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De jure Regni Apud Scotos

For four hundred years George Buchanan's latin text, the *DIALOGUS DE JURE REGNI APUD SCOTOS* has been known to the Latinist legal philosopher as a profound study of the art and science of good government.

The work was published at the time when the Scottish people has forced Mary Queen of Scots to abdicate in favour of her infant son James and George Buchanan sought to establish the rights of the people to bring their Crowned Head to order. This was, for the time, a novel principal to express and the book was widely and eagerly read by those reaching towards the more egalitarian principals of government that has now become part of our democratic parliamentary system.

Despite the fact that the *Dialogus* was not well received by King James (to whom the work was dedicated) or the establishment, and was condemned by the Scottish Parliament, banned after the restoration of Charles II and ordered by the University of Oxford to be publicly burned by common hangman, the book had a profound influence on the political thinking of the time. In England, Parliamentarians cited Buchanan to justify their own proceedings against the King and the tendrels of Buchanan's principals, enunciated first in this *Dialogue*, can be found interwoven in the Constitutions and Legal systems that have stemmed throughout the world from what has been called the "Mother of Parliaments."

The work, although neglected by our own universities, was for many years in some Continental seats of learning mentioned as a major classic, but only one translation into English by an American Duncan H. McNeill has been published. This important exposition of early democratic thought has been made available to people throughout the world, who study the evolution of principals governing the democratic heritage.

Duncan H. McNeill had a distinguished record to his credit in uncovering the neglected political and constitutional history of Scotland he is the author of "The Scots Constitution" an outline and historical introduction, and "The Scottish Realm," an approach to the political and constitutional history of Scotland. He has written numerous essays and articles on related subjects. He is the brother of F. Marian McNeill, whose books on Scottish Traditional Customs and Life have also made a signal contribution towards a revival of Scottish National sentiment for which both brother and sister have devoted a lifetime of dedicated work in their respective fields.

A brief outline of the Life of George Buchanan

George Buchanan was born in February 1506, at Moss near Killearn, Stirlingshire, Scotland. He was the third son in a family of five sons and three daughters. His father Thomas, was of Highland, and his mother, Agnes Heriot, of Lowland stock from East Lothian. The Lennox, as the district of his birth was then known, was largely Highland in character and he grew up bilingual in Gaelic and Scots.

His father died when George was seven and the family had to move to Cardross through straitened circumstances. Scotland at this time was better provided with schools for primary and secondary education than was any country in Europe with the possible exception of the Netherlands, and at Killearn or Dumbarton George received the grounding from which he was to rise to the peak of European scholarship.

In 1520 his uncle, James Heriot, sent him to Paris to further his education. Although the university there had lost much of its former prestige through its adherence to the obsolete scholasticism, as against the new humanism, its connection with Scotland was still strong, through the influence of the Scots College founded there in 1325. George remained in Paris two years at which time his uncle died and lack of financial support drove him back to Scotland. His health had never been robust, but despite this he joined the Duke of Albany's expedition against England and took part in the siege of the Castle of Wark. The Scots army made little headway; winter set in, and the expedition returned to Scotland, suffering severely from snow-storms on the way. This experience reduced his strength still more, but in the spring of 1525 he had recovered sufficiently to matriculate at the University of St. Andrews. His studies in Paris were recognised, and in October of the same year he graduated Bachelor of Arts of St. Andrews.

John Major, the last of the Scottish Scholastics, was then teaching at St. Andrews, but in the summer of 1526 he returned to Paris. George soon followed him there and in March, 1528 graduated Master of Arts of Paris. Next year we find him teaching at the College of St. Barbé in that city, a position he resigned in 1531 to become tutor to the young Earl of Cassilis.

While in Paris he had as fellow students John Calvin and Ignatius Loyola, who were in later life to become famous - the first as leader of the non-Lutheran reformers, and the latter as the founder of the powerful Society of Jesus, the Jesuits. While there is no direct evidence to show that George was on friendly terms with either of them, it seems not improbable that he was acquainted with them for he had the ability to remain on speaking terms with people who were themselves violently opposed to one another; as for example, when after his final return to Scotland he remained friendly with both Queen Mary and her most bitter critic and opponent, the Earl of Moray. In Paris at this time he was a companion of Budé, one of the most celebrated scholars in the Europe of that day.

George Buchanan developed intellectually along the same lines as Colet, Erasmus and More, that is, anti-obscurantist rather than pro-reformation, and he soon became one of the most erudite and famous scholars in Europe. But he was no less practical than intellectual, and in 1533 he published a Latin translation of Linacre's Grammar, which had the effect of revolutionising teaching methods both in France and in Britain. His movements become rather obscure at this point, until we come across him again in Scotland in 1537, where he was appointed by King James V as tutor to his natural son, Lord James Stewart (not the James Stewart who afterwards became the well-known Earl of Moray). But in 1539 George was arrested on account of his anti-Catholic satire FRANCISCANUS, and on his escape exiled. He moved to England and from there to France.

Though France was at that period more kindly disposed towards Scotsman than towards other foreigners, Francis I's sympathies has become more definitely pro-Catholic and anti-Lutheran, and George found it expedient to accept the offer of a post at Bordeaux. The College de Guyenne, to which he went, ranked with Strasbourg and Geneva as the best in Europe, where the new humanism stressed the advantages of higher learning over the impractical theorising of the scholastics and upheld the intellectual training afforded by the writings and philosophies of Greece and Rome. In 1542 or early 1543 he left Bordeaux and we once more lose sight of him until March, 1547, when we find him a professor in the new college at Coimbra, in Portugal.

Here, however, the Jesuits were powerful, and they succeeded in overthrowing the college and in having the teachers, including George Buchanan, imprisoned. In 1552 he was released and came to England; the following year he returned to a post in the Collège Boncourt in Paris, where he remained for two years before becoming tutor to the son of the Maréchal de brissac. In 1560 he returned to Scotland, this time to make his permanent home. He became classical tutor to Queen Mary, Clerk to the Privy Council, and was granted a pension from the Treasury. In 1563 he helped in the revision of the First Book of Discipline. Three years later he became Principal of St. Leonard's College, St. Andrews and was also appointed Poet-Laureate. In July, 1567, he was made Moderator of the General Assembly of the Church of Scotland - the only layman who has held that high office - and in October, 1568, he was one of the assistant commissioners who went to York to lay the indictment against Queen Mary before the commissioners for Elizabeth of England. In 1570 he was appointed tutor to the young king, James VI, afterwards James I of Great Britain - a post which involved his resignation from St. Leonard's. He died in Edinburgh on 20th. September 1582, and is buried in the Churchyard of Greyfriars church in Edinburgh.

George Buchanan had, to a superlative degree the qualities characteristic of the intelligent Scot, more markedly perhaps, than most other races - the ability to assess the essential merits of the individual man, to appreciate the other man's point of view, and to temper his actions so as to cause as little hurt or offence as possible. In his treatise *DE JURE REGNI* he gives evidence of another typical Scottish trait - the desire to convert an ideal into a practical human institution; indeed this may be regarded as in some ways the most important aspect of the whole work. As we have already noted, George was in his early years anti-obscurant rather than pro-Reformation; indeed it was only when he returned to Scotland for good in 1560 that he threw himself whole-heartedly onto the side of the Reformers.

By that time he had come to realise how potent a factor religion was in daily life, particularly in that age. None the less, it is noteworthy that he remained on terms of friendship both with Queen Mary (at least until he became convinced of her complicity in the murder of her husband, Darnley) and with the Earl of Moray, her half-brother and lay leader of the Reformers, just as he seems to have kept in contact while in Paris with Catholic and Lutheran alike. But whilst in France and Portugal, and indeed over the Continent of Europe generally, the struggle between the two factions became bitter and more bitter.

In Scotland, we have the Act of the Privy Council dated 1561, the first Religious Toleration Act in Europe, pre-dating the Edict of Nantes by thirty eight years.

In his writings too, George Buchanan shows that wide knowledge of human experience which is exemplified by his ranging from the erotic and the satirical to his translations of the Psalms of David, and from the philosophical to the practical.

In this broad sweep subjects he is of course not alone - it was common throughout Europe of his day, among the best writers - but it persisted and still persists in Scotland. It reappears in the contrasting poems of Robert Burns - "The Twa Dogs" and "The Cottar's Saturday Night".

Apart from the translation of Lineacre's Grammar, already mentioned, his more important works were *THE LIFE AND DEATH OF JOHN THE BAPTIST*, in which he inveighs against political tyranny, and *JEPHES*, following the same theme, both of which were, one might say, a clearing ground for his *DE JURE REGNI APUD SCOTOS*.

These were published while he was at Bordeaux, as were *MEDEA* and *ALCESTIS*, both translations from the Greek. While in prison in Portugal he translated the *PSALMS OF DAVID* into Latin.

Among his many satires against Catholics, his *FRANCISCANUS* takes first place, if only because it became best known and formed one of the bases of the indictment laid against him by the Jesuits; indeed it has been said to be the most skilful satire ever written. It appeared in 1538 and was the reason for his arrest and exile the following year. But as this is not a criticism of his literary output I must pass to the subject of his work, his *DIALOGUS DE JURE REGNI APUD SCOTOS*.

I am not, however concerned at this moment with its political merits or demerits, but with the circumstances under which he wrote it and under which he published it. Mary, the only surviving child of James V, King of Scots, was six days old, when on the death of her father in February 1542, she became Queen of Scots. Henry VIII of England desired to bring about her marriage with his son, the Prince of Wales, but his insolent and violent methods of wooing turned the whole nation against him.

In 1548 Mary was sent for safety to France, where she remained for thirteen years. Her marriage to the Dauphin, afterwards Francis II, took place in 1558.

It was on this occasion that George Buchanan wrote his *EPITHALAMIUM*, to show how valuable was Mary's dowry, a valiant freedom loving people. Meantime French troops came to assist the Scots in driving English garrisons from certain Scottish strongholds they then held.

The people of Scotland found that Mary's marriage appeared to bring the country within the power of France, at state of affairs they regarded as quite as objectionable as the overlordship the English had so long tried to claim. In 1559 Mary became Queen of France, but in 1561 she was widowed, and in August of that year she returned to Scotland.

Her story is not relevant to this summary until in July 1565, she married her cousin, Henry Darnley, son of the Earl of Lennox. Darnley proved to be a worthless fellow and the marriage was most unhappy. But on Darnley's murder at Kirk o' Field, near Edinburgh, on 9th, February, 1567, Mary found herself accused by many of her subjects as a participant, or at least an accomplice, in the crime, and her marriage the following May, to the Earl of Bothwell, deepened suspicion into conviction in her guilt. She was forced to abdicate in favour of her infant son James, and was imprisoned in Lochleven Castle. She escaped and rallied her supporters, but was beaten at the Battle of Langside. She fled to England, where Elizabeth kept her in prison until her execution at Fothering Castle in 8th. February 1587. This treatment - the forced abdication by subjects - of a Crowned Head aroused much excitement in Europe, the more so as it was at a time when in most European countries the authority of the Crown was in the ascendent.

Kings, it is true, had fallen at the hands of rival claimants, but the idea that a people could themselves bring their own Crowned Head to order was indeed novel, It was in order to justify the actions of his fellow-countrymen that George Buchanan wrote the treatise DE JURE REGNI APUD SCOTS.

