction and still less a construct. The inability of historians of the middle ages to engage with law in a meaningful way has hampered their interpretation of Craig and of early modern feudal tenure in general. Davis’ contention that Craig “recommended the adoption of feudal law to James VI and I” is illustrative of an all-too-common misunderstanding of what feudal law actually was and how it functioned in early modern society.¹²² Craig could not recommend the adoption of feudal law because it was already central to the customary law of Scotland, England and practically the whole of Europe. In Craig’s day, feudal law was the framework upon which the ownership and use of immovable property was founded. It was an organic element of customary law and its strictures resided more within people’s memories than within legal texts.¹²³

Within the system of feudal tenure, land was held of the king in return for feudal service. Those who had been infeft by their monarch could then subinfeudate others and so on, so that ultimately all landholders in the kingdom were made links in a vast feudal chain stretching back to the king, the apex of the notional feudal pyramid and answerable only to God. As Craig says in the dedicatory epistle addressed to James VI and prefacing the *Jus feudale*, “if the whole of Britain were cut into tiny pieces, there would be nothing which was not held in feu of Your Majesty.”¹²⁴ The centrality of land in economics of pre-industrial society need hardly be explained. In a society such as 16th century

¹²¹ E A R Brown, “The Tyranny of a Construct: Feudalism and Historians of Medieval Europe”, (1974) 79 *American Historical Review* 1063–88, 1064

¹²² K Davis, “Sovereign Subjects, Feudal Law, and the Writing of History”, *Journal of Medieval and Early Modern Studies* 36:2 2006, 223-261, 258 n.67. We find comparable errors elsewhere: C Russell, “Topsy and the King: the English Common Law, King James VI and I and the Union of the Crowns”, in B Sharp and M C Fissel (eds.), *Law and Authority in Early Modern England* (Newark, 2007), 61, 72, speaks of Craig’s “discovery of feudal law”. A similar misunderstanding is found in J.E. Berg, “Gorboduc as a tragic discovery of ‘feudalism’”, *Studies in English Literature 1500-1900* 40 (2000) 199-226, 201-202. Overall, one takes away the sense that the juristic reality of feudal law and tenure in the early modern period is poorly understood by mediaevalists whose focus is on social and economic relations to the exclusion of all else and that their misunderstandings have seeped into the wider academic consciousness.

¹²³ The influence of written institutes of feudal law, above all the *Libri feudorum*, has been overstated by some mediaevalists. See D. Heirbaut, “Feudal law”, in H Pihlajamaki, M D Dubber and M Godfrey, *The Oxford Handbook of European Legal History* (Oxford, 2018) 529-548, 538.

¹²⁴ Craig, *Epistola nuncupatoria*, lxxii-lxxiv: *nam si tota Britannia in partes vel minutissimas secetur, nulla erit quae non in feudo de Majestate Tua teneatur.*

Scotland, which is either non-monetised or only partially monetised, capital is rare and land takes its place. Thus, all economic life in Scotland during this period was tied up with the use and ownership of land; and the ownership of land was, in almost all cases, a function of feudal law. At the time of the union, feudal law provided a juristic framework shared by both kingdoms. Its ultimate ideological basis was the relationship that existed between landholder and monarch, a relationship based on idealities of power, fealty and faith. From Craig's perspective, it was a common ground for discussions of law, monarchy and union that would be mutually comprehensible on both sides of the border.

While nationalism is a product of the Romantic era, national identity certainly existed in early modern Britain.¹²⁵ The Scots and the English were aware of themselves as distinct national communities with an identity based on language, geography, law and monarchy.¹²⁶ This national identity existed alongside but was separate from other identities, such as religion or dialect. A recurring issue in Craig's writings on the union is his fear that historical mutual antagonism between the Scots and the English, as distinct national communities, would undermine both the Stuart succession to the English throne and the union which was to ensue.¹²⁷ Feudal law offered a solution. In place of an identity founded on national belonging, it offered a personal relationship with the monarch, a relationship mediated not by abstract ideas about national identity but by direct social and economic relationships with one's feudal superiors who, in turn, held of their own superiors and so on all the way up to the king at the apex of the feudal pyramid. Above the royal apex, however, was God.

