

## CHAPTER 11

# Scotsman or Englishman? Trial & Execution, 1649

### I

From Uttoxeter, Hamilton was taken in stages to Derby, Loughborough, and Leicester and arrived at Ashby-de-la-Zouch on 28 August.<sup>1</sup> Shortly after his capture, the English parliament voted a sum of £100,000 sterling on him for ransom, but this was subsequently repealed.<sup>2</sup> Towards the end of September, a small delegation arrived from the Commons, accompanied by Hugh Peters, who had been present at the duke's surrender, and pressed Hamilton to reveal the names of his English collaborators in the Engagement. His brother-in-law, Denbigh, visited him a few weeks later, probably for the same reason, but with a similar lack of success. In the middle of November, the House of Lords ordered that an ordinance should be prepared for the banishment of the earl of Cambridge and another for the other ringleaders of the Second Civil War. Yet this got no further than a conference with the lower house.<sup>3</sup> Pride's Purge, on 6 December, almost certainly stopped the initiative in its tracks.<sup>4</sup> On 4 December, the duke was taken from Ashby-de-la-Zouch and arrived at Windsor Castle a week later. Charles was also taken to Windsor, from Carisbrooke Castle, towards the end of the same month and Bishop Burnet described a brief meeting between

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<sup>1</sup> NRS, GD 406/2/M9/137 (Description of Hamilton's Imprisonment after the Battle of Preston, 1648–1649) unfol., fol [1]. The next paragraph is based on this manuscript, which was probably written by one of the six servants Hamilton was allowed in the articles of surrender.

<sup>2</sup> W. C. Cobbett, *Complete Collection of State Trials* 10 vols (London, [1809–1826]), vi, 1156, 1165.

<sup>3</sup> *Journal of the House of Lords*, x, 587–588, 594, 596. During the conference between the two houses, the Commons reminded the Lords that it was their house that moved the banishment in the first place. The issue was discussed in the upper house again on 18 November, but Cambridge was not included in the list, which suggests that he had been excepted after the initial debates.

<sup>4</sup> Woolrych, *Britain in Revolution* (2004), pp.419–433.

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the duke and the king. Hamilton was supposedly allowed by his captors to kiss the king's hand as he passed, and they exchanged a few brief words.<sup>5</sup>

It was probably around this time that Cromwell used Denbigh to carry a final overture to Charles at Windsor, knowing that the messenger would arouse little suspicion since most observers would assume Denbigh was visiting the duke.<sup>6</sup> It was the failure of Denbigh's mission that most likely brought Cromwell to Windsor. He offered Hamilton 'life, reward and service' in return for the names of the Englishmen that had colluded with him.<sup>7</sup> In Cromwell's eyes at least, Charles was an Englishman and it is almost certain that the hours spent questioning the duke were partly aimed at securing evidence, for use in a trial, of the king's complicity in the Engagement. Hamilton was unsettled enough by these interviews to smuggle a note to his brother, written with lemon juice, telling him that he had been 'oft examined, but nothing discovered' and warned his brother to beware in case he suffered a similar experience.<sup>8</sup> Cromwell's emissaries pursued Hamilton to the very steps of the scaffold in their attempt to extract 'discoveries'.<sup>9</sup>

After a fascinating trial, which lasted barely a week, and during which the presiding judge, John Bradshaw, wore a bulletproof hat, Charles was executed on a scaffold erected in front of his palace at Whitehall on Tuesday 30 January 1649.<sup>10</sup> On the Monday following, 5 February, the Scottish parliament proclaimed Prince Charles, king of Britain, France and Ireland.<sup>11</sup> The execution of Charles, king of Scotland, ushered in a new phase of the wars of the three kingdoms, but the effect on Hamilton was more immediate. Knowing that he was now certain to suffer a similar fate, his loyal servant Andrew Cole hatched an escape plan by which Hamilton successfully walked out of Windsor Castle in disguise.<sup>12</sup> Cole had instructed Hamilton not to approach a safe house he had arranged in London before 7am, as the night guards around the city were numerous, given the recent execution of the king. The duke foolishly ignored his servant's instructions and troopers, one of who grew suspicious when he heard the duke's Scottish accent, apprehended him in Southwark at around 4am.<sup>13</sup> It seems the troopers had spoken to a messenger who told them of the duke's escape and they literally walked around the corner to find Hamilton battering on the door of an inn. After this final farcical interlude, Hamilton was sent as a prisoner to St James's Palace, where his ally during the Personal Rule, Henry Rich, earl of Holland, and also George Goring, earl of Norwich (formerly Lord Goring), Arthur, Lord Capel, and Sir John Owen were being held.<sup>14</sup> Even worse, Hamilton's botched escape attempt provoked the purged House of Commons to bring the 'chief delinquents to a speedy trial' and an act was introduced to erect another High Court of Justice.<sup>15</sup>

It was perhaps fitting that Hamilton's month-long trial produced at its very heart arguments about the extent to which Scotland and England were separate nations, and what constituted

<sup>5</sup> Burnet, *Lives of the Hamiltons* (1852), p.482. Burnet claims that Hamilton fell on his knees exclaiming 'My dear Master!' to which Charles replied, 'I have been so indeed to you.' This meeting excited a particularly notable, and highly amusing, emission of purple prose from Hamilton's previous biographer, H. L. Rubinstein, *Captain Luckless* (Edinburgh, 1976), pp.223–224.