Although it was published in 1579, it appears from the dedication that it was written very soon after Mary's abdication and defeat. It was not well received by King James and his advisers, and in 1584 it was condemned and confiscated by the Scottish Parliament. Nevertheless it was widely and eagerly read, and in England was cited by Parliamentarians to justify their own proceedings against their king. Consequently, after the Restoration of Charles II in 1660 - the Privy Council prohibited its circulation - a ban repeated in 1688 - while in 1683 the University of Oxford had it publicly burned by the common hangman.

Thus the work passed out of the orbit of political thought; yet though neglected in our own universities, in some of the Continental universities it is still mentioned as a major classic. It was republished in 1789 and again in 1843, this time as an appendix to Dr. Rutherford's LEX REX. So far as I have been able to ascertain, its next appearance was in 1949, when a translation and commentary by C.F. Arrowood was published by the University of Texas Press.

It has been asked why Buchanan wrote the treatise in Latin rather than in Scots or English. It was a wise decision to write it in the international language of the day for international, or at least European, consumption. The work is far more than a mere explanation and excuse for the incidents of 1567; it is a profound study of the art and science of government, and deserves the consideration of every legal philosopher today and in times to come.

TRANSLATOR'S NOTE

*In considering how to frame an English translation of George Buchanan's work I was at once struck by the way in which he used words and phrases to convey the human rather than the material aspects of affairs. The title was my first problem. DE JURE REGNI -concerning the law of the kingdom - is easy to translate, with the *is APUD SCOTOS* to be rendered? How the term *SCOTICI, SCOTICANI, or even SCOTORUM* been used instead, the problem would be comparatively simple, but *APUD SCOTOS* conveys the idea that the *JUS* has been evolved by, and remains definitely within the control of the Scottish people. (*JUS REGNIAPUD SCOTOS* has a parallel in the title, *Mary Queen of SCOTS*, which differs significantly from that of *Elizabeth of ENGLAND*; and similarly throughout Buchanan's work the reader will find references to peoples - *Greeks, Romans, and the rest - and not, as is the usual practice, to states.*)*

The title, DE JURE REGNI APUD SCOTOS has usually been rendered, "The Constitutional Law of Scotland", but that is not only unimaginative; it is also misleading. A constitution is a machinery - the scientific foundation of politics, if you like. Buchanan's work, however, is not the study of a machinery, but of the very active part that men play in politics and, most important of all, the aim towards which that activity is directed. In short, it embraces the art as well as the science of politics. In a study of Buchanan's works C.F. Arrowood of the University of Texas renders the title "The Powers of the Crown in Scotland". This conveys, in my view, a quite wrong impression. "The Crown, in international studies, connotes a state officer with more or less clearly defined rights and duties, whereas Buchanan makes it very clear that his "king" means the chief holder of political power irrespective of the name bestowed upon him, be it emperor, king, prince, duke, consul, or what you like.

The fact that the Scots chose the name king for their political head is of no moment whatsoever. A study of the development of kingship in Scotland makes it abundantly clear that the King of Scots combined the pomp and dignity of an orthodox king with the utility of the president of a republic.

As the solution of the very difficult problem of the title, I have adopted, "The Art and Science of Government among the Scots".

Summary of Subjects Dealt With in The Dialogue

1. Europe is perturbed by recent events in Scotland - the murder of the Queen's husband, Lord Darnley, and the deposition by her subjects of the Sovereign Queen Mary
2. Maitland is nonplussed for an excuse, a reason
3. Maitland poses the problem: Buchanan suggests a discussion.
4. Buchanan is confident of justifying the deposition.
5. The accusers fall into three groups - those who pander to tyrants, those who consider only the effect on their personal affairs, and those who censure whatever they do not understand.
6. The third group is amenable to reason.
7. Kings and tyrants, in spite of superficial similarities are essentially different.
8. Quoting the views of the ancients, Buchanan argues from the founding of primitive communities.
9. Expediency is a factor in making men form associations,
10. More important is the need for human companionship.
11. And the spiritual urge to love God and our neighbours.
12. As in the human body disorders arise, so in the body politic disturbances take place; a doctor is necessary in the first case, and in the second we require a king, a leader, prince or governor, for the benefit of the people.
13. The function of doctor and king compared
14. Justice is the factor which restrains undue ambition and controls community affairs.
15. A doctor functions in virtue of his knowledge and experience in the art of healing. A king similarly should be chosen not for his eminence but for his ability in the art of ruling.
16. Practice and experience have evolved a set of principles so that medicine has become an art; similarly with politics; simple votes of the people can no more make a king than they can a doctor.
17. The faculty of government is the art and science of politics.
18. A king is a man, and the wisest of men has a law to guide him and, when he errs, to bring him back to the proper course.
19. Among the ancients the aim of their constitutions was to ensure that all remained equal, no matter what the leading man was named, king, doge, consul, or emperor. "As the king should be the law speaking, so the law should be the king when dumb."
20. Kings were sought after, not for their personal pleasure, but for the enjoyment of justice.
21. A summing up of what has been said.
22. There are daily new diseases in medicine and new problems in politics.
23. The king consults a council of wise men to advise him on these problems; crimes fall to be dealt with by advocates and judges.

24. *Paul, and Aristotle before him, postulated that the king's manner of life should be an example of what the law demands.*
26. *An artist is guided by the idea of what he wishes to create; who will guide the king?*
27. *Laws affecting joint safety should have the backing of an open general council; when they have agreed on a measure, it should be referred to the people.*
28. *A crowd of men will produce a kind of balance and moderation.*
29. *The safety of the people is the supreme law.*
30. *When a question of freedom arises, sureties should be granted for liberty,*
31. *Interpretation of laws.*
32. *Interpretation of laws continued*
33. *Interpretation should be left to trained lawyers.*
34. *Kings should be loved and not dreaded.*
35. *Laws can be circumvented by sharp-witted criminals.*
36. *The king should endeavour to free the people from unlawful habits.*
37. *Examples from the Classics.*
38. *Kings must be careful since they live in the limelight.*
39. *The king's bulwark is the love of his people, not the dread which mercenaries arouse.*
40. *Kings should be trained in the art of kingship.*
41. *The study of kingship being completed, let us turn to tyranny.*
42. *The origin of the word is obscure, but in the Classics it is used someone so eminent that he could be confused within no boundaries of law, and the word was highly honourable, though now infamous.*
43. *Among the ancients some tyrants were lawful, having been given power with the consent of the people.*
44. *Originally kings and tyrants were similar, but kingship came to infer a more benign type of government. This discussion is basically the difference between two types of government.*
45. *The king reigns for the benefit of his people. the tyrant for his own.*
46. *Some types of tyrant could be tolerated if they could be removed when necessity arose.*
47. *Can a man who treats his citizens as slaves be admitted to a society with established laws?*
48. *Such a man should be regarded as a monster.*
49. *A picture of a tyranny*
50. *No free people would accept a law making authority hereditary and not elective.*
51. *Princes were chosen through belief in their ability to rule.*
52. *Some Scottish kings were imprisoned, exiled or executed for scandalous cruelty; those rebelling against good kings were strictly punished.*

53. *A people compelled by force or fraud to surrender liberty can gain restoration on legal grounds such as would overturn a civil contract.*
54. *No people would voluntarily worsen their condition in order to enhance the kingly power.*
55. *The Scots have developed harmony between king and people through the exercise of moderation; moderation has led to continuity of government, while in France, England and Spain, frequent changes of dynasty have taken place.*
56. *If a people has lost its liberty through blindness or neglect, do they not deserve to pay the penalty?*
57. ***Scots kings took an oath of fidelity, and the overriding everlasting rights of the people have never been impugned by public decree.***
58. *A law is what is approved by the people when asked by him who has the right to ask.*
59. *A code of law to limit the power of kings.*
60. *How should the royal power be restrained.*
61. *Examples from the Classics and Holy Scripture.*
62. *Paul calls us to pray for princes.*
63. *Paul's motives explained.*
64. *Paul's motives further explained.*
65. *Paul's motives examined.*
66. *Paul's motives further examined.*
67. *Is it lawful to kill tyrants?*
68. *Kings should be glad when a bad king is punished.*
69. *Paul's writings explained.*
70. *Paul's writings further explained.*
71. *Does God, in his anger, set tyrants over peoples?*
72. *All power given by a people can be revoked by them.*
73. *This may be valid among Scots, but how would foreigners react?*
74. *A doctor cannot kill with impunity; why should a king?*
75. *Good kings need not fear the law.*
76. *Who shall arraign a king who has become tyrant?*
77. *The king draws his authority from the law.*
78. *The people make the law.*
79. *If we arraign a king, can he not veto the proceedings?*
80. *We must consider what ought to be done.*
81. *If the king illegally seizes a farm, he can be sued in the civil court.*
82. *No one who comes before a judge comes before an inferior.*
83. *The judge draws his authority from the law, and the verdict belongs to the law, not the judge.*
84. *An accused must divest himself of all his characters except the PERSONA of defender.*

85. *A parricide must be tried as a parricide wether he be a king or a pauper.*
86. *There is a contract between king and people, and the king has sworn to rule with justice.*
87. *There is no link between humanity and tyrants. The killing of tyrants has often been held to be justifiable.*
88. *The right to kill a tyrant might lead to chaos.*
89. *The judgement of the Church anent tyrants.*
90. *Paul's exhortations.*
91. *If our customs do not please foreigners, they should leave us at peace, for we have preserved our country through laws and not through force.*
92. *No race is less given to sedition than ours.*

George Buchanan

TO

James VI, King of Scots

With Loyal Greetings

Some years ago, when our country was in a somewhat disturbed state, I wrote a dialogue concerning the rights and duties of the King of the Scots; in this I endeavoured to clarify the law from earliest times (if I may say so) and the relations between kings and citizens. I hope it may have helped to restrain those whose demands went beyond the bounds of reason, and those who sought to restore order rather by railing at the state of affairs than by appealing to reason.

Things becoming, however, a little more tranquil, I felt it best to lay aside my work in order to help restore public peace. I have recently found the treatise among my papers, and as I seem to see much in it which should be a value to you at your age - especially as you have to play a leading part in public affairs - I decided to publish it, so that it should be both an aid to your studies and a means of providing you with an outline of the duties which a king owes to his citizens.

A number of things suggest to me that my efforts will not have been in vain, particularly that you are still young enough to be uncorrupted by wrong ideas, are full of a desire to learn, and are eager to acquire the clearest view of the most important matters, and all to a degree unusual in one of your age. You are unusually apt not only with your teachers but with anyone who can give you sound advice; and your judgement and intelligence are such that you examine everything for yourself and accept advice only so far as it is tested and proved to be at least reasonable and relevant.

I know also that you abhor adulation and realise that what is for tyrants is poison for true kings; you also despise the absurd and artificial ways of courtiers as much as those who claim to be arbiters of good taste, who love and affect all kinds of mannerisms and who bespatter their talk with "Your Majesty", "My Lord", "Most Illustrious" and other unmanly expressions.

