

# Scottish Sovereignty Movement

## SOVEREIGNTY

Extracts by: Dr James Wilkie, James Fairlie and Andrew MacDonald.  
Edited by Robert Ingram.

### Contents:

1. Introduction
2. Scotland's current status
3. Constitutional Principles in the United Kingdom
4. Scotland's Constitutional Principles
5. Sovereignty and Self-Determination
6. Sovereignty and Constitution
7. Sovereignty and The People
8. Sovereignty and Currency
9. Sovereignty and the European Union
10. Sovereignty and International Law
11. Sovereignty in the Global community
12. Definitions

## 1. Introduction

*Sovereignty* in the modern political context is the ultimate resting place of *legitimate* authority. Sovereignty means the supreme and controlling power of an absolute and independent authority (such as a state). It is the place where arbitration stops; it is the source of final decisions from which there is no further appeal.

The emphasis here is on the word “legitimate”, because sovereignty can be usurped by means of armed force, brainwashing, propaganda, etc. It is true that power may be either exercised directly or delegated by a sovereign authority, but power is all too frequently exercised without such legitimisation, or even against the will of the sovereign authority, on the principle of “might is right”. The fact that it may not be possible or expedient in a practical sense to oppose such exercise of power effectively does not legitimise it in the slightest.

Sovereignty is not simply an abstract concept, it has practical applications. A claim to sovereignty is a claim by some representative authority in the name of “the people” to exercise a monopoly of law making and law-enforcement within a designated territory. In an increasingly interdependent world, sovereign states have accepted specific treaty limitations on their law-making rights.

The “sovereignty of the people” is the international standard in states all over the world with vastly differing socio-economic structures. In most cases it is written into their constitutions.

## 2. Scotland’s Current Status

**Q. Is Scotland a sovereign state?**

**A. No - In 1707 Scotland signed over sovereignty to the United Kingdom.**

**Q. Is the United Kingdom a sovereign state?**

**A. No - As a member state of the European Union the United Kingdom is no longer a Sovereign State.**

The **Lisbon Treaty**, the latest in a series of treaties, was signed by member states of the European Union on 13th December 2007, and entered into force on 1st December 2009. In effect, ceding the sovereign authority of the United Kingdom over to the European Union.

The UK currently has an opt-out from EU policies on asylum, visa and immigration. The UK can either opt in or out of any policies in the fields of justice and home affairs.

### **3. Constitutional Principles on Sovereignty**

There is a very significant difference between the historic constitutional principles of Scotland and those of England.

In Scotland, "The People" hold the supreme sovereign authority.

In England, "Parliament" holds the supreme sovereign authority.

The 1707 Treaty of Union did not state which constitutional principle would apply in the joint parliament, resulting in the numerically dominant English members following their traditional principle.

This led to a misconception within the Westminster Parliament that is clearly based on the English constitutional tradition of absolute monarchy, and the related mythology of the unlimited sovereignty of the Westminster Parliament, a concept that, if it ever had any validity in England, certainly does not apply in Scotland.

Along with other noteworthy persons the Scottish jurist Professor T.B. Smith effectively demolished this fallacious argument:

*"At the time of the Union the idea had not emerged in Scotland that an absolute sovereign power was to be found in King or in Parliament or in both combined. The theory that the Scottish King was not above the law is of ancient acceptance. Neither in public nor in private law was the King above the law, and he could not concede powers of absolute sovereignty to Parliament. In questions of private law the Scottish courts prior to the Union did not accept the English doctrine that 'The King can do no wrong'..."*

Recently however, individuals within the SNP government appear to have adopted elements of this mythology to imply, wrongly, that they have the authority to decide proposals for the future sovereign Scotland.

In 1707, the general population did not have a vote in the Scottish Parliament – only the landowners and their representatives had a vote. However, it is recorded that in cities, towns and burghs all across Scotland there were riots by the general population against the decision to join in a union with England. At the time this was the only way for the "will of the people" to be expressed. Thus it follows that, if the general population, as the "Community of Scotland", are by historic constitutional principles the supreme sovereign authority in Scotland, then the actions of the Scottish Parliament that resulted in the 1707 Treaty of Union cannot be considered as "legitimate".

**In the modern political context only by means of a Referendum can the "People" of Scotland empower the Scottish Government with "legitimate" authority to sign over the sovereignty of Scotland to any external organisation.**

#### **4. Scotland's Constitutional Principles**

In Sovereign Scotland there are aspects of sovereignty that must be addressed: internal and external. There is the question of who is the sovereign authority within the state, and the question of Scottish national sovereignty in relation to the outside world. The following points are relevant to both aspects:

a) The Declaration of Arbroath of the year 1320, one of the earliest documents of the Scottish constitution, laid it down that the King of Scots (the then executive and head of state) was subject to the will of the Community of the Realm of Scotland, and could legally be deposed if he failed to carry out that will. The Declaration refers to "our kingdom", and not "the king's kingdom". The principle is crystal clear, and can easily be translated into terms of the modern executive. The expression "Community of Scotland", even in the sense in which it was understood in 1320, can be taken to include all of the registered electorate members of the modern population.

b) The Claim of Right of the year 1689 justified the deposition of King James VII by the Convention of Estates (the Scottish Parliament meeting on its own authority) on the ground that he had subverted the constitution of Scotland by turning a legal limited monarchy into an arbitrary despotism, and had thereby forfeited the right to the crown, which had become vacant. Here, again, it requires no revolutionary thinking to realise that, in this age of international democracy, the principle is eminently applicable to the current Scottish situation.

