'The Question Now Standeth Betweene the Two Nations': English and Scottish Sovereignty in Seventeenth-Century Spitsbergen[1]

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Introduction

IN THE Arctic mist of 31 July 1634, a group of about one hundred whaling men, led by Captain William Goodlad, sailed into Hornsund, Spitsbergen.[2] The contingent disembarked and marched along the shore towards another group of men, approximately eighty in number, positioned in the fjord's southern cove.[3] They came armed not only with pistols and muskets but also with a 'comission under the great seale of England', and orders given by the English Privy Council to their employer, the Greenland Company of London.[4] In addition to pistols, muskets, and their ships' cannons, the Yarmouth whalers they approached, led by William Cane and Thomas Wilkinson, were armed with 'a patent graunted to one Nathaniell Edwards for the kingdome of Scotland'.

The two groups came face to face on the barren Arctic shore and proclaimed their rights to the harbour. Captain Goodlad did not accept that the Scottish patent granted the Yarmouth men the right to whale in 'the cove ever possessed

1 Following common practice for the early modern period, 'Spitsbergen' is used in this article to refer to all modern-day Svalbard. The English and Scots used 'Greenland' to refer to Spitsbergen and used 'Gronland', 'Groenland', 'Gruinland', and similar names to refer to modern-day Greenland.

2 The following account is derived from TNA, SP 16/275, ff. 60r-61v, 'Relation of the Greenland Companie of the differences betwixt there ships and those of Yarmouth', 9 October 1634; TNA, SP 16/282, ff. 69r-70v, Petition of Nathaniel Edwards and others to Charles I, 12 January 1634/5; TNA, SP 16/499, f. 168r, Complaint against Archbishop Laud, January 1640/1.

3 Probably modern-day Samarinvågen (Map 1).

4 The Greenland Company was a subdivision of the Muscovy Company of London. The names were used nearly interchangeably in the context under discussion and, following the sources, that practice is adhered to in this article.

by the [Greenland] Company' and commanded them to leave. The Yarmouth men 'answered they did stand upon their patent and would maynteyne the harbor w[i]th their bloods' and, allegedly, denounced the orders of the English Privy Council as merely 'a peece of paper'. In response to this 'ill usage', Goodlad attempted to wrest away the Yarmouth men's train oil.[5] An exchange of gunfire followed. The Greenland Company men drew first blood, killing at least one of their opponents with musket fire. During a break in the fighting, William Cane, determined to hold the harbour, challenged Goodlad 'to fight tunne for tunne and man for man' for its control. The battle was, however, put on hold and transferred over 2,400 kilometres (1,500 miles) south to the halls of power in the Stuart kingdoms of Charles I.

At the centre of the 1634 incident was the Scottish entrepreneur Nathaniel Udwart (sometimes anglicised as 'Edwards'). Scholars have long noted Udwart's disruptive role in Spitsbergen whaling.[6] Nonetheless, those working in the early twentieth century, as well as the few scholars who have broached the topic more recently, have not provided a thorough account of Udwart's activities and the issues leading to the 1634 incident. The more recent accounts have, however, provided tantalising glimpses into the broader significance of Udwart's whaling venture in terms of Anglo-Scottish relations in the union of the crowns.[7] For example, Gordon Jackson raises questions about the national status of each kingdom by describing the clash of 1634 as 'a minor international incident'.[8] Andrew Nicholls has described Charles I's role in adjudicating the differences between Udwart and the Greenland Company as an example of 'British policy making' between 'rival interests from his two sovereign kingdoms'.[9] Chesley Sanger has emphasised the inter-kingdom complexity of the situation as Udwart made appeals to Scottish rights in his whaling disputes even though the whaling was primarily conducted by Englishmen rather than Scots.[10]

5 Train oil is the oil extracted from boiling the blubber of whales and other sea creatures. The bowhead whale (*Balaena mysticetus*), also known as the Greenland right whale or Arctic right whale, was the target of whalers at Spitsbergen and, in early seventeenth-century Europe, their oil was primarily used in manufacturing soap.

6 For example, Conway 1906, 144-145, 174-177, 183-184; Scott 1910, 70-71; Harris 1920, 44-70.

7 The union of the crowns saw James VI, King of Scots, accede to the English and Irish thrones. Historians have long debated whether that political arrangement essentially resulted in Scotland becoming a 'province' of England. In point of law, England and Scotland remained independent sovereign kingdoms with their own crowns, parliaments, Privy Councils, laws, churches, and commercial systems. See, for example, Galloway 1986, 93-136; Levack 1987, 1-9; Wormald 1992, 175-194; Brown 1993; Macinnes 1999, 33-64.