Yet although your natural goodness and excellent principals are at present potent enough for your protection, I am still a little apprehensive lest evil customs induced by flattery, that nurse of vice, should divert your tender mind towards less admirable lines of thought and action, especially since I know very well how prone our minds are to temptation. And so I present my book to you not only as a guide, but also as an importunate critic, sometimes even to the verge of disrespect; which, while your mind is in its formative stage, may help to steer you through the dangers of flattery; not only to show you the way but, once you have entered upon it, to keep you safe, to check you and bring you back if you stray.

If you will observe those principles, you will bring peace to yourself and your people during your lifetime and everlasting glory in times to come.

Farewell!

Stirling: in the year of human salvation
MDLXXIX the tenth of January.



DIALOGUS

1

When I learned that Thomas Maitland had recently returned from France, I questioned him carefully about the state of affairs there, for I knew that he was a keen observer of everything that went on. Because of my affection for him I urged him to continue on the course he had taken to achieve honour and the highest hopes of advancement.

He should also, I insisted, press on with his studies, for if I, I told him, who am of modest ability, almost without resources and born into an illiterate age, could non the less struggle on against adverse conditions and achieve something, surely those born, as he was, in happier circumstances - with age, money and ability all in their favour - should nether be deterred from the honourable task which they have begun, nor despair when they have considered so many advantages.

Let them therefore persevere, I continued, in the strength of young manhood in bringing distinction to the realm of letters, as far as it lies in their powers, so that they and their fellow citizens may enjoy the respect of posterity.

With the exercise of only a modicum of energy they could banish the idea from the minds of men that in ice-bound regions of the world men are far removed from literature, from culture and from every intellectual pursuit as they are from the sun. For, although Nature has endowed the Africans and Egyptians and most other people with nimbler wits and greater mental energy than Northern races, she has condemned no people to be incapable of achieving virtue and glory.

2

Maitland with his usual modesty, replied by disparaging himself and praising me in terms more of affection than truth. Our conversation eventually turned on the disturbed state of our country, and I dealt with the cause of it at some length. Then I, in turn, asked him what opinion of our affairs was held by those he had met in France and elsewhere, for I had no doubt that the every novelty of the events was sure to provide everyone with an occasion and topic of conversation.

Why he replied, ask that of me? Since I not only understand the order of events but are also well aware of what the great majority are saying and practically all are feeling, your own conscience will enable you to guess easily what opinion of everyone is or at least ought to be; whereupon:

Buchanan: But listen to me. The farther nations are from one another, and the less cause they have for anger, hatred, love and other emotions which distract the mind from truth, the greater, in most cases, is their soundness of judgement and their frankness in expressing their feelings. The same freedom of speech and discussion should explain much that is obscure and difficult, should remove doubts, silence the wicked and bring truth to people who are liable to waiver.

3.

Maitland: *Shall we discuss the matter seriously?*

b. *Why of course!*

m. *Although I had a very strong urge to see my country, my parents, my relatives and friends after a longish absence, nothing influenced me so much as the disparaging comments of the ignorant multitude. Although I believe that I have benefited by my experience and by the teachings of the most learned men, nevertheless, in regard to the present affair I feel I can not help betraying the uncertainty in my mind. For they all without exception express their detestation of the foul murder of which they have recently heard. When the identity of the culprit is uncertain, the ordinary people, who are moved by impulse rather than by reason, place the fault of the few upon the heads of the many. Consequently the odium of this crime, though committed by an individual, falls on the whole nation, to such an extent that even those of us who were furthest from suspicion find ourselves implicated in the ill fame of someone else's deed. So I was glad to fly for refuge to this harbour until the storm of abuse had time to die down; but in so doing I fear I have struck a rock.*

b. *Why should you think so?*

m. *Because the recent crime was so atrocious that it seems likely to inflame public opinion - already hostile enough - to such a degree that there can be no defence to it How shall i be able to stand up to the accusations of ignorant people - far less to those who have some claim to intelligence? They will cry out that we were not satisfied with the unheard of cruelty inherent in the murder of a blameless youth, but would commit a deed of unprecedented frightfulness towards women - a sex which is spared even when cities are stormed and sacked?*

From what crime will any dignity or majesty deter those who treat crowned heads with such savagery? What place for mercy will be left by those men who have been restrained nether by the weakness of sex nor by the innocence of youth? Who, after this outrage, will feel sufficient shame to submit to, the discipline of law, custom, regulation or respect for lawful authority? Who will be halted by fear when the might of the highest authority is exposed to the ridicule of the lowest rank?

Surely it is an unhappy state of affairs when the distinction between justice and injustice, between baseness and virtue is removed with general approval, and there ensues a degeneration into sheer barbarity. Accusations such as these - and worse - I know will be flung at me when I return to France, and, indeed, everyone's ears will have been closed meanwhile and they will not readily listen to excuses or explanation.

4.

b. I do not anticipate much difficulty in dispelling your fears and in clearing our nation of these false accusations. For if they execrate the original atrocity so much, why should they reprove me for punishing the deed? Or, if they are against the idea of a queen's being bought to order, surely they should show the rightness of the deed for which the queen is blamed. So you must make up your mind which of the two is the crime, for neither you nor they can praise and condemn both if we are to be consistent.

m. Naturally I can say that I hate and detest the murder of a king, and I am glad that the odium for it has been removed from the conscience of the public and assigned to the wickedness of the few. Then I must add that I can neither altogether condemn nor altogether approve of the second incident.

The full and tireless investigation of the facts - regarded by all mankind as without exception the most heinous of crimes - and the prosecution of the guilty even with armed force seems to me to be a fine and memorable achievement. I do not care to think how the nations of Europe - especially those under monarchical government - are going to accept the fact that the king, a name everywhere and at all times held great and sacred, has been brought to order and the world held in contempt; I, at any rate, although I am well aware of the excuses made on the other side, am certainly very unhappy about the enormity and the novelty of the crime, and the more so since some of the conspirators are intimate friends of mine.

5.

b. Now I think I have an idea what it is that perhaps moves you less than it does those biased judges of other people's virtues whom you think you ought to satisfy. I would divide into three classes those persons who are likely to denounce the use of force. The first class is the most pernicious: in it are to be found those who pander to the whims of tyrants, who believe that nothing is dishonourable which brings to them the approbation of kings, and who measure everything not by its intrinsic worth, but according to the whims of their masters. They have so enslaved themselves to other men's desires that they have left themselves no freedom for independent thought or action. It is from among this group that there have appeared those who have cruelly slaughtered a blameless youth, not because of any personal enmity but in the vain hope of gain, of honour, and influence at court. When these people pretend to grieve for the queen they are not really concerned about her misfortunes, but are merely trying to protect themselves, and they are distressed in case they have torn from their jaws the rewards for the scandalous killing -rewards which they have devoured in anticipation. So this class of men should in my opinion be punished not with mere words, but with the utmost rigour of the law and by force of arms. Another class consists of those persons who are bound up in their own affairs. These men, who are in other respects not bad, are troubled not, as they would like to have it thought, by the harm suffered by the state, but by their own private losses; so they seem to me to require to be encouraged rather than to be subjected to moral or legal pressure.

The third class is the ignorant rabble which marvels at everything new, and censures most of it, indeed all except what they do themselves or see done before their eyes. Just so far as anyone departs from his accustomed way of life, by that much they think he is departing from what is right and just.

These people, because they are not influenced by malice, envy or self-interest, generally allow themselves to be taught and turned away from error; in most cases they give in when they have been persuaded by the force of reason. Today as in the past, we often find that this is true in the matter of religion and that there is almost no one "so wild as not to be tamed, if he will but patiently lend an ear to instruction" m. We have often found it so.

6.

b. Suppose you are dealing with this multitude, if you ask one of the noisiest churls what he thinks of the treatment meted out to Caligula, Nero or Domitian, I am sure you will find that he is not so overawed by royalty as to deny that these men were lawfully made to pay the penalty.

m. Perhaps you are right. But the same people will insist that while they approve of the punishment of tyrants, they are of a different mind when it comes to the undeserved misfortunes of lawful kings.

b. Do you see how easily the mob can be placated?

m. Not unless you can elucidate the matter further.

b. When I have cleared up a few points I will make you understand. The people, you agree, approve the killing of tyrants, but are disturbed by the misfortune of kings. Do you not think that in most cases their feelings might change if they were made clearly to understand the distinction between a king and a tyrant?

m. If they were all to agree to the proposition that tyrants can be overthrown, the way would lie open for us to deal with other matters. But I know that some men whose authority is not to be despised would hold tyrants to be sacrosanct; although they would subject kings to the pain of law - certainly a perverse view, to my mind. But these men are prepared to fight to the death for government by tyrants, no matter how intolerable and oppressive, as for their altars and their hearths.

b. I, Too, have more than once come up unexpectedly against people who hold this opinion very obstinately; but it will be more convenient for us to discuss whether they are right or wrong; meantime let us make this assumption, with the proviso that unless it seems to you to have been properly proved later on, you may withdraw it at your pleasure.

m. If we make that proviso I cannot object.

b. We are agreed, then, to deal with tyranny and kingship as being incompatible forms of government?

m. We are.

7.

b. If it is made clear how and why kings were created, and what duties kings owe to their peoples and peoples to their kings, shall we not thereby also clarify the nature of tyrants, which is the reverse nature of kings?

m. I should imagine so.

b. And if we set up a model of each, do you think that people would understand the nature of their duties to both if we demonstrate what people owe to each of them and what each of them owes in return.

m. I think it very probable.

B. On the other hand there are points of apparent similarity in matters which are really dissimilar, but which fall into the same class and may easily lead the unwary astray.

M. That is undoubtedly so, and particularly in that class in which that which is worse easily takes on the character of that which is better, with the sole purpose of imposing on the ignorant.

B. Have you in mind some specific ideas regarding a king and a tyrant? For, if you have, you will save me a great deal of trouble.

M. Indeed I could easily explain what I have in mind in regard to each, but I am afraid it is all very rough and ready; and you are older and well versed in affairs, so I should prefer to listen to what you have to say, and not waste time in having you disprove my ideas. You not only have at your fingertips the opinions of other men, but have yourself observed the customs and the civic usages of many peoples.

S.

b. *Very well, I shall do that gladly; and I shall put forward not so much my own views as those of the ancients, for my arguments will be the weightier since they are not made up just for the occasion, but are taken from the opinions of those who, although they have no part in the present controversy, set forth their views with equal eloquence and brevity, without hatred, favour or envy - emotions which did not affect them. Then, too, I shall be quoting especially the views of men who were noted for integrity and wisdom both at home and abroad, in peace and in war, in well governed states, rather than those of men who have grown old in peaceful leisure. But before I present these witnesses I wish to ask you a few questions so that we agree on some few points. That will save us from digressing from our chosen course and wasting time in explaining or confirming matters which are obvious and almost universally accepted.*

M. *I think this should be done, so ask me what you wish.*

b. *Do you believe that that there was a time when men lived in huts and caves, had no laws or fixed abode, but roamed at large in a primitive condition, regulating themselves in accord with caprice, or as some convenient or useful purpose common to them all brought them together?*

M. *That, I believe, is so, for it harmonises with the natural order of things and and it is borne out by the histories of almost all nations. Homer has painted a picture of that kind of life, rough and uncultured, in Trojan times in Sicily: "They have no market place for council; they find shelter in dark caves, high in the mountains each man rules his own home, his wife and children; nor is there leisure to develop a social weal." Italy is said to have been in no way at a higher state of culture in that age; so that one can easily guess how great was the waste and wilderness in regions nearer here; though these are now some of the most fertile lands.*

9.

b. Now, which do you think more consonant with nature, a wandering solitary life or harmonious councils and gatherings of men?

m. An association, without doubt, which "expediency, almost the mother of justice and equity," at first effected and bade men, "to give warning to all by the one trumpet; to defend themselves within the same stronghold; and to be shut in with one key for all the gates".

b. Well then, do you believe that expediency has been the first and most important unifying factor among men?

m. Why should I not? I have heard it said by very learned men that it was for the sake of mankind that men were produced.

b. It does then appear to some, that expediency had great force in forming and maintaining the friendly association of the human race. But, unless I am mistaken, there is an even older reason for men's gathering together, and a much earlier and much more sacred bond of fellowship among them. If this were otherwise, if each wished to consult only his own interest, expediency might well be a disruptive force rather than a binding one.

m. Perhaps that is true, but I should like to hear about this other factor in the formation of human society.