This idea is central to Craig's understanding of feudal law and tenure. He had found a way to tie together his idealised version of feudal practice and his deep religious faith. As he saw it, "Almighty God is the sole author and dispenser of all those benefices which we today call feus."¹²⁸ Monarchs served not for their own benefit but as God's chosen vassals and their crowns were gifts given through God's innate generosity and for which a profound debt of gratitude was owed.

"Indeed, were we to judge the thing with the reverence proper to Christians and with rightness and accuracy of mind (that is, plainly and simply), these empires and kingdoms

¹²⁵ Cf. J M Richards, "The English Accession of James VI: 'National' Identity, Gender and the Personal Monarchy of England", *English Historical Review* 117:372 (2002), 513-535, 514

¹²⁶ On the "familiar alterity" Scots in Jacobean England, see S Waurechen, "Imagined Polities, Failed Dreams, and the Beginnings of an Unacknowledged Britain: English Responses to James VI and I's Vision of Perfect Union", *Journal of British Studies* 52:3 (2013) 575-596 (quote from 577).

¹²⁷ Craig, despite his unionist credentials, was not above sniping at the English and was vigorous in his defence of Scottish national honour. See Dodd, "Historical Introduction", xxiv.

¹²⁸ Craig, *JF*, 1.12.1: *Beneficiorum omnium quae hodie feuda dicimus Deus ille Optimus Maximus solus auctor et largitor est.*

are the most significant kind of pure and rightful feu and correspond perfectly with the definition of a feu which we previously laid out. No rational person will deny that the ineffable God is the lord superior of all kingdoms which are granted, solely through His generosity and kindness, to sinful humans, though we do not deserve them, without any payment or exchange arising. All kings attest to this when they sign their letters with their name and the phrase 'by the grace of God, king' and, in doing so, faithfully acknowledge the grace of God, and his freely given generosity, without their having earned it, both in establishing their kingdom and in allowing them to possess it; according to the saying, 'Through Me, kings reign'.¹²⁹

While he and Melville certainly agreed that the king was God's vassal, there is nothing "sillie" in Craig's conceptualisation of the relationship. The direct relationship between vassal and superior (whether between James and God or between a subject and James) was the solution to questions of national identity and attendant antagonisms. The individual owed fealty to his direct superior and, through the feudal chain, ultimately to the king and thence to God in a manner that sidestepped entirely questions of nationhood and replaced them with a combined ideology of pan-Protestantism and feudal fealty. Thus, in place of a true political union, we see that Craig envisioned the existing dynastic union evolving into a religio-feudal establishment founded on shared devotion to a Protestant king and a Protestant God.

Spain: the feudal antithesis

To the extent we can usefully apply a specific epistemology to Thomas Craig, it is clear that, like many of his contemporaries, he construed the world in terms of paired opposites, thesis and antithesis.¹³⁰ This was an Augustinian perspective, itself reflecting Aristotelian dialectical models, and not uncommon in mediaeval and early modern Christian thinking. Within Craig's conceptualisation of the world – what we might call his cosmology – a united Britain under the

¹²⁹ Craig, *JF*, 1.12.1: *Immo, si rem omnem ea qua decet Christianos reverentia, eaque mentis integritate et acumine (id est, nude et simpliciter), expendere velimus, haec imperia et regna gravissima pura et recta feuda sunt et cum definitione feudi quam praemisimus aptissime conveniunt. Nam Deum illum ineffabilem omnium regnorum dominum superiorem nemo sanus negabit et ab eo ex sola ejus munificentia et liberalitate hominibus concedi, nullo hominum merito sine aliquo pretio, sordibus aut nundinatione interveniente. Quod et reges omnes in sua literarum epigraphe testantur, N. Dei gratia rex; per Dei gratiam, ejus munificentiam gratuitam tam in regni sui inauguratione, quam possessione retinenda, sine suo merito fideliter agnoscentes; juxta illud, Per me reges regnant.*