<sup>6</sup> Gardiner, *Great Civil War*, iv, 285–286.

<sup>7</sup> NRS, GD 406/2/M9/137, fols.3–4. Abbott, *Writings and speeches of Cromwell* (1988), II, 26.

<sup>8</sup> The note is reproduced in Burnet, *Lives of the Hamiltons* (1852), p.483.

<sup>9</sup> *State Trials*, vi (1640–1649), 1191.

<sup>10</sup> C. V. Wedgwood, *The Trial of Charles I* (London, 1964); Gardiner, *Great Civil War*, iv, 293–330.

<sup>11</sup> Baillie, *Letters and Journals*, iii, 66.

<sup>12</sup> Hamilton was to go to London first, then take a carrier to Dover and thence to the Continent. He was dressed as a merchant, which probably makes him the first 17–18th century escapee not to avail himself of the opportunity to dress up as a woman.

<sup>13</sup> Bulstrode Whitelock, *Memorials of the English Affairs from the beginning of the reign of Charles I to the happy restoration of King Charles II* 4 vols (New Edition, Oxford, 1853), II, 487.

<sup>14</sup> Burnet, *Lives of the Hamiltons* (1852), p.487.

<sup>15</sup> Whitelock, *Memorials of the English Affairs* (1853), II, 517.

a native of each kingdom.<sup>16</sup> The main thrust of Hamilton's defence was that he was not an Englishman; that he was in fact an alien, and as a non-native could not be tried for treason in an English court. He was a Scotsman, he insisted on numerous occasions. He had been born there and had most of his land and wealth there. He maintained that he had been sent to England at the head of an army by the parliament of Scotland, to carry out the instructions framed in their *Declaration of the Parliament of Scotland*.<sup>17</sup> He was not acting as an individual, but as the servant of his native legislature. To disobey the commands of the Scottish parliament would have resulted in censure and perhaps even the loss of his estate. As a soldier, he was protected by articles of surrender, which guaranteed him his life, and so he could not be tried for treason because he was an enemy of the kingdom of England, not a traitor. Throughout the proceedings he was addressed as earl of Cambridge, never as duke of Hamilton, despite the accused insisting on numerous occasions that he was better known by another name. In short, the trial summarised many of the tensions in the subject's life. Was he a Scotsman or an Englishman? Duke of Hamilton or earl of Cambridge? Traitor or defeated general from another nation, his life protected by articles of surrender? The gossamer of his carefully woven identity as a nobleman of two kingdoms, with interests in all three, was blown aside in the pursuit of the principal actor in the Second English Civil War.

## II

On 6 February, the president of the High Court of Justice, John Bradshaw, convened the court in Westminster Hall and the attorney-general, William Steel, exhibited the charge, 'that the Earl of Cambridge about the 19 July last traiterously invaded the nation in an hostile maner and leavyed warre for to assist the King against the Kingdome and people of England, and had committed sundry murders, rapines, wastes, and spoils, upon the said people.'<sup>18</sup> Hamilton's first words to the court was to tell them that he was better known by a name other than earl of Cambridge and he waived the answering of the charge, instead putting in a declinator or special plea. If the special plea was not sufficient, he would then answer the charge. The plea contained three heads. First, that he was employed by the parliament of the kingdom of Scotland, not to invade England, but for the ends they had set out in their *Declaration* sent to the parliament of England. He obeyed the supreme authority of the kingdom of Scotland for achieving ends that he perceived to be justifiable, though he had tried to resist being given such a prominent role in the effecting of the Scottish parliament's wishes. Second, 'that he is no Englishman, notwithstanding the naturalisation of his father'. Hamilton said that he was born before his father's naturalisation in England, and so he 'conceived himself an alien, and not tryable in England.' Third, he was 'a prisoner of warre rendred upon Articles with Major Gen: Lambert.'<sup>19</sup> These articles, argued Hamilton, assured him of life and the safety of his person and were agreed before he rendered up his forces and arms.