10.

B. There is an urge of some kind in nature which is implanted not only in human beings, but also in the more domesticated animals, in such a way that even if the attractions of expediency are lacking, they nevertheless gladly associate with their fellow creatures. But it is irrelevant at present to consider creatures other than man. Certain it is that this urge is so deep rooted by nature in man that even if he possessed every facility to enable him to enjoy personal security along with his pleasures and the free development of his faculties, he would still find life frustrating without the companionship of other men. In fact, even those men who have shunned human fellowship and withdrawn to secluded retreats cannot endure for very long the unending strain on their minds, nor, whenever they were in a position to relieve it, would they be able to remain apart, and they would produce even these very secret studies and so contribute to the general good the fruits of their labour, as if it had been for the profit of all that they had been toiling. If there is anyone so completely devoted to solitude that he flees from and avoids human society, I would say that he is suffering from a disease of the mind rather than a natural impulse. As such we regard Timon of Athens and Bellerophon of Corinth.

"Who roams alone on the shores of the Plain of Wandering eating his heart out and shunning the foot-prints of men."

M. So far I do not really differ from you. But there is one word you use here, NATURE, which I myself often employ rather through habit than through a precise understanding of its meaning. It is a word so widely applied with such a variety of meanings and used in so many contexts, that I often wonder myself exactly what meaning should be attached to it when I use it.

11.

b. I want it to be understood as present as implying only the divine inspiration which guides your thoughts. For, since God has given form

"to man, so holy and so full of understanding

that he could have dominion over all other creatures,"

He has not only given him eyes to enable him to avoid danger and ensure his safety, but he has also created in him an inner light by which he should distinguish good and evil. Some call this faculty Nature, others call it the Law of Nature. I believe it to be of divine origin, and am fully persuaded of this fact, viz:

"Nature never says one thing and reasons another".

Further, God has given us a compendium embracing the whole law in a few words, namely, that we should love the Lord our God and our neighbours as ourselves. All the books of Holy Script which are concerned with the forming of character are purely explanatory of that saying.

M. Then you think that God himself in the beginning gathered people together, and that neither orator nor lawmaker had to do with it?

b. That is indeed so; and, in harmony with the feelings of Cicero, let me say that nothing is done on earth that is more acceptable to God our Prince who rules this universe than those lawful gatherings of men which are called cities. His will was that the parts of these cities should be joined together and should form a coherent whole, like the limbs of or body, to engage in mutual services, develop for the common good, show a united front against aggression, plan useful projects and, by sharing these duties, bind fact the goodwill of all to one another.

M. You will maintain that it is not expediency which motivates men in coming together, but that spiritual urge born in us from the beginning of time, and that nothing can be more noble and divine than that?

b. It is not that expediency is the mother of justice and right, as some have maintained; it is rather the servant and one of the guardians of a well ordered body.

M. With that too, I can readily agree.

12.

b. Now just as in human bodies which are made up of elements that conflict with one another, disease and certain internal disorders arise; so it is in these political bodies or states which are formed from diverse and, in a sense, mutually conflicting types, classes, conditions and characters, and even from men who are irresolute and undependable, none of whom, in short, "can remain for an hour in agreement about anything," These would inevitably break up and perish unless someone was summoned to calm the disturbances, like a doctor, who can by a balanced and health-giving mixture, strengthen the weaker parts, control superfluous fluids and take such thought for the individual limbs that the weaker organs do not suffer from undernourishment or the stronger from a superfluity.

m. Clearly this would inevitably occur.

b. What name shall we give to the man who is to carry out this treatment on the body-politic?

m. I am not greatly concerned about what name we decide to give him. Wherever he comes from he will be the subject of criticism. To my mind he will have to be the most outstanding type of man, and little short of a divinity; and in this matter the wisdom of our ancestors seems to me to have been very discerning, for they adorned the highest office with the most splendid name. You are thinking, I am sure, of the name king, a word whose virility is such that it almost makes visible to our eyes a thing which is in itself great and excellent.

B. You are right, for we apply the name even to God. We have no word more illustrious by which we may proclaim the excellence of that most honourable nature, and we have no word more convenient to signify the paternal care and attention he bestows on us. Need I mention other names we apply to the office of king - Father Aeneas, Agamemnon, Shepherd of the Peoples, also Leader, Prince and Governor?

Of all these the significant point is that kings have been appointed not in their own interest, appointed not in their own interest, but for the benefit of the people. And now that we have reached a satisfactory agreement on the name, let us, if you will, discuss his functions, following the same course on which we started.

m. What exactly do you mean?

13.

b. *Do you recall what has been said, that a state is very like a man's body, with civil riots as diseases, and a king as doctor? it follows that if we understand the nature of the doctor's function, we shall not be far from understanding the function of a king.*

m. *That may well be, for the other points you enumerated seemed to me to be very similar, in fact, almost identical.*

b. *Do you expect me to discuss every trifling detail? The time we have at our disposal will not permit it, and the subject itself does not require it. But if we can resolve the principal issues, you can deal with the rest yourself.*

m. *Proceed then as you suggest.*

b. *We are agreed then that the two (i.e. physician and king) seem to have the same aim.*

m. *What exactly is that?*

b. *The soundness of the body, to the care of which they are called.*

m. *I understand. The one ought to maintain the human body in good health, the other the body-politic, as its nature demands, and to heal it when diseased.*

b. *You understand my argument perfectly. Each has a double function, first, to maintain good health and, second, to restore it when impaired by disease.*

m. *I quite agree.*

b. *The diseases in both cases are similar.*

m. *So it appears.*

b. *For, firstly, each of them is harmed both by the presence of poisonous matter and by lack of necessities, and secondly, each is treated in the same way, that is by nourishing and gently nursing it when it become weakened, and when it suffers from fulness and excess, by relieving it by purging and by moderate exercise.*

14.

m. *That is so, but there is this difference, that in the once case fluids and in the other case habits are to be brought into proper relationship.*

b. *You are quite correct. In the civil body, just as in the human one, there is an appropriate harmony; this, in my opinion, we shall be right to name justice, for it is that which supervises the various members and ensures that they perform their proper functions. In the human body, sometimes by letting blood, sometimes by banishing what is harmful, as if by evacuation, justice removes what is superfluous; sometimes it cheers up the downcast and timorous, consoles the unhappy, and restores to the body that harmony which I have mentioned, and once this has been done, justice trains it by proper exercise and preserves its regained health as far as it can by prescribing a properly adjusted alternation of work and leisure.*

m. *I find it easy to agree with you in every respect except where you credit justice with maintaining the equipoise of the civil body. It is temperance, rather that seems to me to be entitled to claim the role of creating harmonious functioning.*

b. *It is of no moment, so, far as I can see, on which you confer the honour. All traits whose virtue is seen in activity are adjusted so as to preserve a smooth balance among themselves and are in a certain way interlinked, and thus they cohere for the common purpose - the restraint of immoderate fevers or ambition, The method or factor which leads to this result is always operative irrespective of what name you give it. The balancing factor which aims at controlling community affairs and the dealings of men among themselves seems to me to be most conveniently styled justice.*

m. *I readily agree.*

15.

b. *In appointing a king I imagine the ancients looked to see whether there was anyone of outstanding merit among them, pre-eminent in impartiality and in intelligence, and him of their own accord they invested with the supreme political power - as, indeed, is said to be the practice in hives of bees.*

m. *That is the most likely course for them to take.*

b. *What would happen if no such man were to be found?*

m. *According to the law of nature we have just been speaking about, an equal cannot hold authority over equals, nor ought he to; for I maintain that it is naturally just that those who are equal in all other respects should be equally able to wield, or oblige to submit to political authority.*

b. *What if the people get weary of annually recurring contests and wish to elect someone who is not blessed with all the virtues we ascribe to royalty, but who is outstanding in respect of nobility, or riches, or military achievements? Are we not fully entitled to consider such a man also as king?*

m. *Definitely yes. For the people have the right to confer the royal authority upon whomsoever they wish.*

b. *But what would be the position if we employed for the treatment of diseases a man who is astute but not specially skilled in his art? Are we to acknowledge him as our doctor since he has been appointed by popular election?*

m. *Not in the least! For a man becomes a doctor not by votes, but by instruction and experience in the various branches of his art.*

b. *What about people who practice other professions?*

m. *The same reasoning applies to them all.*

b. *Do you think there is an art of ruling?*

m. *Of course I do!*

b. *Can you give me your reasons for thinking so?*

m. *I can say the one which is usually given in the case of other professions or arts.*

b. *Can you amplify that ?*

16.

M. It is experimentation that has developed every art; for whilst most people attempted various things at random and without method, others did these things more skilfully as the result of practice and experience. Intelligent men watched what happened in either case and weighed up the reasons for these results, from which they drew up a series of principals, and this arrangements they named an Art.

b. So by a similar process we can have something which may be entitled the Art of Ruling - just as in medicine.

M. I think we can,

b. What rules will that art be made up of?

M. I am not in a position to say, off-hand.

b. May we search for them, using what we know of other arts?

M. How do you suggest?

B. Along lines something like these. There are certain rules of grammar, medicine and of agriculture.

M. that is so.

B. Are not these rules of grammarians and physicians their arts and laws?

M. That seems clear enough.

B. What then are the laws of a state? Do they not seem to you to be in a sense the rules of the Art of Government?

M. It would seem so.

B. What about a man who maintains that these rules or laws do not apply to the art? Even if the people have made him king, do you think he should be given the name of king?

M. You are putting me in an embarrassing position, If I agree with your last argument, it is tantamount to saying that the votes of the people can no more make a king than they can make any other kind of professional man.

B. But what do you consider should be done in this case? For, unless we have a king elected by vote, I fear we are destined never to have a legitimate ruler.

M. I, too, fear precisely that.

17.

b. Do you not feel that we should examine in greater detail what we postulated just now in our comparison of the arts?

m. By all means do so if you think fit.

b. We have, have we not, called the rules followed by practitioners of the respect arts, laws?

m. We have.

b. But I fear we did not go deeply enough into the proposition.

m. Why do you think that?

b. Because it would seem to be absurd that a man should be a master of an art and yet have no standing as such.

m. That is indeed absurd.

b. But we shall consider him a practitioner of the art if he fulfils the functions of the art, whether he does it by natural aptitude or by constant, unremitting power of reasoning.

m. I feel that is right.

b. We shall acclaim him a master of this art if he has the ability to do his work satisfactorily whatever method he employs, provided that he has developed his skill by practice.

m. He has a better right to be regarded as skilled than one who has merely acquired the rules, but lacks experience or practice.

b. We shall not then consider that these rules constitute the art.

m. Not in the least! They constitute a mere reflection of the art or, better, a mere shadow.

b. What then is the faculty of governing which we call the art or science of politics?

m. You seem to me to be inclined to call it knowledge and wisdom, out of which, as from a spring, all laws should flow which aim at the preservation of the state.