¹³⁰ Dodd, "Historical Introduction", xxvii

Stuart monarchy represented religio-feudal ideality. If Britain was thesis, Spain was antithesis. Spain was the dark mirror image of Britain, representing the inversion of religious and feudal ideals.

Like Britain, Spain was a union of multiple kingdoms united under the rule of a single monarch.¹³¹

“Today, Spain consists of twelve or more kingdoms, which, over time, through marriage alliances and the succession resulting from them, have united into a single extremely powerful realm.”¹³²

Craig explains that this includes not only the kingdoms of Iberia proper, but also Sicily, Milan, Naples, the Spanish Netherlands and all the other parts of the Hapsburg empire. The focus on marriage and inheritance, rather than conquest, is important, as the Stuart claim on the English throne arose through the marriage of Margaret Tudor to James IV. The Stuart inheritance of England and the Hapsburg inheritance of Castille and the other parts of the Spanish empire thus parallel one another.

Where Spain and Britain diverge, in Craig’s eyes, is in the treatment of their shared feudal superior. If feus are, as Craig says, gifts from God, it follows that the feudal obligation of gratitude governs the monarch’s relationship with the deity. Any duty owed by a vassal to the king is also owed by the king to his divine superior. In Craig’s words “As the Psalmist says, ‘The heavens are the Lord’s but the land’ (that is, earthly feus) ‘He gave to the sons of men’ and to their heirs perpetually for their use and enjoyment, for as long as they persist in their feudal duty, namely fidelity.”¹³³ We should not underestimate how much value Craig attached to the feudal bond, which he described as “the training ground for all manners and duties and the only defence against the unjust ambitions of lords and vassals”.¹³⁴ The 18th century judge Lord Kames reflected Enlightenment values when he derided feudal law as being responsible for the “corruption and brutalisation of manners”;¹³⁵ but, for Craig, feudal duties defined all social and political relations and encapsulated the obligations and responsibilities which individuals in society owed one another.

The Spanish Hapsburgs had perverted the feudal bond and abandoned their feudal duties by accepting not God but the Pope as their feudal superior. In the third title of the *Jus feudale*, dealing

¹³¹ On Spain as a “composite monarchy” under the Hapsburgs, see C Palomo, “The Catalan Collective Identity in the Early Modern Era (1479-1714): Catalanity and Spanishness in the Principality of Catalonia During the Old Regime”, in A Cortijo Ocaña and V Martines (eds.), *History of Catalonia and its Implications for Contemporary Nationalism and Cultural Conflict* (Hershey, 2021) 23-52, 74-76. Sumption describes Spain at this point as “a union of crowns but not a union of nations”: Sumption, “Disunited Kingdom”, 148.

¹³² Craig, *De unione*, 73 (fol. 90): *duodecem regna vel plura in Hispania hodie possideat quae tractu temporis et mutuis affinitatibus et ex iis successione in unum potentissimum coaluerunt.*

¹³³ Craig, *Jus feudale*, 1.12.1: *Nam, ut ait psalmista, caeli caelorum domino, terram autem (id est, feuda terrestria) filiis hominum, et eorum heredibus perpetuo (dummodo in officio feudali, id est, fidelitate, permanserint) utenda et fruenda dedit.* [Craig is quoting Psalm 115.16.] Cf. also *JF* 1.9.19.