Significantly, perhaps, the only other thing that the counsel for the people did on the first day was to have the act of naturalisation of Hamilton's father read out and discussed.<sup>20</sup> The duke also

<sup>16</sup> The proceedings are conveniently reproduced in *State Trials*, vi (1640–1649), 1153–1188. A manuscript transcription of the proceedings has survived in the hand of Hamilton's secretary, Lewis Lewis, which contains additional matter and comments in the margin, NRS, GD 406/2/M1/190. I have used Lewis's version when it adds significantly to the account in *State Trials*. The exhaustive case by Mr William Steel for the Commonwealth was printed in its entirety, Mr. Steel, *Duke Hamilton, Earl of Cambridge. His case, spoken to, and argued on the behalf of the Commonwealth, before the High Court of Justice* (London, 1649) [Wing, S5395]. A useful summary of the proceedings are to be found in Whitelock, *Memorials of the English Affairs* (1853), II, 529–548.

<sup>17</sup> *A Declaration of the Parliament of Scotland to all his Majesties good subjects of this Kingdome concerning their resolutions for Religion, King, and Kingdoms, in pursuance of the ends of the Covenant* (Edinburgh, 1648) Wing S1224.

<sup>18</sup> *State Trials*, VI, 1155–1156.

<sup>19</sup> NRS, GD 406/2/M1/190, fol. [1].

<sup>20</sup> The act was passed on 8 April, 1624. *Journals of the House of Lords*, III, 295.

requested time to call witnesses and evidence from Scotland, citing by allusion the time given to the earl of Strafford to send for witnesses to Ireland, but this was denied.<sup>21</sup> The next two sessions of the court were spent selecting counsel for Hamilton, which was done with some difficulty as no lawyers could be found that would take the case. Following pressure exerted by the court, Hamilton eventually secured Mr. Heron, Mr Parsons, Mr Chute, and Mr Matthew Hale.<sup>22</sup> Hale was certainly a good choice by the duke, being a closet royalist who had represented Archbishop Laud (1643–44) and the Irish papist rebel Connor Maguire (1644).<sup>23</sup> In treason trials, however, counsel were only allowed to give their opinion in points of law; they were not permitted to state the case and present matters of fact, and Hamilton spoke to his own case in every session, except the final one on 26 February when his counsel had liberty to present their legal opinion in support of the plea.<sup>24</sup>

On Saturday 17 February, Hamilton began to present the parts of his plea. He produced a copy of his commission from the parliament and committee of estates to be general of the Engagement forces, he displayed the Engagement *Declaration* to the parliament of England, and finally tabled the original articles of capitulation. He was forced to use his two servants, Lewis Lewis and Andrew Cole, to attest to the veracity of the documents and to the time of his capitulation. All of the documents were read out in court and the *Declaration* in particular caused considerable offence, with its disparaging references to sectaries. At one point, the atmosphere was so hostile that Hamilton interrupted the reading and told the court that he had not been present at the passing of the document.<sup>25</sup> He chose, quite naturally, to lie. Hamilton spent the rest of the session trying to prove that the articles of capitulation secured him life from both the violence of the soldiers and from the civil authorities. He was absolutely convinced that he had full protection for his life and he pursued the point with substantial vigour. Thomas, Lord Grey of Groby, Hugh Peters and Colonel Robert Lilburne, who had all been at Uttoxeter on the morning that the articles were agreed, all gave evidence. Grey had apparently tried to take Hamilton prisoner with no articles of surrender, but Hamilton had refused to yield because he was agreeing terms with Lilburne, Major-General Lambert's representative. Lilburne then claimed that he had signed the articles on the understanding that Hamilton's life was to be protected from the common soldiers, but not 'from the justice of Parliament'. At this, Peters jumped up and denounced Lilburne's gloss, claiming that it was clear that Hamilton's life was protected from the soldiers and the parliament.<sup>26</sup>

The governor of Windsor, Colonel Christopher Whichcote, and the marshall of Windsor were examined about Hamilton's escape, this being done to prove that Hamilton had broken the articles of capitulation by escaping from Windsor Castle. Perhaps sensing this angle, Hamilton expressed resentment at the wound to his honour inflicted by the governor's claims that he had broken his promise to be a 'true prisoner' and said that if he were free he would challenge Whichcote to a duel. Hamilton was allowed to conclude the proceedings of the day by speaking to all three branches of his plea, though he spent most of his time emphasising 'how sacred articles of war were reputed in all places' and liberally sprinkled his discourse with examples from the Bible (Abner, Elisha, the Gideonites) and the First English Civil War (Prince Rupert and Lord Cottington) where combatants were protected by articles.<sup>27</sup> Over the next two sessions, on 19 and 21

<sup>21</sup> *State Trials*, vi (1640–1649), 1156.

<sup>22</sup> *State Trials*, vi (1640–1649), 1156, 1162. A Dr Walker, though nominated by Hamilton, refused to act for him.

<sup>23</sup> Alan Cromartie, *Sir Matthew Hale 1609–1676: law, religion and natural philosophy* (Cambridge, 1995), pp.2–3, 44–45.

<sup>24</sup> Whitelock, *Memorials of the English Affairs* (1853), II, 539; *State Trials*, vi (1640–1649), 1162–1165; Cromartie, *Sir Matthew Hale*, p.44.