8 Jackson 2005, 16.

9 Nicholls 1999, 61, 170.

10 Sanger 1995, 18-21.

These threads – Scotland's 'national' status, policy in the Stuart multiple monarchy, and inter-and-intra-kingdom partnerships and rivalries between Scots and English – will be tugged at in this essay. They will then be woven into broader historiographical tapestries. The details of Udwart's whaling venture add to a growing corpus of work demonstrating that colonial and commercial projects in the first decades following the union of the crowns created unique ways of challenging the institutions controlling trade in England and Scotland, resulted in new Scoto-English partnerships and rivalries, and served as constitutional testing grounds between the two kingdoms.[11] The 1634 incident was a physical manifestation of the seventeenth-century 'Scottish question': in the Stuart multiple monarchy, was Scotland to remain an independent kingdom or be made 'subalterne to Ingland'?[12]

Both parties involved in the 1634 incident placed tremendous weight on their respective patents: the Muscovy Company's granted under the Great Seal of England and Udwart's granted under the Great Seal of Scotland. The English Privy Council supported the Muscovy Company patent and the Scottish Privy Council supported Udwart's patent. Could Udwart's Scottish patent coexist with a similar English patent or was it inevitable that patents of the larger and wealthier kingdom would supersede those of Scotland?[13] Would decisions made, and advice given, by the Scottish Privy Council be treated on equal footing with that of the English Privy Council? This article examines these questions through the conceptual framework of union *aeque principaliter* – a union of equals. Roger Mason has recently shown that Scots employed this concept to counter English assertions of superiority in the intellectual battleground surrounding the union of the crowns.[14] The defence of Udwart's whaling patent demonstrates that the concept was also applied in practical matters between the two kingdoms. This case study provides insight into how Scots desired parity of status with England and some of the strategies used in their attempts to achieve it.

Scotland, whaling, and the disputed north

The histories of the English and Scottish patents are linked to the independence of crowns, Privy Councils, laws, and commercial systems, as

11 See Wagner 2020, 582-607; Wagner 2022a, 1-19; Wagner 2022b, 40-61.
12 Galloway and Levack 1985, 84.
13 For this idea, see Mackillop and Murdoch 2003, xxxi-xxxii, xxxv-xxxvii; Devine 2003, 3-4; Mijers 2013, 173-174.
14 Mason 2020, 402-421. Also see Mason 2015, 1-24.

Map 1. Spitsbergen (Svalbard), Hornsund, and Samarinvågen in the Arctic Ocean. (Source: https://commons.wikimedia.org/wiki/File:Norway_Svalbard_location_map.svg. Adapted by author under the Creative Commons Attribution-Share Alike 3.0 Unported licence.)

well as with the royal prerogative. The English commission that the Greenland Company men referred to in Hornsund was a 1613 patent granted by James VI and I to renew and extend the Muscovy Company's privileges.[15] In association with the patent, it was declared that Spitsbergen and its whale fishery belonged to the Crown of England and the Muscovy Company possessed exclusive whaling rights.[16] Unlike other English commercial monopolies, the whaling monopoly was to be enforced against foreign competitors.[17]

This aggressive policy was pursued through diplomacy and force. During the 1613 whaling season, the Muscovy Company's seven ships, including the armed *Tiger*, encountered Dutch, French, Spanish, and interloping English

15 TNA, SP 14/141, ff. 61r, 65v, Confirmation of the liberties of the Muscovy Company, 30 March 1613.

16 TNA, PC 2/27, ff. 118r-118v, Answer of English Privy Council, 10 January 1613/4.

17 The monopolies possessed by English trading companies were internal monopolies. They declared that no English subject could participate in trade in certain regions unless they were members of the company that possessed a monopoly for that region. They did not assert that merchants from other nations were not allowed to trade in the region. Pettigrew and Stein 2017, 341-362. The difference in the case of Spitsbergen was that there was a territorial claim. As stated in one instance, Spitsbergen was 'justly appropriated to the Crowne of England, and … his Ma[jes]ty was King *tam mare quam terra*'. TNA, SP 91/2, ff. 35r-35v, 'Allegacons of ye Muscovy Comp[an]y ag[ains]t such as interupt their whale fishing', 20 December 1617.

vessels.[18] In one example, the *Tiger* approached five French and Spanish vessels, called the rival captains aboard, and 'shewed them the King's Majesties patent … forbidding them, by the authoritie thereof, to make anie longer aboad ther, or in anie parte of the countrey, at their perills'.[19] When confronted with a competing Dutch commission granted by Maurice of Orange in another instance, the English claimed their commission from James VI and I 'was still greater'.[20]

Muscovy Company actions in 1613 and subsequent years caused protests from Spanish merchants[21] and the governments of the Dutch Republic,[22] France,[23] and Denmark-Norway.[24] In this way, English claims brought Spitsbergen onto the stage of international diplomacy.[25] They also affected ongoing debates about *mare clausum*, *mare liberum*, and the law of the sea.[26] The contest for Spitsbergen became an opportunity for European states and dynasties to assert

18 Most of the French and Spanish vessels were manned by Basques, the pre-eminent whalers of the period. Demonstrating that Spitsbergen whaling was transnational as well as international, Basque whalers served on English and Dutch vessels as well; Dunkirk and La Rochelle merchants hired Dutch ships and crews; an English pilot was employed on a ship from Bordeaux; and Englishmen and Scots served on Dutch vessels. Markham 1881, 38-69; Conway 1904, 1-38.

19 Markham 1881, 60.

20 Conway 1904, 30. The Muscovy Company later asked James VI and I 'to write his l[ette]res to the Prince of Orange to forbeare to authorise his people by comission'. TNA, SP 14/181, f. 87r, Petition of the Muscovy Company to English Privy Council, [13 January 1625].