18.

b. You have grasped my point. So if these qualities were to be displayed in the highest perfection in one particular person, we should declare him to be our king and vest supreme authority in him. Cherishing a certain resemblance we find in him to a true king, we shall have as king the one who approaches most nearly to that outstanding excellence of nature - one who has some similarity to a true king.

m. So indeed we shall, if that is what you think.

b. And since we are afraid that he may be insufficiently strong-willed to resist certain impulses which can and often do turn men away from the truth, we shall make a law applicable to him as a kind of moral support or rather as a restraint on his passions.

m. So you do not believe that the king's judgement should be final in all matters?

b. Not at all. I have to bear in mind that he is not only a king but a man, liable to commit errors, some involuntarily, through ignorance, and many almost against his will, since inasmuch as he is a human being, he is easily swayed by every touch of favour and hatred. This fault is usually aggravated by a position of authority, so much so that, particularly at this point, I appreciate the truth of those words in the comedy, "Licence debases all men". And it is because of that that all wisest men have been careful to have a law to guide the king where he is ignorant and, when he errs, to bring him back to the right course. Now I think you see what I consider the true nature of the function of a king.

m. You have quite satisfied me as to the reasons for appointing a king, as to why he should bear that name, and as to his duty. I shall not object, however, if you have anything to add, especially anything new; in fact, although I am eager to get on to what seems to remain on this subject, yet there is one thing which somewhat offended me throughout your argument and which I think should not be passed over in silence: I mean, of course, that you seem to me to be just a little unfair towards kings. I had often suspected this in the past, hearing you praise so profusely the republics of ancient days, and also the constitution of the Venetians.

19.

b. You have misunderstood me. In the Romans, Massilians, Venetians and any others with whom authority of the law was more powerful than that of any man, what I admire is not so much their different system of political administration as their fairness in holding all men as equal in the eyes of the law. It does not matter at all whether you call the man at the head of affairs king, doge, emperor, or consul, so long as you make him realise that he has been placed in office in order to ensure the continuance of that equality. For provided that the authority is held lawfully there is no need for us to argue over the name. The man whom we call the duke of the Venetians is nothing but a legitimate king; and the early consuls retained not only the symbols of kingship, but the authority as well. The only difference was that there were not one but two men in supreme power (as you are not unaware, this was customary in the case of the kings of Lacedaemonians, who reigned for life), and they were elected for a year only, not for life. What we stated earlier, that kings are created primarily to preserve justice, should therefore always be maintained. If these men could have kept that fact in mind they could have held on to their authority for ever on the conditions under which they had received it, I mean by remaining independent and unbound by laws. But (as all things are subject to human weakness) the state of affairs degenerated, and the powers which were created for the benefit of the public became an arrogant tyranny. When the whims of the kings took the force of law, and the men who were placed in positions of unlimited and inordinate power were unable to control themselves, but often indulged their fancies in such a way as to engender hatred or self-interest, it was then that the arrogance of kings made men feel the need for laws. It is for that reason that laws were devised by peoples, and kings compelled to use the system of law which the people had given them, instead of acting without restraint in giving judgement. Long experience had taught people that it was safer to base their freedom upon laws than upon kings; for while kings could for many causes be drawn aside from the path of duty, laws were deaf to prayers and threats alike, and kept one single unswerving course. Kings are free to indulge themselves in other directions, but this one limit is prescribed for their exercise of authority, namely, that they bring their deeds and words into conformity with what is laid down by the laws, and award benefits and punishments

In short, as the greatest teacher of administering a state puts it, "As the king should be the law speaking, so the law should be the king dumb"

M. When we began this discussion you lauded kings so far as to make their majesty all but august and sacrosanct. But now, as though you regret having done so, you would confine them within I don't know how narrow bounds, fling them into what I might almost call the penitentiaries of the law's limits, and refuse them even freedom of speech. Now you have blasted my high hopes. I had been hoping that, either of your own accord or in response to my suggestion, you would restore kingship to its true splendour, which is, in the opinion of the leading historians, the most beautiful conception in the eyes of gods and men. Instead, you have stripped it of its beauty and reduced it to the commonplace. And this office, which was the supreme one on earth, you have restricted and have fenced within such narrow limits as to make it contemptible - certainly not such as to attract any sane man. For who in his senses would not prefer the life of a private citizen with a moderate fortune to an existence in the midst of continual worries, spending his time in the concerns of other people while neglecting his own. Every moment of his life is at the disposal of others. If rulers everywhere had to live under such conditions I am afraid that the scarcity of kings would not be any less than that of bishops in the early days of our church; and if things are to be judged by this rule I am not surprised that men were sought of old from among shepherds and ploughmen, to accept this high honour.

20

b. Take a glance and you will see the error you have fallen into. You think that it was not for the enjoyment of justice but for their personal pleasure that kings were sought after by peoples and nations; and you think, too, that honour cannot thrive except in the midst of riches and voluptuousness. When you say this you are detracting from their greatness. Compare, I beg you, some king from among those you have seen, dressed up like a little girl's doll and led out with a display of empty pomp, puffed up with pride and surrounded by a great crowds of fawning courtiers, a king whose likeness you seek in that king whom we are portraying - compare, I say, such a king with those who were once renowned and whose memory is kept green and honoured by all who have come after them. These, I tell you, are the kind of kings I had in mind. Have you not heard the tale of Philip of Macedon and the old woman who besought him to hear her complaint: how he replied that he had no time to spare for her; whereupon she commented that in that case he should not be king? Have you not heard, again I ask, how that king, victor in so many wars and overlord of so many people, having been reminded by that simple old woman of his duty, obeyed her and acknowledged the nature of a king's function? Compare this Philip with the greatest of kings not only in Europe today, but throughout antiquity, and you will find none to equal him in prudence, valour and endurance, and few who were his equal in extent of power. If I were to cite Agesilaus, Leonidas and other kings of the Lacedaemonians (and what men they were!) I might seem to be using outmoded examples. But I cannot pass over the saying of a Lacaenian girl, Gorgo, the daughter of Cleomedes. Seeing a slave removing the shoes from the feet of a guest, an Asian, she ran to her father, exclaiming, "Father, our guest has no hands!". You can easily form a judgement from the girl's remark on the whole system of teaching in Sparta and the domestic habits of their kings. Now while those who were reared in this rustic but virile school have risen to the heights of greatness, those who were trained along Asian lines have, through their extravagance and idleness, lost the vast lands which their forebears had passed on to them. But, leave the ancients out of account and coming to more recent times.

Pelagius the Gallician was the same type of man;

he was the first to shake the power of the Saracens in Spain, and although "a common calamity fell upon his goods, his home, his flocks and him their master" yet the Spanish kings, so far from being ashamed of him, count their descent from him their greatest honour. But this point would demand too long an exposition, so let us return to where we digressed. Following upon what I have promised, I want to show as quickly as possible that this method of governing has not been invented by me, but that it has the approval of the most illustrious men of all time - in short, I will show you briefly the sources out of which I have drawn it. By universal agreement the treatise under the heading DE OFFICIIS of M. Tullius Cicero is worthy of the highest praise, and those are his very words, taken from the second book, ch. 12:

"It appears to me that it was not only the Medes, as Herodotus says, but our own ancestors as well, who set up kings of the better type, for the sake of enjoying justice. For when the large indigent section of the people were oppressed by the rich, they sought help from some particular person of outstanding merit who, although he protected the weaker classes from wrongs, yet by establishing equity maintained the equality of rich and poor in the eyes of the law. Laws were made for precisely the same reason as kings. Justice is always sought after as equitable, otherwise it would not be justice. \\ \\ if these benefits were obtainable through one good and just man, so much the better; but if it turned out otherwise, laws were framed to speak always with one and the same voice to everyone. Therefore it is obvious that those usually chosen as governors were men who ranked high in public esteem: to which may be added that as the same people were held to be wise, it was thought that there was nothing which they could not do".

You see from these words. I am sure, what Cicero thought was the reason for having both kings and laws. I could praise Zenophon both as a witness and as an assistant in my cause, for he was as eminent in the study of philosophy as in the profession of arms - but I know you are thoroughly familiar with him. Plato and Aristotle I pass over at the moment, although I know how much you admire them, for I prefer to summon to my aid eminent men from the field of action rather than from the shade of the schools.

Then again the Stoic king as described by Seneca in *Thyestes* I regarded as being much less worthy of being put forward for your consideration, not so much, perhaps, because he is not a perfect picture of the true king, but because, as a model of a good prince, he could be more easily imagined as ever hoped in real life. But in case there may be grounds to question the examples I have quoted, note that I have not put forward kings from barbarous Scythia, who unsaddled their own horses and performed other tasks which are even less consistent with our ways, but from the heart of Greece, men who, in those very times when the Greeks flourished in every noble art, ruled over the greatest nations and states of the highest character, and governed in such a way that in their lifetime they were held in the greatest honour among their own people, and when dead, left to posterity an illustrious memory.

M. If you ask me what my feelings are. I hardly dare to confess to you either my inconsistency or my timidity, or whatever name you like to give that fault. Every time I read those reviews which you have just read out in the works of the finest writers of history, or hear them praised by the wisest of men whose authority I would not venture to dispute, and approved by all good men, they seem to me to be true, right and sound; also brilliant and convincing. Again, when I see the elegance and refinement of our days, those days of old, though praiseworthy and dignified, seem to me to have been rather rough and unpolished. But more about that when we have time to spare! Meantime please develop your argument.