<sup>25</sup> NRS, GD 406/2/M1/190, fol. [3].

<sup>26</sup> *State Trials*, vi (1640–1649), 1157–1158. Peters reacted angrily again on Monday 19 February at the examination of Colonel Wayte, who had claimed Hamilton was Grey's prisoner, *Ibid*, 1159.

<sup>27</sup> *State Trials*, vi (1640–1649), 1158–1159.

February, evidence could not be found to prove that Hamilton was *post natus*, that is born after James VI became King of England in 1603 (which he was, being born in 1606). Nor was it proved that Hamilton had actually joined with Langdale, thus rendering him guilty by association. The act repealing the duke's ransom for £100,000 was also read out, and Hamilton used this to show that he had not been viewed as a traitor, 'but as an enemy who had life granted him by Articles'.

Hamilton closed his evidence on 22 February. He again showed that he had been the prisoner of Lambert, not Grey of Groby, and that he had articles securing his life. If these were ignored it would be accounted 'a downright butchery' and set a hideous precedent should there be future conflicts between the nations. He produced an order of parliament stating that no quarter was to be given to the Irish in arms, which Hamilton argued implied that others would receive quarter.<sup>28</sup> The declaration issued by the English parliament on 14 July 1648 was cited, as it confirmed that all the Scots who entered England were enemies and all the English and Irish were traitors. Since Hamilton would not be allowed to speak again, he summarised his case for the final time, adding that when the Scots entered England in 1640 it was not accounted treason, and had his design prospered it would have been viewed in a similar light, the objective being the same. It had not been proved that he was *post natus*, nor did his father's naturalisation include his son. He also revealed that an act for his own naturalisation had been framed at the beginning of the present parliament, although it had not been passed. Nor did possession of an English earldom 'naturalise him, that being the king's single act, whereas naturalisation was only by act of parliament.'<sup>29</sup> Hamilton concluded with the emphatic statement 'that his Articles were sufficient, according to the laws of all nations, to preserve his life.'<sup>30</sup>

Hamilton's counsel, and Matthew Hale in particular, spoke to the three branches of the plea on Monday 26 February.<sup>31</sup> Since Hamilton was born a Scotsman, his tie of obligation to that kingdom was 'indispensable and indissoluble.' No man could be a subject of two kingdoms, so since Hamilton's stake in Scotland formed the majority of his interests and attachments, then he had to be accounted a Scottish subject. Therefore what he carried out on behalf of his native kingdom 'could not infer treason.'<sup>32</sup> It was argued that his father's naturalisation did not confer that status on his son, nor was the distinction of *post natus* (born before an event) or *ante natus* (born after an event) enough to lay a charge of treason on one from an independent kingdom. Many examples were cited, including that of Lord Fairfax, who was *post natus* and held his title in Scotland, and if he was tried for treason in Scotland for taking an army thither it would provoke outrage in England. Finally, it was claimed that articles for life were universally understood to be protection from both military and civil authority and such 'secret meanings' as were averred in this case, raised dangerous precedents.

Mr William Steel, the attorney general, summed up the Commonwealth's position in a legal presentation that lasted six hours and ran to around 18,000 words in its printed version.<sup>33</sup> Throughout his discourse, he referred to Hamilton under his English title of earl of Cambridge. For the first part of the plea, that Cambridge was acting under orders from the Scottish parliament, Steel argued that Cambridge should be judged a traitor, not an enemy, and cited the case of Empson and Dudley, where a commission had been used to mask complicity and enthusiasm for treasonous actions.<sup>34</sup> In fact, 'all the catalogue of former traitors, who have hatched their treasons and designs

<sup>28</sup> The denial of quarter to Irish in arms was the same in Scotland.

<sup>29</sup> *Ibid.*, 1161.

<sup>30</sup> *Ibid.*, 1160–1162.

<sup>31</sup> *Ibid.*, 1162–1165.

<sup>32</sup> Apparently this was well-argued by Hale, though he admitted afterwards that though it was a universally received maxim, it was not founded on a common or statute law, *Ibid.*, 1163.

<sup>33</sup> Whitelock, *Memorials of the English Affairs* (1853), II, 545; *Duke Hamilton, Earl of Cambridge. His case, spoken to, and argued on the behalf of the Commonwealth, before the High Court of Justice* (London, 1649).