¹³⁴ Craig, *Epistola nuncupatoria*, lxxiv: *omnium morum et officiorum gymnasium et unicum praesidium adversus dominorum et vassallorum injustas cupiditates.*

¹³⁵ A Rahmatian, *Lord Kames: Legal and Social Theorist* (Edinburgh, 2015) 118

with the canon law, Craig describes the papacy as aiming to achieve feudal superiority over all Christian monarchs: “Not content to be their equal, he [the Pope] endeavoured relentlessly to subjugate all the kings of the earth to himself.”¹³⁶ While Craig details how various mediaeval rulers have been humiliated or degraded at one point or another by papal arrogance, his particular attention is given to Spain and to events of the 16th century. Regarding Spain, he explains:

“Spain used to be divided into ten or twelve kingdoms and had not yet coalesced into the enormity that we see today; but the pope had infiltrated the country bit by bit. Not only did he subjugate Aragon to himself as though he were its overlord, he actually made it a tributary. He acquired the kingdom of Castile and eventually Portugal too. When King Henry assumed the royal title, after slaying the five Moorish kings in battle, he subjected the kingdom of Granada in fealty to the Roman pontiff. Ferdinand and Isabella, the monarchs of Aragon and Castile, acknowledged the pope as their lord, just as the kings of the greater and lesser Balearic Islands had before. Afterwards, the kings of Aragon acceded to his authority under the same condition of homage to the pope. He granted the kingdom of Navarre to Ferdinand, although it was previously his vassal, and expelled the rightful heir John.”¹³⁷

Spain is the greatest of the Pope’s vassal kingdoms, but not the only one: “In our century, the kings of Bohemia, Corsica, Sardinia, Naples, Sicily, Poland and Hungary have attested that they are subject to the pope’s authority. The two islands of Britain survived, both the greater and the lesser which is called Ireland.”¹³⁸

The Pope, as Craig saw it, was creating his own feudal empire by stealing away the fealty that monarchs rightfully owe to God. The Pope had supplanted God and only Britain endured as an authentic Christian (meaning Protestant) feudal monarchy faithful to God, the ultimate granter of feus. As a devout Calvinist, Craig sees the Pope’s role in all of this not simply as that of an ambitious potentate trying to gain secular power but as a manifestation of the Antichrist. At a number of points when discussing either canon law or ecclesiastical feus, Craig indicates a belief that the Pope

¹³⁶ Craig, *JF*, 1.3.4: *nec aequari contentus, omnes terrarum reges sibi subjicere non irrito incepto conatus est.*

¹³⁷ Craig, *JF*, 1.3.6: *Hispania in decem aut duodecim regna divisa nondum in eam magnitudinem quam hodie videmus coaluerat, sed per partes eam pontifex invaserat. Nam Arragoniam non solum sibi tanquam domino superiori subjecit, sed etiam aeriariam fecit. Accessit et Castellae regnum; tandem et Lusitaniae. Postquam Henricus rex, quinque Maurorum regibus in acie caesis, regium nomen assumpserat, Granatae regnum etiam in fidelitatem Romano pontifici subjecit. Ferdinandus et Isabella reges Arragoniae et Castellae, et ante Balearum Insularum majoris et minoris reges, pontificem dominum agnoverant. Post in ejus ditionem Arragonienses reges sub eadem conditione hominii pontifici maximo praestandi concesserunt. Navarrae regnum, licet sibi prius vasallum, Ferdinando tribuit, Joanne dejecto vero herede.*

¹³⁸ Craig, *JF*, 1.3.6: *Hoc nostro seculo, Bohemiae, Corsicae, Sardiniae, Neapolis, Siciliae, Poloniae et Hungariae reges clientes se pontificii imperii testati sunt. Superat utraque Britannia major et minor, quae Hibernia dicitur.*

is, in fact, the Antichrist.¹³⁹ With that in mind, Spain and Britain become perfect mirror images: Britain is a Protestant monarchy united by the bonds of feudal duty under the ultimate overlordship of Christ; Spain is a Catholic monarchy united by the bonds of feudal duty under the usurped overlordship of the Antichrist.