21 Regarding Spitsbergen, and drawing a comparison with Spanish claims in the Americas, Sir Thomas Lake and John Digby (later 1st earl of Bristol) argued that English 'merchants shoulde maintaine their prioritie of discoverie as they doe theires of the West Indies'. TNA, SP 94/19, f. 367v, Digby to Lake, 26 May 1613; TNA, SP 94/20, f. 41r, Digby to Lake, 4 September 1613; TNA, CO 1/1, ff. 103r-105v, Digby to Sir Dudley Carleton, 3 November 1613.

22 See, for example, TNA, SP 84/71, ff. 320r-323v, 'A copie of a Remonstrance to the States concerninge Greeneland', [March 1615?]; TNA, SP 84/71, ff. 99r-102v, 'The States Answere to o[u]r first Remonstrance touchinge Greeneland', 6/16 April 1615.

23 TNA, SP 78/62, ff. 177r-178r, Sir Thomas Edmondes to [Sir Ralph Winwood], 21 October 1614; TNA, SP 78/67, f. 230r, William Beecher to Lake, 21 December 1617.

24 See, for example, TNA, SP 75/5, ff. 148r-150v, Christian IV to James VI and I, 18 February 1616; Rigsarkivet, TKUA England A.I.2, James to Christian, 26 April 1616. For an overview, see Murdoch 2003, 32-33.

25 While mostly disputatious, Spitsbergen could be used to strengthen diplomatic ties. Upon being informed of the English claim to the archipelago and in response to a request from the English ambassador (and Muscovy Company agent), Sir John Merrick, Tsar Mikhail I of Russia granted a licence 'for certaine of his subj[ec]ts called Lapps [Sámi], a people living in a very cold climate, & a barren soyle' to travel to Spitsbergen 'w[i]th some English to inhabite there, and search, & see what good meanes for proffitt might be there found out'. TNA, SP 91/2, f. 35v. For background on early modern Russian, Danish-Norwegian, and Swedish competition over control of the territory, natural resources, and people of Sápmi, see Ojala and Nordin 2019, 98-133.

26 For the classic study of the British context, see Fulton 1911, 181-200.

their sovereignty and present themselves as serious international players. Már Jónsson argues that Christian IV did just that by forcefully asserting the Danish-Norwegian claim to Spitsbergen. Through that claim, Jónsson contends, Christian was able to negotiate on an equal footing with the Dutch and English and, thus, Denmark-Norway 'stood equal to the most powerful states in the disputed North'.[27]

What about Scotland? Was it, like Denmark-Norway, able to assert itself on the issue of Spitsbergen as a sovereign kingdom equal to its European neighbours? As an equal to England? Nathaniel Udwart's patent stood at the centre of this matter and will be duly examined. The stage can be set by building upon Steve Murdoch's research and looking at a few additional entanglements with Denmark-Norway.[28] First, Denmark-Norway is the only foreign kingdom known to have been sent a copy of the Scottish East India Company's patent in 1617.[29] The patent was granted under the Great Seal of Scotland and the act of sending it to Denmark-Norway demonstrates that it was meant to be recognised as a legitimate legal instrument in the international arena. Second, when, in 1619, the Muscovy Company agreed to allow 'the Kinge of Denmarks owne subjects' to whale with the English at Spitsbergen, it explicitly stated that those rights were 'not by couller thereof [to] be transferred to any other nation'.[30] That stipulation may have been included with Scots specifically in mind as it coincided with continuing debates over the Scottish East India Company's whaling plans[31] and Scots, by the terms of the 1589 marriage treaty between Scotland and Denmark-Norway, were naturalised subjects of Denmark and Norway.[32] Third, in 1617 or 1618, some Scottish fishermen aggressively pursued catches in the Faroe Islands, a dominion of Christian IV. When Christian complained to James VI and I, he was told that the Scottish Privy Council needed to be consulted before an answer could be given.[33] Although the Scots had been forced out of their regular fishing areas around Orkney and Shetland by Dutch

27 Jónsson 2009, 17-27, quote at 21.
28 For the most recent study, see Murdoch 2023, 211-231.
29 Rigsarkivet, TKUA England A.II.12, Danish translation of the Scottish East India Company patent, 24 May 1617.
30 TNA, SP 91/2, f. 248r, Answer of the Muscovy Company to the King of Denmark, 10 January 1618/9.
31 See, for example, Parliamentary Archives, HL/PO/JO/10/1/18, f. 189, Answer of the Muscovy Company, [1618 or 1619?]; British Library, IOR/B/6, f. 389, English East India Company court minutes, 30 July 1619.
32 Or, more specifically, in negotiations regarding the 1589 marriage treaty it was determined that previous agreements conferred mutual subject status between the kingdoms. Murdoch 2003, 23, 33; Murdoch 2023, 214-215.
33 TNA, SP 75/5, f. 165v, James to Christian, [1617 or 1618].

fishermen, the Council determined that the Scottish fishermen were in the wrong. After hearing the report, James proclaimed that Scots were no longer to fish within sight of the Faroe Islands. The opinion of the Scottish Privy Council was sought and respected in this case and the matter went through an independent Scottish process as the Council called commissioners from several burghs to explain the matter.[34] When confirming his decision to Christian, James specifically made the point that 'we had to wait until the Counselors of the Kingdom of Scotland, whom this matter especially concerned, could be consulted'.[35]