21

b. *Would you like to run over briefly what has been said? That would help us to know exactly where we stand, and if any assumption has been made too hastily it will be easy for us to put matters right.*

m. *Very good.*

b. *First, we must agree that men in the natural course of things group themselves into associations and desire community life.*

m. *That is agreed.*

b. *Also that a king is chosen as guardian of that association or society, and that he should be of outstandingly good character.*

m. *Certainly.*

b. *Now just as discords among men gave rise to the need for kings, so injuries done by kings to their subjects gave rise to the need for laws.*

m. *I cannot dispute that.*

b. *And we see that laws are a model in the art of government just as medical principles are the basis of the art of medicine.*

m. *That is so.*

b. *It would seem to be safer that practitioners of each of these professions should attempt a cure according to the general principles rather than at random, since in neither case have we assumed an outstanding and intimate experience of the art to guide us in practice.*

m. *That would undoubtedly be the safer course.*

b. *It is clear that the principals of medicine are not all of one kind.*

m. *What do you mean by that?*

b. *Some are for preserving health, others for restoring it.*

m. *That is true.*

b. *What then, about the art of Government?*

m. *I should say that there are just as many kinds of principals here also.*

22

b. *So it seems that the next point for us to consider is this: do you think that doctors know so much about all diseases and their remedies that nothing further can be required for their cure?*

m. *Not in the least! Many new types of diseases spring up in almost every age and corresponding new remedies are discovered almost year after year either through men's industry, or through being brought in from distant regions.*

b. *What about the laws of states?*

m. *The same line of reasoning certainly seems to apply to them.*

b. *So neither doctors nor kings of states can avoid or cure all diseased by using the principles of their arts if they restrict themselves to those which have been committed to writing and handed to them.*

m. *I consider that an impossibility.*

b. *Shall we now enquire what can be enforced in states by law and what can not?*

m. *That would be well worth our while.*

b. *It seems to me that there are many important matters which fall out with the ambit of the laws. First of all are those matters which fall under the heading of deliberation as to the future.*

m. *Yes indeed.*

b. *Again there are many past events - such as those the truth of which is established by inference, spoken to by witnesses or bought out by torture.*

m. *Naturally.*

23

b. What part, then, shall a king play in solving these problems?

m. There seems to be no need for much discussion on that point, since kings do not arrogate to themselves supreme power in arranging to meet future eventualities; they voluntarily call a council of the wisest men to advise them.

b. What of these matters which are inferred by conjecture or provided by the evidence of witnesses? What about such crimes as witchcraft, adultery, poisoning?

m. These are investigated by advocates and elicited through their skill, and the decisions left, as a rule, to judges.

b. And probably rightly so; for if the king wished to hear the private pleas of each and every citizen, what time would he have left to consider questions of war and peace and those matters which bind a commonwealth together and preserve it in safety? What opportunity would the king have to relax?

M I, like you, would not have the investigation of all complaints left in the hands of the king; nor if that were done would one single man be able to deal with every case. I am all in favour of that piece of advice - as necessary as it is wise - which his father-in-law gave to Moses as to delegating judicial work to various people. I need say no more, as everybody knows the story.

B. But even these judges, I imagine, will dispense justice in accordance with what is laid down by the laws.

M. That is true. But, as I see it, there are few matters the law can provide for, compared to the many eventualities which can not be foreseen.

B. There is still another matter of no less difficulty, and that is that not everything about which such laws are introduced can be bought under definite rules.

M. How so?

B. Legal philosophers, who rank their art very highly, and who wish to be regarded as the high-priests of justice, tell us that the multitude of questions arising are all but numberless and that new outrages arise daily in states like a plague of sores. What then is a legislator who adapts laws to what is present and past to do in this situation?

M. Not much, unless he is a superman.

B. There is still one more difficulty - and it is no small one. No art can lay down stable and inflexible rules that will have universal application.

M. Nothing can be truer.

24

b. It would seem then to be the safer course to entrust the health of a sick man to a skilled physician and the welfare of a state to a king. For a physician will often go beyond the rules laid down by his art and cure a sick man with or without his consent; similarly a king can impose a law that is new and yet useful upon citizens whether they are willing or unwilling to accept it.

m. I see nothing to forbid him.

b. But when either of them does so, you surely do not think that he is going beyond the existing law and making his own?

M. No. To me, at least, each of them is acting in accordance with his art. We have already agreed that an art does not consist in the knowledge of its principles, but in a faculty grasped in the mind which the practitioner employs in handling the material which comes under the heading of art. But I am very glad that

(provided you are sincere) you have been compelled, as it were by an interdict brought by truth itself, to restore the king to the place from which he had been flung down.

B. Wait - you have not heard everything yet. There is another inconvenience when authority is upheld by laws. For a law, like some obstinate and inexperienced superintendent of duty, will accept nothing as right except what is laid down. When one is tried before the king there is the excuse of weakness or hastiness, and there is a place for indulgence through an obvious error. But the law also is deaf, unyielding and inexorable. A youth may plead the attractions which draw young people astray; a woman the infirmity of her sex; someone else, poverty, drunkenness or friendship. How does the law deal with such as these? "Ho Lictor! bind his hands, blindfold him, scourge him, hang him on a barren tree!" But you cannot fail to see how dangerous it is, humanity being so weak, to trust your hope of safety to the fact of innocence alone!

m. I do not dispute for a moment the danger you have pointed out.

b. Whenever these points are recalled I see that some people are considerably alarmed.

m. Considerably, would you say?

b. And so when I ponder with greater care the assumptions which were made by us above, I fear that in respect the manner in which I made the comparison between a king and a doctor was not altogether happy.

m. In what respect?

- b. In that we have freed each of them from slavery of rules, and have given them unrestricted power to treat their patient.
- m. What particularly disturbs you in this?

25

b. wait till you have heard all that I have to say and then you can judge for yourself. We have agreed on two reasons why it is not for the good of the people to have kings unrestrained by the laws, namely, love and hatred, which dim the clarity of mind required in administering justice. But a patient is not afraid that his doctor will go wrong because of the affection he has for his patient since he even expects a reward from the patient once his health is restored. But if the patient should think that that the doctor is being got at through entreaties, promises or money to do him harm, he is free to get another physician; if no other is available, he would, I think, be safer to try to find a remedy in books, however dumb they may be, rather than rely upon a corrupt doctor. But since we have been complaining of the barbarity of laws, let us see whether we have been consistent enough about it.

m. In what way?

b. We have agreed that the ideal king whom we envisage with the eye of our mind rather than those of our body, should not be limited by the laws.

m. That is so.

b. And for what reasons?

m. I think, as Paul thought, he should be a law unto himself and to others so that his manner of life should be an example of what the law demands.

b. Your argument is quite right, and your view will be strengthened when you realise that, centuries before Paul, Aristotle came to the same conclusion, guided only by nature. I emphasise this so that you will see the more clearly what has already been proved to be true, That the voices of God and Nature are one and the same. But to make progress with our discussion, what shall we say the earliest law-givers wished to accomplish?

m. I think, as we have already said, that they were aiming at justice.

b. I am not at the moment interested in their ultimate aim, but in the design they had in mind.

m. I think I follow you, but I would like you to explain more fully so that I may be assured that my ideas are correct; and if I am wrong you will be able to put me right.

b. You know, I take it, that the power the mind has over the body.

m. I think I do.

26

b. You know also that when we act under the guidance of our reasoning powers, we first get in our mind an idea of what we want; and that the idea which inspires the greatest artists is far more perfect in their minds than in their finished work.

m. That is just what I often find by experience, both in speech and writing; and I feel that words cannot express ideas any more than ideas can express things; for neither can our mind, shut up as it is in this dark and confused prison of a body, see clearly the details of all things, nor can we convey in words to others the preconceived picture we have in our minds so that it will not be much inferior to those which our minds have created for themselves.

b. What shall we say, then, was the idea that our law-givers had in their minds?

m. I think I understand what you are after: that they almost had in their minds a picture of the perfect king, and that, using that picture as closely as they could, they expressed somehow a model, not of a material body but of an idea, and that they wanted to have as laws what that king would have been likely to think fair and just.

b. You are quite right, and have said precisely what was in my mind. Now I would have you consider what kind of man it was that we established as king in the beginning of our discussion. Was he not to be firm in resisting the influences of hatred, love, anger, envy and other emotions which tend to upset one's reasoned judgement?

m. That is certainly the type of man we portrayed, and such as we believe a king actually to have been in ancient times.

b. Do those laws that have been passed seem to have anything of this concept in them?

m. Nothing is more likely

b. A good king, then, is as hard and unyielding as a good law.

m. He is equally firm; but although I can alter neither - nor should I want to do so - yet I wish to make them, if I can, a little less inflexible.

b. But God wills that in our judgements we should not show compassion even to a poor man, but bids us consider only what is right and just, and give our decisions on those grounds alone.

27

b. *Precisely to whom, would you say, should this function be given?*

m. *If you ask me, I would say the king himself. For in the other arts, on the whole, we see the principals laid down by the artists, who use them in their practice like notebooks to aid their memory, and also to remind the of their duty.*

b. *I, on the other hand, do not see that it matters whether we leave the king free and unbound by the laws or give him the power to create new ones. For no one will put himself in chains of his own accord, and I rather think it is better to leave him unbound by the laws than to bind him with flimsy fetters which he make break as he pleases.*

m. *But when you entrust the helm of state to laws rather than to kings, take care, I beg you, that you do not impose a tyrant on this man whom nominally you make a king; a tyrant who has the power to oppress him and bridle him with chains, and all but send him out to the fields loaded down with shackles, or hand him over to work in the slave-mill.*

b. *Fine words! I would place him under no overlord, but I would give the people the right to prescribe the limits of the authority which they have vested in him, and I would ask that he, as king, should abide by these limits. And I would not have these laws applied by force as you understand it, but I think what affects the joint safety of all should have the backing of an open general council acting with the king.*

m. *You wish to give the people this right?*

b. *To the people, assuredly, unless you have some other suggestion.*

m. *Nothing seem to me to be less fair.*

b. *How so?*

m. *You know the saying "A monster with many heads". You know, I take it, how impulsive the mob can be - and how fickle.*

b. *I have never thought that a matter like this should be left in the hands of the people at large, but I should say that, roughly in accordance with our standing practice, selected people of all classes should assemble to advise the king. Then when they have agreed on a measure, it should be referred to the people for approval.*

m. *I appreciate your point of view very clearly, but you seem to me to be getting nowhere in spite of your great caution. You do not wish a king to be above the law. But why not?*

It is, I imagine, because within man there are two savage monsters, covetousness, and anger, waging a continuous struggle with reason; laws were desired in order to restrain their licentiousness and, when they run to excess, to recall them to respect for just authority. What about these counsellors-to-be who are to come from the people? Is it not true that they will suffer from that same internal warfare? Will they not be affected by the same evil temptations as distract the king? The more men you give the king as counsellors, the greater the number of fools. And from the state of affairs you know what can be expected.

28

b. But I foresee something entirely different from what you are describing, and I will explain why. First, it is not altogether true, as you say, that a convocation would be valueless even if there were no one of outstanding ability present. For not only do they see and understand more in the mass than any man by himself, but even more than any one individual who excels them in cleverness and skill. Indeed a large number is generally a better judge of all matters than one man. For each individual has some particular good points, and if these points are grouped together we get an excellent result. An example may be clearly seen in the case of doctor's medicines, and especially in the antidote called Mithridaticus. This contains numerous drugs, poisonous if taken separately but, when mixed together, making an effective remedy for poisoning. In the same way many men are slow and undecided while others are impulsive and rash; but if they are brought together in a crowd they will produce a kind of balance and that moderation which we look for in every type of creativeness.

m. Very well. Let the people make laws and keep control of them and let kings be mere keepers of records. But when you seem to have a conflict of laws through lack of distinctness or clarity will you have the king play no part?

Especially when, if everything is to be judged by the written rules, a state of chaos is inevitable. If I may use the tritest example - that law repeated over and over again in the schools - "if a stranger climbs the wall, he may be slain". What could be more absurd than that a guardian of the public safety should have cast down the enemies as they climbed the walls of the city and should then find himself treated as an enemy?

b. Nothing could be more absurd.

m. You approve then of the old saying, "The more inflexible the justice, the greater the injury"?

b. I do approve it.

m. If anything of this nature comes up for judgement, there should be a humane expounder who should know the laws are made for convenience of all men and should not be applied to the disadvantage of good men who have never been convicted of any crime.