When interpreted through Craig's lens, such events as the Spanish Armada of 1588 and its sequel 1596 take on a radically different, perhaps even apocalyptic, hue. The battle is no longer simply a conflict between nations, but a conflict between two feudal vassals each serving a very different superior. Craig was not unusual in applying an apocalyptic reading to contemporary events. Indeed, the Protestantism of his day was arguably defined by such thinking.¹⁴⁰ Even James VI himself, as a young man, had written a couple of commentaries on the Book of Revelation.¹⁴¹ Nor was Craig unique in seeing contemporary events in apocalyptic terms or in seeing James as a figure who would unite Britain against Catholicism. Indeed, it had been argued that Protestant apocalyptic thought had combined with unionist fervour to create a popular image of James VI as a new Constantine, a Christian emperor would lead a united Britain against Rome and the Antichrist, and that this image enjoyed considerable support in Scotland.¹⁴² Mason has demonstrated that "Constantinian imperialism", though popular with the coterie of Scottish courtiers surrounding James in England, made no real impact on the thinking or opinion of the Scottish people.¹⁴³ Nevertheless, we can see that there certainly were people who believed in the "martial potential of the union, who believed that a united England and Scotland was strong enough militarily to protect European Protestantism."¹⁴⁴ Craig was foremost among them and his beliefs in this regard were framed primarily by feudal ideology.

¹³⁹ Craig, *JF*, 1.3.23; 1.13.1; 1.13.5

¹⁴⁰ J E A Dawson, "The Apocalyptic Thinking of the Marian Exiles", *Studies in Church History Subsidia* 10 (1994) 75-91

¹⁴¹ These were *A Paraphrase upon the Revelation* and the unfortunately-titled *A Fruitfull Meditation, Containing, a Plaine and Easie Exposition, Or Laying Open of the 7, 8, 9, and 10 Verses of the 20. Chapter of the Revelation*, both of which were eventually printed in the 1616 collected edition of James' written works, *The Workes of the Most High and Mightie Prince, James*.

¹⁴² A H Williamson, *Scottish National Consciousness in the Age of James VI: The Apocalypse, the Union and the Shaping of Scotland's Public Culture* (Edinburgh, 1979) 21, 31

¹⁴³ R A Mason, "The Scottish Reformation and the origins of Anglo-British Imperialism", in R A Mason, *Scots and Britons: Scottish Political Thought and the Union of 1603* (Cambridge, 1994), 161-186, 184. One might note that James himself seemed more enthusiastic about the potential for union to foster peace than to form a basis from which to begin wars: W Patterson, *James VI and I and the Reunion of Christendom* (Cambridge, 1997). While Stuarts had made use of imperial symbolism, this was less an expression of imperial ambition than a reflection of the "desire to ensure that the Scottish monarchy was seen as the equal of its counterparts elsewhere": R A Mason, "George Buchanan, James VI and the Presbyterians" in Mason (ed.) *Scots and Britons*, 112-137, 128.

¹⁴⁴ White, "Militant Protestantism", 158-159

Notwithstanding the failure of Hapsburg Spain to mount a successful invasion of Britain and the failure of English Catholics to stage an insurrection capable of challenging the Protestant monarchy, we should avoid the temptation to dismiss Craig's fears as mere phantasms or to treat his literary response to the situation as purely rhetorical in nature. Craig had reasons for his fears. He had the example of France, where he had studied as young man, torn asunder by decades of religious warfare;¹⁴⁵ but Britain too furnished cases of religious conflict. In England, there had been the Rising of the North, less dramatic by far than the French wars but, from a Scottish perspective, highly consequential. Looking back further, there were the Rising's precursors, the Pilgrimage of Grace and Bigod's Rebellion. And, in Scotland, Craig had lived through the Marian Civil War and all the related turmoil. It was by no means unreasonable for Craig to fear further sectarian conflict, especially since Spain, the dominant Catholic power of the age, was seemingly committed to the conquest of England. If Craig had ever nursed any hopes that the rapprochement between Spain and England under James' rule would end religious conflict, the Gunpowder Plot put paid to those.