These episodes demonstrate a 'mixed bag' regarding the ability of Scots to assert themselves on the international stage and within the Stuart multiple monarchy. Starting within Scotland, Nathaniel Udwart's whaling patent adds more complexity. Though surely a business endeavour from his perspective, Udwart's efforts would redound to an inter-kingdom dispute between the rights of the English and Scottish crowns.[36] James VI and I granted Udwart a soap patent under the Great Seal of Scotland in 1619, and it was through his soap business that he became involved in Spitsbergen whaling. Heretofore historians have only recognised that the patent granted a twenty-one-year monopoly on the production and sale of soap in Scotland.[37] As the production of soap required train oil, the patent also included the 'full libertie and privilege of trade and benefite of fishing … within the seas and territories of Greinland and iles adjacent' without interference from 'any of his highness subjects whatsoever'.[38] Like the Scottish East India Company, which planned its Spitsbergen whaling voyages in London, Udwart coordinated with English partners in his whaling activities even though the patent protected independent Scottish operations.[39] Udwart, in fact, originally worked in cooperation with the Greenland Company. For example, a Greenland Company ship, the *Nathan* of London, carried sixty tonnes of train oil to Leith from Spitsbergen in 1622.[40]

34 *RPCS, 1616-1619*, 328-330.
35 Meldrum 1977, 187.
36 For a recent and insightful study of how the pursuit of individual overseas interests could have 'national' consequences, see Roper 2017.
37 *RPCS, 1619-1622*, 106-107; Scott 1912, 124, 130; McLoughlin 2013, 55.
38 NRS, GD45/15/6, 'The Coppie of Mr Nathaniall Edwards patent of the soape works', 26 October 1619.
39 There was little whaling experience in Scotland at the time. Wagner 2020, 592-599.
40 NRS, E71/29/7, f. [98]r, Edinburgh and Leith entry books: imports, 2 September 1622. The master of the *Nathan* was the Thomas Wilkinson of the 1634 incident and Udwart paid the import duties. Wilkinson worked for the Muscovy Company in 1622 and Udwart explained to the Scottish Privy Council the next year that his soap business was supplied with train oil by the Greenland Company. *RPCS, 1622-1625*, 797; Markham 1881, 62; Conway 1904, 42-51.

With the support of the Scottish Privy Council, Charles I granted Udwart a new Scottish patent in 1626.[41] Unlike the 1619 patent, its focus was Spitsbergen whaling. Beyond a personal grant to Udwart, it explicitly granted Scots' parity of status with the English. The patent was intended 'for the maynteineing, and preserveing of the priviledges and liberties of that kingdome [Scotland] in full integrity' and Udwart's and other Scots' rights to whale in Spitsbergen were confirmed 'as fully and in as ample manner as any our subjects whatsoever'.[42]

Along with the new patent, Udwart's choice of English partners shifted. Whalers from Hull, Lynn, York, and Yarmouth operated outside the monopoly held by the Muscovy and Greenland Companies in the 1610s and 1620s. They were subject to accusations of interloping and the question of whether they should be allowed to operate without licence from the London companies was litigated in the English Privy Council and parliament.[43] The new Scottish patent created a legal backing for Yarmouth whalers against the Greenland Company when they partnered with Udwart to supply train oil for Scotland. The merchant Thomas Hoarth took the lead among the Yarmouth men, being the assignee of a seven-year deed of assignment from Udwart in which the whaling rights conveyed in the 1626 Scottish patent were extended to English partners.[44] Like Udwart, Hoarth and these English partners were pursuing their own interests and were willing to form an inter-kingdom partnership to that end.[45] Their support for the legitimacy of the Scottish patent was tied to the fact it could be used to further their own interests. They were not concerned about the broader sovereignty issues which resulted from the competition between English and Scottish patents.

Competing patents and conflicting visions

Clashes over those broader issues began in 1627 when Udwart, in partnership with Hoarth, planned to send two whaling vessels from

41 *RPCS, 1622-1625*, 692; *RPCS, 1625-1627*, 375-377.
42 TNA, SP 16/32, ff. 69v-70r, Charles I grant to Udwart, 28 July 1626.
43 See Appleby 2008, 23-59. This outport versus London dynamic is important to consider, as is Udwart's cooperation with English partners. They demonstrate that the issue was more complex than simply a clash of English versus Scottish interests.
44 TNA, E 178/5525, 'Interrogatories to be administred unto witnesses on the parte and behalfe of Thomas Horth of Yarmouth', [January 1633?].
45 Udwart also contracted English workmen knowledgeable in gun-making in relation to his Scottish monopoly on iron ordnance. TNA, PC 2/38, p. 357, Privy Council Register, 31 July 1628.