29

b. You are quite right. I have sought for nothing in this whole discussion, as you will have observed, other than that Cicero's dictum should be revered and held inviolable: "Let the safety of the people be the supreme law". Whatever case comes into court in which it is clear what is right and just, the king's task will be to ensure that the law is guided by that rule which I quoted. But you seem to use the name of king to demand more than the most imperious monarch has demanded for himself under the name of king. For you know that questions of this kind are usually referred to judges, when the law appears to say something different from what the legislators intended, just as in those cases in which doubts arise out of ambiguity of expression or a conflict of laws. It is from such situations that we get the most weighty debates between advocates in court and the rhetoricians' rules that have been so carefully handed down.

m. I know that these things happen as you say. But it seems to me that in this kind of case no less harm is done by laws than by kings. For I think it better that a law-suit should be decided on the opinion of one good man rather than clever men - and some times tricksters- should be given the power to obscure rather than to interpret the laws. Advocates not only argue the merits of a litigation but endeavour to excel in the art of dialectics, and so suits are kept going even at the peril of losing sight of what justice demands. So we allow to men of inferior standing powers which we refuse to the king, and these men are generally more engrossed in the technicalities of the law than in justice.

b. You seem to have forgotten the point we agreed on a little while ago.

m. What is that?

b. *Our ideal king, such as we described at the outset, should be allowed complete freedom, so that there would be no need of any laws at all. But when the high office is held by any one man out of a multitude, a man who may not be notably superior to the others and inferior to some, the freedom to do as he pleased, unrestrained by law, would be a dangerous weapon.*

m. *What precisely has this to do with the interpretation of the laws?*

b. *A very great deal. Probably you have failed to notice that we are now to restore the king, using different terms, that boundless and unlimited power which we have already refused him, and so he may, forsooth, twist anything and everything to suit his slightest whim.*

m. *If that is what I have been doing I certainly did not mean to make such a blunder.*

30

b. Let me put it more clearly to you. When you allow a king to expound the law, you give him such power that the law need not express what its promoter intends, or what is fair and proper in the light of public interest, but what is in the interest of the expounder; and such power that he can apply the law in all litigations to his own advantage, as if it were the Lesbian rule. Ap. Claudius during his decemvirate enunciated this most just law: "Where a question of freedom arises, sureties should be granted for liberty". What could be expressed more clearly? But the framer of the law by his interpretation of it himself made it worthless. You see, I take it, how much licence you are giving to the prince in one stroke, for now the law says what he wants and does not say what he does not want. Once we accept this position it will serve no useful purpose to turn out good laws to remind a good prince of his duty and to restrain a bad prince. In fact, to put it more clearly, it would be better to have no laws at all than have open robbery tolerated and even honoured under the cloak of law.

M. Do you think that any king could be shameless as to have absolutely no thought for what everyone thinks and says about him? Or be so oblivious of himself and his people as to fall into the vices of those he has curbed by ignominy, imprisonment, confiscation of goods, or, finally, by the heaviest of punishments, i.e., death?

b. We should not believe that such things could happen but for the fact that they have already happened, to the great detriment of the whole world.

M. Where do you say such things have happened?

b. Where, do you ask? As though all nations of Europe have not only seen but felt the great evil which has fallen on men, not through what I should call unbridled licence, but through the uncontrolled power of the Roman Pontiff, No one is unaware how modest and to, outward appearance, honourable he was to begin with, and how nothing was less likely to make the unwary afraid. In the beginning, laws had been laid down for us which sprang from the deepest secrets of nature, which came from God himself, expounded by His Holy Spirit through the prophets and finally confirmed by the son of God, who is also God, and commended by the writings of the most praiseworthy men, exemplified by their lives and sealed with their blood.

Now there is no article in the whole body of the law which has been handed down with greater care, approval and exposition than that which deals with the duties of bishops. But so long as it was forbidden to add anything to these laws, or to repeal them in whole or in part, nothing remained but interpretation. When the Bishop of Rome arrogated the interpretation of them for himself, he not only oppressed the other churches, but claimed for himself a despotism, the most sever of all that have ever existed. He lorded it over men and angels alike and brought Christ to order - unless, of course, it is not bringing to order to proclaim what you wish to be done in heaven, on earth and among the damned. What Christ commanded is to be valid only if the Bishop of Rome approves. For if the law does not seem adequate in a particular case, he can twist it by so interpreting it that Christ is forced not only to speak through his mouth, but to express his very desires. Christ would therefore be speaking through the mouth of the Roman Pontiff when Pipinus took the place of Chilperico, and Ferdinand of Aragon that of John of Navarre; the son rose in unholy arms against the father; citizens against their king; Christ is saturated with poison, then He is made to become a poisoner so that He might remove Henry of Luxembourg by poison. M. This is not the first time I have heard such views, but I should like to be able to follow more closely this question of the interpretation of the law.

31

b. I shall give you one instance to clear away any doubt as to how strong this principal is. The law says: "A bishop ought to be the husband of one wife". What could be simpler than that, what words more explicit? "One wife" is interpreted as "one church", as though the law was aimed at restraining not the libidinousness of bishops, but their avarice. Now this interpretation, though not really relevant, does contain a sentiment quite honourable and pious if only the pontiff had not vitiated it again by another interpretation. And what did he devise? The meaning may alter, he says, according to differences in persons, places, cases and times. Some bishops are so grandiose that no number of churches would satisfy their pride. Some churches are so poor that they could not support a monk - not long ago a mendicant, but now mitred - if he wished to assume the dignity of bishop.

Through this cunning interpretation of the law a principal has been devised so that whilst a bishop is said to have only one church, others are commended to his care and all are plundered. The sun will set before I can enumerate all the frauds which are devised in respect of this law; but though these bishops are unworthy of the name of Pope and Christian, it is not in them that the tyranny lies. For it is true of all things once they begin to move headlong, they can never bring themselves to a stop before they plunge to destruction. Would you like me to illustrate this for you with an outstanding example? Can you recall any of the emperors of Roman blood who was more cruel and wicked than Caligula?

m. None, so far as I know.

b. What would you say was the worst of his crimes? I do not mean those which the popes have placed on the Reserved List, but in the rest of his life.

m. I can not think which

b. What sort of behaviour does it seem to you when he invited his horse Incitatus to dinner, put golden barley in front of it and appointed it Consul?

m. A most iniquitous proceeding.

b. And what about his admitting the same animal to be his colleague in the priesthood?

m. Do you say so in all seriousness?

32

b. I am certainly serious. And I am not surprised that you think these things fabrication. But our Roman Jupiter has done things that make these stories credible to posterity. I mean Pope Julius the Third. He seems to me to have engaged in a contest to see which was the prince of wickedness, C. Caligula or himself.

M. In what way did he do so?

B. He co-opted the keeper of his ape, a man almost lower than the lowest of brute beasts, to be his colleague in the priesthood.

M. Perhaps he had some other reason for choosing him.

B. Others are spoken of, but I have taken the most respectable of them. This unbridled power of interpreting the laws illustrates the contempt he felt for the sacred office of priest, and it also shows his complete disregard of humanity, Be careful not to regard such power of interpretation as a trifling matter!

M. It still seems to me that our fathers did not think this power of interpretation as important as you wish it to appear. This is evident from the fact that the Roman Emperors left the exercise of it in the hands of men skilled in law. This one fact refutes your long and wordy argument; it not only upsets your contention that interpretation is so immensely important but also makes clear a point you have most carefully avoided, that they delegated the power of adjudging others while at the same time not denuding themselves of it, in case it might happen that they should wish to act personally and had the necessary leisure to do so.

33

b. So far as the Roman emperors are concerned. they do not come within the category of kings such as we have laid down, for they were raised to that eminence by their soldiery without any legal formality or even regard for the public weal. Moreover, they were elected by the most depraved set of men, and were themselves, as a rule, the worst of the lot; or they simple seized power by force. They are not to be blamed in any way for handing over the task of considering and advising to trained lawyers; for although the power of the latter is very great, as I have already said, it would be safer in their hands, for it would then not be an instrument of tyranny. It would be safer too, in the care of a number of men who would be held to their duty by mutual respect, and if any one of them were to make an error of judgement the others would set him right. If they were to conspire to defeat the ends of justice, the judge would overrule them, for he need not regard their opinions as the law. Then there remained the emperor, who would inflict penalties for abusing the law. The lawyers accordingly were bound by so many chains that they were afraid that the pains of law would be greater than any reward they might hope to get for misbehaviour. You see, I hope, that the possibilities of danger from this type of man would be very great.

m. Have you anything more to say about kingship?

b. First of all with your permission, we shall run over what we have already said and so make it easier to see if we have overlooked anything.

m. Yes I think we should do so.

b. As to the origins of kings and laws and the reason for creating them, we seem to have reached agreement, but not as regards the law-giver. Yet you seem to me to have been convinced at last, though unwillingly, as if the force of truth had compelled you.

m. In truth you took from the king the power not only of enacting the laws but also of interpreting them, in spite of my most energetic plea in his defence. In this matter I am afraid that should it become generally known, I might some day be convicted of collusion for having so easily allowed myself to lose so apparently good a case.

b. Don't be afraid. If anyone accuses you of prevarication in this matter I promise you free legal defence!

m. Perhaps we shall shortly put that to the test.

34

b. We have seen that many questions arise which cannot be covered by any laws; Some of these we have without objection passed on from the king to the regular judges, and others to the council.

m. I do recall that this was so; but when you were doing so, do you know what came into my mind?

b. How can I know till you tell me?

m. You seem to be somehow forming your kings like those stone figures which rest against the capitals of columns in such a way that they look as if they are holding the whole structure, whereas in fact they carry no greater strain than any other stone.

b. What, you great advocate of kings! You complain that I give them too little to do, when they themselves look day and night for associates to share their burdens or even to take them over altogether. And meantime you seem to be annoyed because I am trying to bring them help in their work.

m. I, too, gladly accept those auxiliary forces, but I would like them to be the kind that serve and not command: such as point the way rather than such as lead where ever they go, or rather drag one along or push one like an engine, and leave the king only the power to agree with them. So I have for some time been expecting you to conclude our discussion on the king, and turn over to tyrants or some other topic. For you have confined the king within such narrow limits that I am afraid that if we linger any longer over him you will banish him from all his wealth and dignity as if to some distant island where, deprived of all his honours, he will grow old in want and misery.

b. A moment ago you were afraid have having to face a charge of prevarication, but I fear that you may do harm by misrepresenting the king whom you are trying to defend. First, I should not like him to be idle - unless you think that all architects are idle. Next you would strip him of all capable assistants and friends whom I have not given him as guards, but whom I wished him to summon for himself to share in his work; and when you have driven these away, you surround him with a cohort of scoundrels who make him an object of fear to the citizens; then, too, you think he can not be formidable unless we leave him with a considerable power of doing harm.

I would have him loved by his people and protected by his people's goodwill, not by their dread of him, for these are the only weapons which make kings unconquerable. That, unless you object, I hope to show you in a few words. For out of what you call those cramped limits I will lead him into light. And by one law I will endow him with so much authority and scope that you would think him shameless if he should ask for more.

m. I long to hear you on just this point.