Nor was it only Craig who thought that Spain might be induced to adventures in Britain. As early as 1582, Scottish and English Catholic exiles in Paris, including Cardinal Allen, the Duke of Guise and the Archbishop of Glasgow, William Beaton, were seeking the support of Spain and the Catholic League for an invasion of Britain, perceiving that the influence of Esmé Stuart over the young James VI was advantageous to their cause.¹⁴⁶ The English Jesuit Robert Persons, who was perhaps the single most active advocate for Spanish invasion and Catholic insurrection and against whom Craig wrote the *De jure successionis regni Angliae*,¹⁴⁷ had suggested Scotland, alongside Wales and Kent, as a potential landing ground for the Spanish invasion.¹⁴⁸ In 1596, the Spanish plan for the invasion of England

¹⁴⁵ The massacre of Huguenot worshippers at Vassy on 1st March 1562 is often given as the start of the wars of religion. Craig has been studying in France between 1555 and 1561 (Dodd, "Historical Introduction", xiv-xvi). It is reasonable to suppose that the conflict played a part in his fear of Catholic violence.

¹⁴⁶ V Houlston, *Catholic Resistance in Elizabethan England: Robert Persons's Jesuit Polemic, 1580-1610* (Aldershot, 2007) 35. The Spanish did not welcome the idea of James VI converting to Catholicism as they feared it would result in English Catholics transferring their allegiance to him: A J Loomie, "The Armadas and Catholic England", *Catholic Historical Review* 59:3 (1973) 385-403, 395. Thus, the Spanish monarchy wanted not simply a Catholic on the English throne, but a Catholic of its own choosing. Interestingly, the Spanish choice for the new monarch of England, the Infanta Isabella, was far from enthusiastic about the idea of an invasion of England: Croft, "*Rex Pacificus*", 144.

¹⁴⁷ See Dodd, "Historical introduction", xxi-xxiii

¹⁴⁸ F Edwards, *Robert Persons: the Biography of an Elizabethan Jesuit 1546-1610* (St Louis, 1988) 183. This seems significant considering that Scotland was not directly involved in the Anglo-Spanish War and must have played its part in convincing Craig that, were England to fall to an invading Spanish army, Scotland's notional it was unlikely that protestations of neutrality would prevent an invasion and the imposition of a Catholic regime.

involved an uprising of Catholic nobles in Scotland, in part to ensure that James VI could not intervene in defence of Protestant England.¹⁴⁹

From Craig's perspective, a Spanish Catholic conquest of England implicitly involved the subjugation of Scotland. In the wake of two Armadas and the coterie of English Catholic exiles who had gathered around Philip II, Craig thus had material reasons for fearing Spain in particular and Catholicism in general. These practical concerns were viewed by him through the prism of feudal ideality and his own Calvinist theology to arrive at a perfect image of the mirrored feudal pyramids of Britain and Spain, two monarchic unions accomplished in very similar ways but, as he saw it, serving very different eschatological purposes. Feudal law also provided an avenue for a type of union. It was not perhaps perfect union into a single state of Great Britain, but it was an authentic union in which the Scots and the English, though remaining distinct national communities, engaged personally and individually with the Stuart monarchy under the jurisdiction of shared religio-feudal and feudal-legal systems. Provided both Scotland and England functioned within this common tradition of feudal law, it made no difference if the countries retained separate parliaments and separate national identities. If both nations were bound to the same monarch by the strictures and structures of feudal law and Reformation Protestantism, an acceptable kind of union had been accomplished.