The defining "Constitutional Principle", as expressed in the Declaration of Arbroath, clearly and succinctly denies the monarch absolute power and declares the people to be Sovereign. This model is seen as an international precedent by a majority of countries, perhaps most significantly in the American Declaration of Independence.

It should be remembered that Scotland was a successful sovereign state for some thirteen hundred years before being manipulated into the union with England; a union that was not supported by the "people" of Scotland.

## **5. Sovereignty and Self-Determination**

The sovereignty of the “people” is the basis of the right to self-determination laid down in major international instruments like the group of United Nations legal measures comprising the International Bill of Human Rights. The UN General Assembly has repeatedly laid down that the right to self-determination by identifiable “peoples” like the Scots is a fundamental human right. It should be noted that “peoples”, not governments or legislatures, expressly hold this right. This international law, which is part of the modern global constitution, is absolutely binding on the United Kingdom. In accordance with Article 1 Par. 2 of the Charter of the United Nations Organisation, Article 1 of the International Covenant on Civil and Political Rights, which is simultaneously Article 1 of the International Covenant on Economic, Social and Cultural Rights, states: *“All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development”*.

The constitutional sovereignty of the people, represented by a qualified and registered electorate, is applicable in Scotland, where Scotland is in fact an integral whole, a distinct legal and constitutional entity in its own right with its status entrenched in the union agreement.

A Sovereign (Independent) Nation is one that controls its own laws and its own financial affairs, and is not reliant on others for financial support.

Misconception: The SNP are proposing to leave the sovereignty of Scotland in the hands of the bureaucrats in Brussels and the control of our monetary policy with the Westminster government. This cedes the sovereignty of Scotland’s people to the European Union and is a betrayal of those who strive for Independence. The reality is that Scotland with a population of 5.3 million would have less influence in the EU with a population of some 500 million than in the UK union with 63 million. The SNP are therefore not proposing sovereign independence for Scotland.

## **6. Sovereignty and Constitution**

In the context of a modern democratic nation, where parliamentary democracy is based on the sovereignty of the people, a codified, written Constitution is essential. Scotland will require a written Constitution that sets out the Fundamental Law of the land, the rights and responsibilities of the people and the structures, responsibilities and limitations of government.

The Constitution will set out the form of democratic government with the people as the supreme sovereign authority. Representatives elected by the people will normally exercise governance as set out in the Constitution.

## **7. Sovereignty and The People**

To provide democratic overview and sovereign ownership by the people, provision will be required in the Constitution of Scotland for the electorate to be empowered to provide their views by means of referendums. To determine “the settled will of the people” a series of referenda will be required following Independence.

## **8. Sovereignty and Currency**

A state that does not fully control its own currency and financial matters is not sovereign (independent). A Central Bank of Scotland would be required to retain sovereignty over our currency and financial affairs. The exercising of authority for monetary and fiscal controls would be as set out in a written Constitution of Scotland.

## **9. Sovereignty and the European Union**

Scotland would not be a sovereign (independent) state as a member state of the European Union (EU). The EU requires member states to cede a general right of law making on a permanent basis to EU institutions.

As a member state in the EU (with a population of some 500 millions), Scotland (with a population of some 5.3 millions) would have less say than it currently has in the United Kingdom (population of some 63 millions).

Sovereignty can be retained and trade can be maintained with European states without being a member of the EU; as demonstrated by Norway, Switzerland and Iceland. The 28-member EU is primarily a political union, and outwith the EU a variety of options are available for Scotland to freely trade with all 50 European states, including EU member states, as well as all Commonwealth countries and all other global states.

## **10. Sovereignty and International Law**

Since the end of the Cold War and the collapse of Communism and its global bipolar system, international law has now become an increasingly integral part of our national constitution. This is resulting in an ever-increasing body of international law. Nowadays there are more international and regional organisations than sovereign states.

The impact on the Scottish constitutional situation is that a significant part of this international law lays down standards of governance that must be adhered to by individual sovereign states.

## 11. Sovereignty in the Global Community

The global community comprises some 200 sovereign states. Many of these states have joined together in regional organisations to promote mutual issues, such as trade and security. Only in Europe, which has five primary regional organisations, is there an organisation such as the European Union that requires states to sign over their sovereign rights.

A Scottish Diplomatic Service will be required to represent and promote sovereign Scotland in the global community. A special training school should be established, perhaps within one of the universities, to provide grounding in directly relevant subjects like diplomatic negotiating techniques as well as rounding off the broader education of candidates coming from different disciplines. The benefits of such talent being retained in Scotland would generate significant positive spin-off effects in politics and cultural life generally (prior to 1707, the original Scotland Yard was the site of the Scottish embassy in London).

Sovereign Scotland starts with a significant advantage due to the tremendous body of goodwill that the Scots have generated globally over the decades.

In a country of Scotland's size, lacking politicians with a background in foreign affairs, it is customary, that a trained and experienced professional diplomat should be appointed as the foreign minister.

## 12. Definitions (*Chambers dictionary*):

1. **Democracy:** A form of government in which the people govern themselves or elect representatives to govern them.
2. **Nation:** The people of a single state.
3. **State:** A territory governed by a single political body.
4. **Independent:** Self-governing; not under the control of others; not relying on others for financial support.
5. **Sovereign:** supreme ruler or head; having supreme power or authority; politically independent.
6. **Cede:** to hand over.

Revision 3- 08-09-13.