Yarmouth.[46] Udwart, Hoarth, and the others involved in the enterprise viewed this and subsequent voyages as legal 'by vertue of his Ma[jes]ties l[ett]ers patente assigned unto him for the furnishing of the kingdome of Scotland w[i]th oyle'.[47] The Muscovy Company complained to the English Privy Council about the planned voyage under 'p[re]text of a voyde Scottish patent'.[48] The company may have been referring to Udwart's 1619 patent, some aspects of which had been voided.[49] It may also have been disparaging the 1626 patent and questioning its legitimacy generally. Upon the Muscovy Company's complaint, the Council ordered the staying of Udwart's and Hoarth's vessels.[50]

The ways in which the English Privy Council characterised the Scottish patent and asserted its jurisdiction in this case are significant to the issue of independent English and Scottish jurisdictions and the status of English and Scottish patents vis-à-vis the other kingdom. The Council was aware of the 1626 patent, knew it was not void, and attempted not to blatantly overstep its jurisdiction or directly infringe upon the royal prerogative by stating it 'thought not fitt to enter into question touching the validitie of the said patent'. Nonetheless, the patent's validity was questioned in its ruling:

> The Board … dislyked the course taken under colour of a patent p[ro] cured under the greate seale of Scotland to use Englishe subjects, English shipps, and all other p[ro]visions here to impeach the libertie and priviledge spetially graunted to the Muscovie Company w[hi]ch excludes all other men though they were English, therfore holding this to be but a fraude.[51]

46 TNA, PC 2/35, ff. 343v-344r, Privy Council Register, 4 April 1627. Further demonstrating inter-kingdom connections in Udwart's whaling pursuits, Nathaniel Wright left the Muscovy Company to join Udwart and Hoarth in 1627. He had been the company's agent in Basque country for recruiting expert whalers and he was able to hire about ten Basque experts for the expedition from Yarmouth, including the company's chief harpooner. Like Hoarth, he believed he could legally operate under the Scottish patent even though he was an Englishman and the voyage was being conducted from England, where the Muscovy Company's monopoly was in force. TNA, SP 16/89, f. 20r, Petition of the Muscovy and Greenland Company, [May? 1627].

47 This idea appears consistently in the records of a case in the Court of Exchequer involving Hoarth. This quote comes from one of several similar depositions: TNA, E 178/5525, Deposition of John Stanly, [January 1633?]. My thanks to Jack Abernethy for photographing these records for me.

48 TNA, SP 16/58, f. 73r, Petition of the Muscovy Company to English Privy Council, 30 March 1627.

49 *RPCS, 1622-1625*, 157, 236, 248-253, 257, 554-555, 796-801.

50 TNA, PC 2/35, ff. 343v-344r.

51 Ibid.

On one hand, the Council did have jurisdiction over the Englishmen who partnered with Udwart. On the other, an English institution was coming close to making a ruling against a legal instrument granted under the Great Seal of Scotland.[52]

The 1627 voyage proceeded despite the Privy Council's orders[53] and tensions increased after a 1628 expedition was conducted under the auspices of the Scottish patent and another was being planned for 1629.[54] The Greenland Company suspected Hoarth and others of planning 'to sett out shipping from Yarmouth … for the whale fishing this yeare w[i]thin the compasse of the patent of the Muscovia companie, under pretence of a patent granted unto one Nathaniell Edwardes under the great seale of Scotland'. The English Privy Council declared that their ships and persons would be subject to arrest if they proceeded.[55] This declaration emboldened the Greenland Company and, as Udwart and the Yarmouth men believed the Scottish patent provided them legal protection against the Council, the opposing factions were set on a collision course.

According to Udwart, he and his partners sent two ships to whale at Spitsbergen in 1629, but the Greenland Company 'debarred us forciblie from fishing'. The company allegedly seized their shallops, stole their provisions, and took several of their men hostage. Thus, the expedition was ruined, no whales were caught, and Udwart and his partners lost £4000 sterling. In an attempt to gain the support of the Scottish Privy Council and Charles I, Udwart framed the issue in terms of 'the liberteis of the natioun'. The Scottish Privy Council strongly supported Udwart's argument. In their letter to Charles I endorsing Udwart's petition, the Privy Councillors wrote: 'we thinke it strange that anie oppositioun sould be made to your Majesteis subjects of this kingdome in the peaceable exercise of that priviledge whiche other natiouns doe promiscuouslie injoy'. The liberties 'of this your Majesteis native and ancient kingdome', they wrote, must 'be keeped unviolat'.[56] They were arguing that the 1626 Scottish patent should be upheld as a legitimate legal instrument – just as legitimate as the English patent – and their entry into the conflict demonstrates the role that the Council played in protecting the sovereign rights of Scotland.

52 For comparison with the English Privy Council's role in the rescinding of the Scottish East India Company's patent, see Wagner 2020, 600-606.

53 TNA, SP 16/531, f. 176r, Petition of the Muscovy Company to English Privy Council, [1630].

54 Though conducted with English partners, the 1628 expedition also included Scots. For example, George Burt, mariner of Leith, was hired to serve on the *Rainbow* of Yarmouth. NRS, AC7/2, p. 193, George Burt v Dick Herth, 6 October 1629.

55 TNA, PC 2/39, p. 170, Privy Council Register, 1 April 1629.

56 *RPCS, 1629-1630*, 354-356.