<sup>34</sup> *State Trials*, vi, 1167–1170. The Empson and Dudley case is at, *State Trials*, i, 283.

against this state in foreign parts, and have ever had the Pope or foreign princes to put a stamp of authority and command upon them, must by this argument be in some measure justified.<sup>35</sup> The second part of the plea, that Cambridge was not an Englishman, was argued at wearisome length by Steel. Although he admitted that conclusive evidence was not found that Cambridge was born after 1603, the whole basis of Steel's long discourse put Calvin's case at its root.<sup>36</sup> Put simply, as a *post natus*, Hamilton was the same as a 'natural born Englishman'.<sup>37</sup> In the haze of his long dissertation, Steel overstretched himself a number of times and at one point discarded the judgement of Calvin's case to argue that an ancient union had existed between the kingdoms, so the union of 1603 was merely a 'national remitter of the antient Union'.<sup>38</sup> Whether he was born before or after 1603, Cambridge was a subject of England and could be tried for treason. William Wallace and Mary, Queen of Scots had been tried for treason, and so could the earl of Cambridge, a peer of England besides, argued Steel.<sup>39</sup> The third branch of Cambridge's plea, that he was protected by articles, was dealt similarly by the attorney-general, but mercifully with more brevity. Whatever the articles of capitulation may have stated, it was not in the power of the military authority to pardon or discharge an individual who had committed treason. Even if this was the case, then Cambridge's escape from Windsor broke the articles and made him no longer a prisoner of war.

Steel attempted to conclude his six hour discourse on a note of levity. In answering Cambridge's claim, often repeated during the trial, that had he understood the articles of surrender would have permitted a charge of treason, then he would never have capitulated, preferring to die *in furore belli* (in the fury of war) and thus avoiding the consequences of attainder. Steel, presumably addressing the earl at the bar, asked 'is it no privilege above an immediate death by the sword, to have a fair judicial Proceeding by a Charge against him, putting his own Plea thereunto, the Matter of Fact by witnesses and other evidence proved on both sides, and counsel assigned him of his own choice to argue his own cause in point of law, and himself to be heard as much as he could speak in his own defence?'<sup>40</sup> Legal convention did not allow the defendant to reply.

On Tuesday 6 March, Hamilton was brought to the bar for the last time. The judges rejected his plea and Bradshaw embarked on a long discourse justifying Steel's arguments, in particular that Hamilton was certainly naturalised and that articles, no matter how explicit, could not protect someone who had committed treason. He was sentenced to have his head severed from his body on the Friday next, 9 March.<sup>41</sup>

### III

Hamilton, Holland, Norwich (formerly Goring), Capel and Sir John Owen were all condemned on the same day, but the court remitted their sentences to parliament for clemency. At the same time, the bills to abolish kingship and the House of Lords had reached the committee stage, and the Commons took a break on 8 March to consider the petitions from 'the great delinquents'. Norwich was saved by the casting vote of Speaker Lenthall, and even though he expressed a

<sup>35</sup> *State Trials*, vi, 1168.

<sup>36</sup> *State Trials*, vi, 1171–1178. The judgement in Calvin's case was that Robert Calvin, son and heir of James, lord Calvin of Colcross, who was born three years after James came to the English crown, was adjudged a subject of England. One of the key questions was also whether allegiance was due to James VI & I or the state and law of the kingdom (England or Scotland). Robert Calvin was born in the same year as Hamilton, though Steel did not know this.

<sup>37</sup> *State Trials*, vi, 1172.

<sup>38</sup> *State Trials*, vi, 1175. This was a quote from the union negotiations shortly after James came to the throne, but I take it to have been conscious hyperbole, especially in the legal sense, by the promoters of the union.

<sup>39</sup> *State Trials*, vi, 1176–1177.

<sup>40</sup> *State Trials*, vi, 1186.

<sup>41</sup> *State Trials*, vi, 1188.

preference for 'being beheaded in such good company', Sir John Owen was also reprieved.<sup>42</sup> The earl of Warwick pleaded for his brother, and was backed by Fairfax, but a single vote sent Holland to the block.<sup>43</sup> Hamilton's petition excited no reaction and it was rejected without a division. He fared slightly better when the Army Council debated his case later the same day.<sup>44</sup> There was uneasiness amongst some of the score of members present, particularly Lieutenant Byfield, Major White, Sir Hardress Waller and Captains Merriman and Clarke, that the articles of capitulation had guaranteed Hamilton's life and that the army should stand by them.<sup>45</sup> A number of the officers agreed with Hamilton's argument that if the articles had not assured him of life, then it would have been more to his advantage 'to have fought it out to the death,' rather than allow himself to be 'tainted in his blood and [have] his estate sequestered'.<sup>46</sup> However, the argument finally swung away from the duke and rested in favour of the 'godly men' who had judged the case. Even though they decided to do nothing to save Hamilton, it was agreed that the issues that the case raised should be discussed at a later date.<sup>47</sup>

Of course, Cromwell took a leading part in the disposal of 'the great delinquents' and his opinion influenced the Army Council and the House of Commons. He opposed debating the petitions from the condemned men in the house and voted against sparing any of them.<sup>48</sup> His mind had been made up by 20 November 1648, as this letter reveals:

If I be not mistaken, the House of Commons did vote all those traitors that did adhere to, or bring in, the Scots in their late invading of this kingdom under Duke Hamilton, and not without very clear justice, this being a more prodigious Treason than any that had been perpetrated before; because the former quarrel on their part was that Englishmen might rule over one another; this to vassalise us to a foreign nation. And their fault who have appeared in this summer's business is certainly double to theirs who were in the first, because it is the repetition of the same offence against all the witnesses that God has borne, by making and abetting to a second war.<sup>49</sup>

This is a rightly famous, and frequently quoted, passage from Cromwell that explains the nature of the odious crime of those who were to go to the block.<sup>50</sup> However, Hamilton's place in this Anglocentric vision is unclear. Did Cromwell view Hamilton as a traitor, and therefore English, or one of the Scots? Or, as is probably the case, did he change his mind after Hamilton refused to reveal his Engagement collaborators? Nor is it certain that the Scots sought to 'vassalise' the English, unless the insistence on a Presbyterian settlement was viewed by Cromwell, as is likely, in those terms. The fact that Hamilton was a neutral in the First Civil War in England, and spent the war as a prisoner of the royalists, does not fit neatly into the sentiment of the second sentence, though one could 'witness' God's judgement in the First Civil War from prison. Here, as happened so often in his life, Hamilton occupied a grey area between what was identifiably Scots and what was identifiably English. The tension in this celebrated passage is that within weeks of Cromwell writing this letter, Hamilton's national identity was altered. Pride's Purge turned the duke of Hamilton into the earl of Cambridge. He went to the scaffold, in the eyes of his accusers, as more Englishman than Scotsman. He went to the scaffold as a Briton, that is one whose national identity

<sup>42</sup> *Journal of the House of Commons*, VI, 159–160; Abbott, *Writings and speeches of Cromwell* (1988), II, 27–28.

<sup>43</sup> The division was 30 to 31.

<sup>44</sup> C.H. Firth, *The Clarke Papers* 4 vols ([London], 1891–1901), II, 194–198.

<sup>45</sup> Of those officers that debated the issue, Major Blackmore of Cromwell's regiment, Captain Spencer of Harrison's regiment and Captain Clarke were all witnesses in Hamilton's trial, *Ibid.*, note.

<sup>46</sup> Firth, *Clarke Papers*, II, 196–197.

<sup>47</sup> *Ibid.*, 198.

<sup>48</sup> Abbott, *Writings and speeches of Cromwell* (1988), II, 26–27.

<sup>49</sup> Abbott, *Writings and speeches of Cromwell* (1988), I, 691.

<sup>50</sup> See, for example, Woolrych, *Battles of the English Civil War* (London, 1961), p.182

had been reshaped by the interplay of the three kingdoms during his life. Elements of the English part, his English peerage title, his father's naturalisation and his enjoyment of some of the privileges of an Englishman were turned into a snare to send him to the scaffold.<sup>51</sup>

Hamilton's last letter<sup>52</sup> to his brother and heir, setting out his instructions for his estate and children, is also revealing:

Since it heath [sic] pleased god so [to] dispose of me as I ame to be in this wordill [world] bot a feu houres you can not expect that I can say much to you, nor indeed is itt nesisarie for I know you will doe undesyred (what is in your pouer) what I nou brifly mention. first that you will be a father to my poure childring; and that they be not forsed to marie against ther willes, yet I hoope they will be found tractabill and will follou the aduuse of freinds, which I wish may be to them that they be married in Scotland; sumthing I mentioned in ane testament I left in Scotland with my Lo Belhaven; bot let not that be binding, bot doe ther in as you and freinds shall think fit.

the debtes I oue ar great, and but feu freinds bound for them. the estat I leaue you [is] small, yet such as will satisfie what I owe and so frea my casioners from reuing and you ar just and so [I] douts not of your performens. I can not forget to recomend my fathfull seruants to you who hes never had anie thing frome me, in particular Coole, Lewis, and James Hamilton; I have giuene sume thing to them during ther lyfes which I hoope you will sea payed to them.

I shall say no more bot this, the Lord of his Mersy preserfe you, and give you grace to aply your self aright to him, in whome ther is only fulnes of joy, dote not on the wordill for all is but vanity and vexation of sperreit; grife not for what hes befallen me; for it is by the apoyntment of him that reyles in Earth and hauen, thidder Lord Jesus be pleased to carie the sinfull soule of your most louing brother Hamilton March 8 1648.<sup>53</sup>

Even this last letter recalled the bitter pill of his own marriage to the daughter of a minor English nobleman, but his desire to have his daughters married in Scotland was driven by more than that. Especially after a decade of conflict, and his imminent execution by the Commonwealth regime in England, there is enough in Hamilton's wishes for his daughters to suggest that, in his view at least, the closer relationship between the British dominions after 1603 had been a disaster. In fact, the duke's will requested that his eldest daughter, Anna, should marry James Hamilton, lord Paisley, eldest son of the earl of Abercorn, which points to a twin desire to re-unite the two main Hamilton branches and to pursue the expansion of Hamilton influence in Scotland and Ireland, rather than England.<sup>54</sup> Hamilton's repositioning of his family's ambitions was certainly unpalatable to his first biographer, who laid down his pen in 1673. As well as anglicising the duke's anarchic Scots writing, as usual, Burnet suppressed the passage about Hamilton's desire to have his children

<sup>51</sup> Hale used the word 'snare' in his speech, when referring to naturalisation, and I have used it here in a similar, but slightly broader, context, *State Trials*, vi, 1163.