While Craig was concerned with the threat posed by Hapsburg Spain, other attitudes prevailed in both London and Madrid. The youthful Philip III, who had succeeded to the Spanish throne in 1598, was eagerly trying to find an end to two decades of war with England. James, who seems to have believed authentically in the Christian ideal of unity and peace, embraced this, which led to the Treaty of London in 1604,¹⁵⁰ negotiations for which were ongoing while Craig was in London serving as a union commissioner. A decade later, James would seek the hand of Philip's daughter, the Infanta Maria Anna, for his son and heir, the future Charles I, something that Craig would have found inconceivable.¹⁵¹ While the feared Catholic invasion of Britain never materialised, Craig was not entirely wrong to fear Spain. By the end of James' reign, England stood again on the verge of war with Spain and, from a Protestant perspective, the crisis had been brought about by a Spanish drive

¹⁴⁹ E Tenace, "A Strategy of Reaction: The Armadas of 1596 and 1597 and the Spanish Struggle for European Hegemony", *English Historical Review* 118 (2003) 855-882, 873. On the other hand, Philip II did not seem to consider English Catholics to be particularly important for the invasion plan of 1588 and did not expect them to revolt, due to fear of reprisals: Loomie, "The Armadas and Catholic England" 389-390.

¹⁵⁰ The peace was not popular in England: J Wormald, "O Brave New World? The Union of England and Scotland in 1603", in T C Smout (ed.), *Anglo-Scottish Relations from 1603 to 1900*. (Oxford, 2005), 13-36, 17-18. It is also possible that James' direct role in the process of making peace has been overstated: see Croft, "*Rex Pacificus*" passim.

¹⁵¹ It must be observed that the Spanish and much of Protestant Europe also found it inconceivable. Cf. G Redworth, *The Prince and the Infanta: the Cultural Politics of the Spanish Match* (New Haven, 2003).

for Catholic hegemony in the Netherlands, Bohemia and Germany.¹⁵² Ever the *rex pacificus*, James refused to declare war on Spain and it was left to his son, Charles I, to do so after his father's death.

Craig wished for more than a simple dynastic union. He aspired to a feudalised British monarchy that stood as the theological anthesis of Hapsburg Spain. It was within the feudal law that Craig discerned the perfect model of the governance of society: a people united in fealty to a monarch who ruled not in his own right but purely as the faithful and submissive vassal of a Protestant God.¹⁵³ Thus, the political and economic aspects of the union debate lacked prominence in his argumentation and even his initial interest in a unified legal system fell aside in favour of a shared commitment to the feudal law.

Craig envisioned a union that was founded on mediaeval idealities of fealty and obligation rooted in an expression of feudal law that articulated a very particular form of apocalyptic Calvinist theology. To that extent, it could seem backward-looking. The issue it sought to address – that of defending the Reformation in the British Isles against Spanish invasion – was one which James had dealt with through diplomacy and negotiation. Yet, Craig was surely not wrong in recognising that Spain, notwithstanding the Treaty of London, was an antagonistic imperial power, utterly committed to the cause of the Counter-Reformation and deeply jealous of any challenges to Catholic authority anywhere in Europe. Conflict between England and Spain predicated upon religious hostility was an inevitability that Craig recognised even if his king did not. In this sense, we can construe the *De unione* as a call for ongoing vigilance on the part of British Protestantism and as a warning against disunity between the kingdoms of Britain when their enemy, a vassal of the Antichrist in Craig's cosmology, remained yet undefeated.

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¹⁵² In 1619, Frederick V of the Palatinate (son-of-law of James VI through his marriage to Elizabeth Stuart) was elected King of Bohemia. He was soon expelled from Bohemia by the Hapsburg Emperor Ferdinand II and, by 1622, a Spanish army had dispossessed him of the Palatinate. In 1621, with the end of the Twelve Years' Truce, the Spanish war against the Dutch Provinces reignited. All this was against the backdrop of the Thirty Years' War.

¹⁵³ Cf. *Jus feudale*, 1.12.1