Thus, the Scottish Privy Council supported Udwart's patent and the English Privy Council supported the Muscovy Company's patent. The issue was a stalemate with each side relying upon the support of one of the Privy Councils against the other. As in other inter-kingdom disputes that arose after the union of the crowns, a broader 'British' solution was needed, but no clear mechanism was in place to provide it.[57] The king, as holder of the royal prerogative in both kingdoms, was one option. The Scots proposed another possible solution, one wholly consistent with the concept of union *aeque principaliter*: that the matter be adjudicated 'by the advice of an equall nomber of his Privie Counsell in both kingdomes'.[58] Neither option was yet pursued.

Again in 1630, the English Privy Council ordered Udwart and his Yarmouth partners not to whale in Spitsbergen. This time orders were sent to officials in Yarmouth to prevent any whaling voyages 'under coulor of a Scotish patent'.[59] A report composed in 1630 is key to understanding the position taken by the Muscovy Company and English Privy Council. Produced by the company, it explicated that the core issue was the competing English and Scottish patents:

> The difference arriseth about the right of theis 2 sev[er]all patents and the execution of them. The Company conceive … that the firste graunt in lawe is better for one and the same thing cannott be graunted to two sev[er]all distinct p[er]sons … where two pattents are graunted directly one crossing the other (as in this cause they doe) the consequences are of great consideracon and the greatest evill to be prevented. Nowe Mr Edwards by his patent seeketh to intrude upon the priviledges graunted to the Company … Also he endeavoureth to execute a patent graunted in Scotland as it were of force here in England and for his private gayne doth joyne Englishmen as his p[ar]tners a thing altogether contrary to the intent of his patent for by this meanes the subjects of England have greater priviledges by a

57 See Rose 2016, 272-275.

58 *RPCS, 1629-1630*, 356.

59 Additionally, Udwart and Hoarth were ordered to enter into bond for £1000 not to engage in the whaling. It appears these tactics were successful and Udwart and Hoarth did not set forth a whaling expedition in 1630. TNA, SP 16/531, f. 176r; TNA, PC 2/39, p. 697, Privy Council Register, 17 March 1629/30; TNA, PC 2/39, p. 765, Privy Council Register, 21 April 1630; TNA, PC 2/39, p. 777, Privy Council Register, 30 April 1630; TNA, SP 16/188, f. 95r, Thomas Glemham to Dudley Carleton, 1st Viscount Dorchester, 12 April 1631. Quote from TNA, PC 2/39, p. 762, Privy Council to Bailiffs and Justices of the Peace of Yarmouth, 20 [April 1630].

> Scottish patent then they have by an English patent … tending to the overthrowe of this Company and by consequence all other patents & companies of marchaunts in England.[60]

Though there were legitimate concerns about Englishmen operating outwith the Muscovy Company's monopoly, this position went further than that. It rejected the principle of union *aeque principaliter*, arguing that the granting of Scottish patents that overlapped with English patents would undermine all English trading companies. The company's legal argument assumed the two patents existed in the same system of law, overlooking the fact that Scots law, the Scottish chancery, and the Great Seal of Scotland remained intact and autonomous after the regal union.[61]

In 1631, Udwart gained the support of the Scottish chancellor, George Hay, viscount of Dupplin (later 1st earl of Kinnoull), to counter the English position.[62] Hay, concerned that 'his hieness letters patents and priviledges of this natioun have bene muche violated and wronged by the Grenland Companye of London', wrote to the English secretary of state, Dudley Carleton, 1st Viscount Dorchester. Hay hoped that there could be a solution 'for the goode of bothe natiounes'.[63] Carleton forwarded the complaint to the Muscovy Company, which answered that it had not violated the rights of Scotland. The company framed the issue in terms of English interlopers and the wrong of using a Scottish patent to protect activities that were in contravention of its patent. Moderating its argument, it acknowledged that Udwart's patent could perhaps protect Scots operating from Scotland but argued it could not be used to protect 'Englishmen subjects of this kingdome livinge and abidinge here'.[64] The English Privy Council agreed and again ordered Hoarth and Udwart to refrain from going to Spitsbergen.[65]

60 TNA, SP 16/540/1, ff. 125v-126r, 'The state of the cause in difference betweene the Muskovia Company and Mr Nathaniell Edwards about the sev[er]all patents for fishing the whale in Greenland', [1630].

61 Disregarding the legal situation in relation to Scotland similarly occurred in the Restoration period when private interest groups, parliament, treasury officials, and others in England persistently ignored the ruling of Calvin's Case in order to exclude Scots from trading with English colonies, characterising them as 'aliens' under the English Navigation Acts. Wagner 2022b, 40-43, 47-53.

62 In 1615, Hay and Thomas Murray had become the first individuals to be granted a whaling patent in Scotland. *RPCS, 1613-1616*, 330; Haig 1824, 60.

63 TNA, SP 16/185, f. 35r, Hay to Carleton, 19 February 1630/1.

64 TNA, PC 2/40, p. 514, Privy Council Register, 18 May 1631. Quote from TNA, SP 16/186, ff. 91r-91v, 'The Answere of the Muskovie Company to the Complaint of Mr Nathaniell Edwards', 9 March 1630/1.