<sup>52</sup> Hamilton actually wrote a personal letter to his daughters on the day of his execution and a short note to his brother to remember his servant the bearer (unnamed, but unquestionably Andrew Cole), but the one reproduced in the text is what he would have regarded as his final, public letter. The letter to his daughters and the short note to his brother are reproduced in Burnet, *Lives of the Hamiltons* (1852), pp. 505–506, 509. The final note to Lanark about Cole has survived, NRS, GD 406/1/2123.

<sup>53</sup> NRS, GD 406/1/2369 (Hamilton to Lanark, 8 March 1649).

<sup>54</sup> Hamilton MSS, Lennoxlove, M14/3/4.

married in Scotland and ignored the Abercorn marriage proposal. It was a final attempt to smooth his subject's image for Restoration sensibilities.<sup>55</sup>

By all accounts, Hamilton went to his death with considerable composure and bravery on 9 March.<sup>56</sup> Before dawn, he conferred with his dearest and most trusted servant, Andrew Cole, all matters that were to be passed to Lanark.<sup>57</sup> It was typical of the man that he fretted over whether his speech on the scaffold would be heard properly by the crowds, or that the soldiers would prevent him from speaking freely.<sup>58</sup> He therefore delivered his speech on the morning of his execution to the other condemned lords and his servants in the room in St James's Palace, where they had passed their last night.<sup>59</sup> Hamilton declared himself 'of the true reformed protestant religion, as is professed in the church of Scotland'. He insisted that Charles I had never countenanced popery, nor had he 'any intent to exercise any tyranny or absolute power over his subjects.' Speaking for his own ancestors, he stated that the Hamiltons had always been loyal subjects to the Stewart dynasty, and that Charles II was the rightful heir to his father's dominions. He also chose to speak about a few of the numerous 'calumnies and aspersions' that had been heaped on him during his lifetime. He had always had a faithful and loyal heart to the king and had never 'expressed disservice or dissoloyalty unto him.' Although he conceded that it was open to question whether it was a good or a bad thing, he did not persuade Charles to consent to 'the act of continuing this parliament' by which he probably meant the act against dissolving the Long Parliament without its consent in 1641.<sup>60</sup> Neither did he secure royal assent to the bill of attainder against the earl of Strafford. He also refuted the claim that he was responsible for the use of the great seal of Scotland to authorise those who rebelled in Ireland in 1641, nor was Charles 'in any case a causer or countenancer of those Irish troubles.'<sup>61</sup> Hamilton then moved to the present and confirmed that he had not revealed the names of any who had invited the Engagement army into England, despite repeated attempts by his captors to secure the information. The 'foul and senseless slander' that he betrayed the Engagement army was also untrue. He used all his power to preserve the army and was convinced of the cause for which he entered England, in particular to avert 'the fatal fall of my master.'<sup>62</sup> Hamilton ended his speech with a scathing attack on the 'lawless and arbitrary court' that convicted him, composed of 'men mechanic' that had even announced its verdict 'before ever the trial begun.' In concluding, he believed his death to be 'no less than murder,' abetted by powerful men who had long contrived his destruction.

<sup>55</sup> Burnet, *Lives of the Hamiltons* (1852), p.505. The passage omitted by Burnet runs 'yet I hoope they will be found tractabill and will follou the aduys of freinds, which I wish may be to them that they be married in Scotland; sumthing I mentioned in aue testament I left in Scotland with my Lo Belhaven; bot let not that be binding, bot doe ther in as you and freinds shall think fit.'

<sup>56</sup> Burnet, *Lives of the Hamiltons* (1852), pp.505–515; *The several speeches of Duke Hamilton Earl of Cambridge, Henry Earl of Holland, and Arthur, Lord Capel, spoken upon the scaffold immediately before their execution on Friday the ninth of March, 1649* ([London, 1649]), p.3; *The manner of the beheading of Duke Hambleton, the Earle of Holland, and the Lord Capell, in the pallace yard at Westminster, on Friday the 9<sup>th</sup> of March 1648 with the substance of their several speeches upon the scaffold, immediately before they were beheaded* (London, [1649]), pp.1–3; Whitelock, *Memorials of the English Affairs* (1853), II, 548.

<sup>57</sup> Burnet, *Lives of the Hamiltons* (1852), p.505. Burnet discussed Hamilton's final hours with Andrew Cole.