65 TNA, SP 16/191, f. 32, Petition of the Muscovy Company to English Privy Council, 13 May 1631; TNA, PC 2/40, p. 511, Privy Council to Bailiffs of Yarmouth, 18 May 1631.

Returning to their standard practice, they proceeded despite the order.[66]

The pattern was repeated in 1633 and one of Udwart's ships, the *Anne Elizabeth*, was stayed. Another, the *Peter*, avoided detection.[67] The usual arguments were advanced. Udwart argued that the *Anne Elizabeth* was being prepared to catch whales off Spitsbergen 'for ye use of ye kingdome of Scotland according to l[ette]res patents graunted to him there'. The English Privy Council sought to protect the monopoly of the Muscovy Company, asserting jurisdiction over the *Anne Elizabeth* and *Peter* as 'English shippes and man[ne]d w[i]th Englishmen'.[68]

Prior to the 1634 whaling season, the Muscovy Company obtained the order of the English Privy Council that Captain Goodlad referred to in his confrontation with the Yarmouth whalers in Hornsund.[69] Concerned about an increased number of interlopers, the Council assured the Muscovy Company it would support them 'against any of [the king's] subjects that should unjustly molest or oppose them'.[70] Were William Cane, Thomas Wilkinson, and the Yarmouth whalers operating under Udwart's Scottish patent 'unjustly' opposing the Greenland Company by hunting whales in the southern cove of Hornsund?

It had been clear for years that orders from the English Privy Council alone could not resolve the contest of the two patents and, with the shedding of blood over the issue in 1634, that fact could no longer be ignored. As the Scottish Privy Council stated in response to the incident, 'the question now standeth betweene the two nations' and cannot 'bee judged by the Lords of yo[u]r Ma[jes]t[y']s privy councell of England onely'. As in 1629, the Scottish Council was concerned that 'the libertyes and prevelidges of [Scotland]' had been 'trod underfoot'. It, therefore, asserted itself to defend the kingdom's rights.[71] Charles I agreed that the English Council could not solely rule on the incident and ordered that five English Privy Councillors and five Scottish Privy Councillors sit jointly to adjudicate the matter. Suggesting

66 TNA, PC 2/41, pp. 36-37, Privy Council Register, 15 June 1631; TNA, PC 2/41, Privy Council Register, 25 January 1631/2. According to Thomas Hoarth, £2700 was invested in the 1631 whaling expedition and the train oil and whale fins obtained sold for £2919 (£1416 worth of oil sold in Scotland; £1442 worth of oil and fins sold in Amsterdam; and £61 worth of fins sold in London). These and other details pertaining to the 1631 expedition can be found in TNA, E 178/5525, Hoarth v Attorney General and Dame Slingsby, [1633?].

67 TNA, PC 2/42, p. 553, Warrant to Sir Henry Marten, 10 April 1633; TNA, SP 16/237, f. 78r, Bailiffs of Yarmouth to Privy Council, 28 April 1633.

68 TNA, PC 2/42, pp. 555-556, 'Touching the Muscovia Company & Mr Hawes and Mr Hoarth', 12 April 1633.

69 TNA, SP 16/275, f. 60r.

70 TNA, PC 2/43, p. 613, 'Touching the Muscovie Company', 30 April 1634.

71 TNA, SP 16/282, f. 69r.

parity of status, the king desired that 'the right and trade of both nations' be preserved.[72]

Thus, the ensuing hearing and deliberations between English and Scottish representatives was framed as an international affair even though the dispute was over the patent rights granted under two crowns possessed by the same monarch. Charles's unique intervention in this case saw the Scottish and English Councillors meet in Whitehall on 12 March 1635.[73] Mr Herne, representing the Greenland Company, was the first to speak in front of the esteemed noblemen and officers of state. Rather than repeat the old accusations against Udwart, his partners, and the Scottish patent, he made a handful of measured points. The conflict could be resolved, Herne exhorted, if Udwart joined the Greenland Company's joint-stock, allowed the company to supply train oil to Scotland, and conducted his whaling in harbours not frequented by the English. Mr Chute, representing Udwart, took the opportunity to reiterate that his client possessed a whaling patent granted by the king and passed under the Great Seal of Scotland. Udwart was not, Chute emphasised, under any obligation to join the Greenland Company as he possessed the same rights to whale off Spitsbergen as it did. Other highlights of the hearing included Chute's claim that Scots were the first to whale in the harbours under discussion; that Udwart should be allowed to partner with Englishmen and Scots because they were 'both under one Prince'; that Scots should only carry train oil to Scotland; and that any resolution should ensure 'that no prejudice be to the Scotch patent & Nation'.

The initial agreement reached was that Udwart and his partners would be allowed to whale off Spitsbergen on similar terms as the whalers of Hull and York. This decision does not, however, indicate that the rights of the 'Scotch patent & Nation' were no greater than those possessed by outport

72 Ibid. The English were: Thomas Howard, 14th earl of Arundel; Henry Montagu, 1st earl of Manchester; Charles Wilmot, 1st Viscount Wilmot; Francis Cottington, 1st Baron Cottington; and Sir Francis Windebank. The Scots were: William Douglas, 7th earl of Morton; Robert Ker, 1st earl of Roxburghe; Alexander Livingston, 2nd earl of Linlithgow; William Alexander, 1st earl of Stirling; and Sir James Galloway. William Alexander had a strong incentive to protect the Scottish whaling patent and the Englishmen operating under its authority as he had obtained a Scottish licence to permit mostly English partners to engage in transatlantic commerce in 1631. James Galloway was even more likely to support Udwart as he was a partner with him in several commercial ventures. TNA, CO 1/8, f. 92r, Licence to William Claiborne, 16 May 1631; *RPCS, 1625-1627*, 296, 433; *RPCS, 1627-1628*, 64, 338-339; *RPCS, 1630-1632*, 28-29, 209-214.