<sup>58</sup> Burnet, *Lives of the Hamiltons* (1852), pp.506, 509.

<sup>59</sup> Burnet, *Lives of the Hamiltons* (1852), p.506. He sent the speech to his brother to be published. The servants had spent the night in an adjacent room. I have used the speech reproduced in Burnet (*Ibid*, pp.506–509) but with some trepidation as the original has been lost, and a copy of the printed version, if in fact it was printed as Hamilton had instructed, has not survived either.

<sup>60</sup> The act is reproduced in Gardiner, *Constitutional Documents*, Third Edition (1947), pp.158–159. The English Triennial Act (1641) preceded the act against dissolution and Hamilton probably had a part in that too, Scally, 'Career of Hamilton', Cambridge PhD (1992), pp.301–2. Both acts provided a bulwark against the crown's right to call and dissolve parliaments.

<sup>61</sup> Burnet, *Lives of the Hamiltons* (1852), p.508.

<sup>62</sup> *Ibid*.

Shortly after 9am, Hamilton, Holland and Capel were taken in sedan chairs from St James's Palace to Sir Robert Cotton's house, close by the Palace Yard at Westminster where the scaffold had been erected. The whole area was teeming with soldiers and spectators. The House of Commons rose early because the attendance was so thin on account of the executions.<sup>63</sup> A contemporary pamphlet noted the scene:

There was a great guard of souldiers both horse and foot, and many thousands of people. There were many scaffolds made about the Pallace Yard, and they were very full, insomuch that divers scaffolds broke, and some people fell down. The windows and tops of houses were all full.<sup>64</sup>

Hamilton went up the scaffold first, accompanied by Andrew Cole, Lewis Lewis, Sir James Hamilton and Dr Sibbald,<sup>65</sup> a Scottish minister who had administered to the duke during his stay at St James's Palace. Norwich and Sir John Owen, who had been reprieved the day before, also supported the duke on the scaffold.<sup>66</sup> He wore a black suite, with a silver star upon his cloak. Hamilton was on the scaffold for over an hour before he was executed. Much of the time was spent in taking leave of his devoted servants and in pious reflections with Sibbald, but at one point a great silence fell and Hamilton seemed rather surprised that a final speech was expected. He addressed himself to the sheriff of Westminster and covered many of the same points in his earlier speech at St James's, though there were some differences.<sup>67</sup> If the pamphlets are to be believed, he declared that he loved England equally with his own country.<sup>68</sup> Halfway through his speech, he noticed that a number of scribblers were taking down his every word. He stopped and asked them not to write anything to his disadvantage, which was again typical of the duke.<sup>69</sup> He ended with an expression of his personal religion which, though difficult to verify, has the ring of truth to it, saying that his was of the established religion of Scotland, but he 'was not of a rigid opinion.'<sup>70</sup> This was a final phrase that could be adopted as a motto for the subject's life.

Hamilton spent his final moments conveying the customary forgiveness to the executioner and arranging payment. His hair was arranged under a white satin cap. A large piece of red silk was spread over the block, on which the severed head was to be gathered. After questioning the executioner in some detail about how he would like him to lie, he lay flat on his stomach and put his head on the six inch block. He embraced the block in his arms and cried out, 'Lord Jesus receive my soul to thy mercy' and stretched out his right hand, the traditional sign to the executioner.<sup>71</sup> His head came off at one stroke. A coffin was brought on to the scaffold and the body was taken to Sir James Hamilton's house in the mews. A surgeon sewed the head back on later that day. The body was eventually conveyed by sea to Scotland and buried in Hamilton Parish church. He was 42.

<sup>63</sup> Whitelock, *Memorials of the English Affairs* (1853), II, 548.

<sup>64</sup> *The manner of the beheading of Duke Hambleton, the Earle of Holland, and the Lord Capell* (London, [1649]), p.1.

<sup>65</sup> It is unlikely that this was the Aberdeen Doctor, Dr James Sibbald (c.1567–1647), since he seems to have died in Dublin a few years earlier, *Oxford DNB*, 'James Sibbald (c1595–1647)', <https://doi.org/10.1093/ref:odnb/25494>.

<sup>66</sup> *The manner of the beheading of Duke Hambleton, the Earle of Holland, and the Lord Capell* (London, [1649]), p.1.; Burnet, *Lives of the Hamiltons* (1852), p.508.

<sup>67</sup> I am presuming this was the sheriff of Westminster, who would have been responsible for making the arrangements for the executions and seeing them carried out.

<sup>68</sup> *The severall speeches of Duke Hamilton Earle of Cambridge, Henry Earle of Holland, and Arthur, Lord Capell* ([London, 1649]), p.1.

<sup>69</sup> *Ibid*, p.2.

<sup>70</sup> *Ibid*, p.3.

<sup>71</sup> *The manner of the beheading of Duke Hambleton, the Earle of Holland, and the Lord Capell* (London, [1649]), p.3.