73 Udwart and directors of the Greenland Company were also present. The information in this paragraph derives from the minutes that Sir Francis Windebank took at the hearing: TNA, SP 16/284, f. 152r, 12 March 1634/5.

English merchants.[74] The final articles of agreement maintained the rights of the Scottish patent and allowed Udwart to employ 'either English or Scottish shipps & men, and make all his provisions either in England or in Scotland'.[75]

Conclusion

Nathaniel Udwart, his partners, the lord chancellor of Scotland, and the Scottish Privy Council promoted the Scottish whaling patent of 1626 as equally legitimate as the Muscovy Company's English patent. The Muscovy Company and English Privy Council did not believe that the Scottish patent was equal to the English patent. Inconsistent with a union of equals, their conception was that the king should not grant Scottish patents that overlapped with rights granted in English patents. After the 1634 incident, Charles I supported the Scottish vision and ordered an Anglo-Scottish process of adjudication that was consistent with the concept of union *aeque principaliter*. Thus, the concept – promoted by Scots in intellectual terms in the years surrounding the union of the crowns – was pursued in a practical, real-world setting in the case of Spitsbergen whaling.

Indeed, the case demonstrates that the pursuit of Scottish parity could be successful during the reign of Charles I. The addition of commercial examples to the dominant theme of religion can help broaden our understanding of Charles's approach to his native kingdom.[76] Perhaps surprisingly, he consistently recognised the autonomy of Scotland and sought and heeded Scottish viewpoints on issues relating to overseas trade and colonisation. For example, in 1629-1632 he sought input from the Scottish Privy Council and Convention of Estates in negotiations with France regarding Nova Scotia, referring to it as a matter 'of the Scottish nation'.[77] He also chartered the Scottish Guinea Company in 1634 (just three years after a new English Guinea Company had been created)[78] and, in 1638, decreed that Scottish trade with

74 Though it does demonstrate the control that London merchants possessed as English outport merchants and Scots needed to overcome the opposition of London interest groups in their pursuits of new trades. For the arrangements made between Hull, York, and the Greenland Company, see Appleby 2008, 40-42.

75 TNA, PC 2/44, pp. 503-504, Privy Council Register, 31 March 1635.

76 As can other non-religious factors, such as local politics and noble rivalries. For a recent study demonstrating this, see Abernethy and Furgol 2021, 1-31.

77 See, for example, TNA, SP 78/88, ff. 197v-198v, Dudley Carleton to René Augier and Henry De Vic, 2 March 1630/1; *RPCS, 1629-1630*, 613-614; *RPCS, 1630-1632*, 46-47, 299-300; *RPS*, A1630/7/30.

78 For an overview, see Law 1997, 185-202. Additional evidence of support from Charles can be found in TNA, CO 1/9, ff. 262v-263r, Warrant to discharge the *Star* of London, 14 May 1638.

Virginia was not subject to English regulations.[79] These and other cases are worth greater consideration.[80]

An additional nuance likewise adds a new avenue for broadening our understanding of Anglo-Scottish relations in the union of the crowns. That is that the case of clashing whaling patents was not simply one of English versus Scottish interests. Udwart's partnerships demonstrate that the regal union created new opportunities for commercial cooperation between the two kingdoms as English people excluded from English monopolies could now operate with the legal backing of Scottish patents.[81] In the Spitsbergen case, that situation complicated jurisdictional issues as Yarmouth whalers were emboldened to ignore orders of the English Privy Council and rely on the protection of a Scottish patent. Additional study into inter-kingdom commercial partnerships and rivalries will provide further insight into the constitutional and practical consequences of regal union and help us better understand the viability – or unviability – of union *aeque principaliter*.

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79 TNA, CO 1/9, f. 283r, Licence to John Burnett, 2 July 1638; Wagner 2022b, 45-47.

80 Another case study ripe for additional analysis in the framework of union *aeque principaliter* is that of the Society of the Fishery of Great Britain and Ireland. See, for example, Scott 1910, 361-371; Fulton 1911, 218-245; Macinnes 1999, 48-49; Nicholls 1999, 155-158.

81 Other examples include the Kent Island project and the just-mentioned Scottish Guinea Company. Scots could also operate under the auspices of English legal instruments. For example, James Hay (1st earl of Carlisle) was granted an English patent for the Caribbean islands in 1627. TNA, CO 29/1, ff. 2r-7v, 'The Earle of Carlisle's first Graunt of the Caribbee Islands', 2 July 1627; Berkshire Record Office, D/ED/F35, Lease of rights trading between Scotland and Africa, 9 March 1637/8; Wagner 2022a, 1-19.

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