35

b. I shall come straight to the root of the matter so that I can satisfy your desire as quickly as possible. A little while ago we admitted that no law can be framed so perfect as to exclude the possibility of some sharp-witted criminal practicing some fraud. The following example may make my meaning more clear. The law prohibits a father from handing down a benefice to an illegitimate son. But a way has been found to circumvent this apparently straightforward rule, for the father simply makes the benefice over to some substitute who, in turn, hands it on to the illegitimate son of the original holder. Then when a distinct ruling was made to the effect that a son should not on any condition hold a benefice which his father has ever held, no progress was made even with this stipulation. The priests came to an arrangement among themselves to defeat that law, simply by each putting in the son of another priest as a substitute. When this loophole in the law was closed, the law was again circumvented by a new type of fraud. A fictitious claimant was put forward to seek a declaration that the benefice was his. While the father engaged in a battle of words with sycophant, the son petitioned the See of Rome for the benefice if neither of the litigants should succeed. The litigants then both willingly withdrew their claims and the son got possession of his father's benefice, through the father's collusion. So you see how many kinds of fraud have been devised to deal with this one law

m. I do see that.

b. Does it not appear to you that proposers of law are very much in the same position as doctors who try to check eruptions of the rheum or some other poisonous fluid by plaster?

When the moisture is checked in one place it seeks to get out by several places at once, as, with a hydra, when one head is struck off, many others grow immediately.

m. The example you give is perfect.

36

b. *Steps should be taken initially by the doctor to cleanse the whole body of noxious fluids at one and the same time, and should not the politico - doctor have done the same thing, and have sought to free the whole body of citizens of unlawful practices?*

m. *This, though difficult, I feel would be the proper way to treat them to effect a cure.*

b. *And if this course could be followed, there would to my mind be need of but few laws.*

m. *That would indeed be so.*

b. *Does not the man who could effect the cure, seem to you likely to contribute more single-handed to the general public than all the assemblies of all Estates convened for the purpose of making laws.*

m. *Far more, I have no doubt; but, in the words of the comedy, "Who is strong enough for such a task?"*

b. *What if we were to commit the task to a king?*

m. *Very nice indeed! Whatever is favourable and easy you have committed to the people at large; but whatever is arduous and difficult you give to the king alone, as though you did not think it enough to have bound him with chains and to have put so many barriers round him, but must place upon him the heaviest of burdens so that he will utterly sink down under it.*

b. *You misunderstand me; we ask of him something that is not easy, but we beg him to grant it.*

m. *Just what do you mean?*

b. *That throughout his life he should be towards his citizens as he thinks a father should be towards his children, for the king must regard the citizens as his children.*

m. *What would be the purpose of this?*

37

b. This is one and certainly the best antidote for corrupt habits; and, in case you think it is just my personal opinion, listen to what is said by Claudius IV Consul. Honor, v 293:

"Bear yourself as a citizen and a father; consider your people, not yourself: let the wishes of the people, not your own, guide you. If you give an order for the good of all and think it must be obeyed, be yourself the first to obey it. It is when the people see the law-giver himself obeys that they will be more observant of justice and not refuse obedience. The world is formed by the example given by the king. Edicts have no such influence upon men's minds as has the behaviour of a king, and the fickle mob always keep step with the prince."

You must not think that the poet, endowed as he was with intelligence and learning of the highest order, was wrong in thinking that there is such force in this idea; for the people are so prone to imitate those in whom some picture of virtue shines out, and they try so hard to copy their habits that they even attempt to reproduce certain faults in speech, dress and bearing of those whose virtue they admire. Indeed they practice counterfeiting the dress, habits and speech of kings, not merely out of eagerness to imitate them, but also to insinuate themselves by flattery into the affections of those who belong to the more powerful classes, and to intrigue for wealth, honours and power. For they know the ways of nature - that we not only admire ourselves and all that pertains to us, but we cherish in others the likeness to ourselves even if it is a likeness to our faults. Not to demand all this arrogantly and haughtily, but to request and plead for it, is a method much more likely to lead to success than would be threats contained in the laws, a parade of penalties or even the use of military forces. It is in this way that the people can be brought peacefully back to moderation, which wins for the king the goodwill of the citizens and which increases and maintains both the tranquillity of the state and the wealth of the individual. A king should constantly bear in mind that he stands, as it were, in the theatre of the world as a spectacle for everyone, and that nothing he says or does can be hidden. As the same poet says, in v 271: "The faults of kings cannot be concealed, for the profound light of fate does not permit anything to be hidden, entering, as it does, every cranny and exploring every nook".

37

b. How careful must princes be in all their conduct, for neither their faults nor their virtues can be kept hidden, nor can they be publicised without far-reaching results! But if anyone still has doubts as to how important the life of the prince is in improving the ways of the people, let him picture to himself what happened in early Rome. The people were rude and uncultured, for they were really just a collection of shepherds and nomads - to put it no lower; they were fierce by nature and took as their king the fiercest man among them. They set up, as it were, a fortified camp for the purpose of troubling the peace by overawing the neighbouring tribes and provoking them into war. What hatred, what trepidation you can understand this aroused in the breasts of these neighbouring tribes! Yet the same people, when they put themselves under the sway of a pious and just king, became all at once so changed that their neighbours thought it almost impious to attack a people so devoted to the worship of the gods and of justice - those neighbours, mark you, whose lands they had previously laid waste, whose cities they had burnt, and whose children and relatives they had enslaved. Now if Numa Pompilius, a king not long come from a hostile nation, could do so much in the case of a people with such savage customs in such a barbarous age, what are we to expect - or rather, what are we not to expect - from the princes who come to power with all the advantages of good relatives and retainers as well as inherited wealth, and who are born and bred to expect this power? And how gladly should it inspire them to a virtuous life that they do not aim at glory for a single day, like actors in a well staged play, but know well that they have gained for themselves the goodwill and admiration of their own generation, everlasting renown in the eyes of posterity and honour all but divine. If only I could portray in words the picture I have in mind of that honour and make it as clear to you as I have it in my mind! But still I think I can give you a rough outline, in part at least, if you will turn your mind to the brazen serpent set up by Moses in the Arabian desert, curing those who merely looked at it of the bites of other serpents; reflect that out of that vast multitude some had been bitten by snakes and run to get this immediate cure, while others marvelled at this strange miracle and all lauded to the skies this great and incredible manifestation of the goodness of God

whereby the pain of the deadly wound is alleviated, not by drugs inflicting further agony on the sufferer; not by the efforts of a physician or the constant attention of friends; not, moreover, over a period of time; but all in a moment the wound is healed. Now consider the king as that serpent, and think of him as one of God's greatest works, for he alone, without cost to you and without your aid, will smooth over all the troubles within the realm and pacify every disturbance - in short, he will heal the longstanding grievances of the mind. He will give health not only to those who see him, but to those who because of the distance at which they live, have no hope of ever seeing him. The picture of him which they carry in their minds is so effective that it can easily achieve more than can the wisdom of lawyers, the knowledge of philosophers and the practice and the accumulated experience of so many centuries. What greater honour, dignity, grandeur or majesty can be attributed in speech or thought to any man than by conversation, companionship, appearance and, finally by their silent recollection of him, the extravagant becomes moderate, the turbulent, peace-loving and the mad, sane? Can you ask a greater gift than this from a God favourably disposed to the human race?

39

b. This unless I am mistaken, is the true picture of a king, not that picture of him surrounded by armed retainers, living in fear and inspiring fear in others, measuring his people's hatred of him against his hatred of them. Seneca, in *THYESTES*, has painted in the most beautiful colours the picture I have outlined. You will no doubt know this poem because of its elegance. Do I now appear to you to despise and scorn a king? And (as you said not long ago) to shackle and hold him within a prison of laws? Do I not rather bring him out into the light and into the company of men and set him on a stage for the edification of all mankind? He is safe because of his uprightness and not because he is flanked by a body of spearmen and swordsmen in shining armour or courtiers in silk; his bulwark is the love his people bear him, not the dread his mercenaries rouse; he is not only free and raised to high rank, but honoured, revered, sacrosanct and glorified. Wherever he goes the Fates are kind; he receives acclamations of welcome and draws to himself men's heads, eyes and hearts. What ovation, what triumph can be compared with this daily display of affection? Or if God were to come down to earth in human form, what greater honour could be paid to him by men than would be shown to a true king, the living image of God? For no greater honour can be bestowed by love, extorted by fear, or feigned by adulation. How does this picture of a king appeal to you.

40

m. Splendid indeed! So magnificent that I cannot conceive of anything more so. But today our habits have become so corrupt that it is difficult to imagine the existence of this greatness of spirit unless a careful education is combined with an upright character and natural integrity. For the mind that is trained from adolescence in good habits and diligence, when strengthened through age and experience, strives towards true glory by means of virtue, is tempted in vain by allurements of pleasure and is not shaken by the assaults of adversity.

For so:

"Instruction builds up innate strength,
Once development of right principals invigorates
the heart".

So that the mind takes the opportunity for practising virtue even amid the enticements of pleasure, and virtue considers that difficulties from which lesser minds would recoil in terror have been offered to it as a chance of proving oneself. Therefore, since a liberal education is so important in every facet of life, the utmost care should be taken that proper instruction be given to the kings-to-be from their earliest days. Just as many benefits have their origins in good kings, and on the other hand many disastrous happenings derive from bad kings, nothing seems to me to be more important than the inclinations and characters both of kings themselves, and of those others who assist them in wielding high authority. For what is done well or ill by individuals is generally hidden from the mass of the people, or, because these individuals are of small importance, their example affects only a few. But of those who take a major part in public affairs, every word and deed is written down, as Horace puts it, on a votive tablet, and cannot be hidden, but is a model for the citizens to follow. It is not only by their eagerness to please, but also by the attractive allurements of expediency that kings gain support of all; and as the minds of kings move, the conduct of the public follows. But I am afraid that our kings may allow themselves to be won over, so that what you have assumed comes about. For they are so weakened by the allurements of pleasure and deceived by a false notion of honour that I imagine they will do very much what some of the poets tell us happened to the Trojans who sailed with Paris. For the true Helen, they say, was left in Egypt with Proteus, a man revered almost as a divinity, and men fought bitterly over her shadow for ten years to the end of a most disastrous war and the destruction of the wealthiest nation of those times; so it comes about that violent tyrants embrace the false idea of a kingdom, and having once acquired it by fair means or foul, they cannot they cannot hold it without crime or give it up without destruction. But if anyone should tell them that the true Helen for whom they imagine they are striving is concealed in some hiding place elsewhere, they would think him insane.

41

b. I am glad that even if you have not seen the true daughter of Jove you do to some extent appreciate her beauty from this image of hers, whatever it is. But if those who, to their own great hurt, were her lovers, were to see a perfect picture of the true Helen painted by some Protogenos or Apelles, I have no doubt they would pursue it even to their destruction. And unless they immediately told this other Helen to mind her own affairs they would incur those very heavy penalties which Persius in his Satires invokes upon tyrants: -

"Great father of the gods, punish the cruel tyrants thus when a dread lust, filled with hot poison, has moved their spirit. May they realise the virtue they have lost and pine away".

And now, since we have mentioned tyrants, do you wish us to go straight on to deal with them?

m. Yes, unless you think anything else should come first.

b. We shall be least likely to wander off the track if we proceed on our way to find the tyrant by the same path that we followed in seeking the king.

m. I quite agree. For if we set them up and look at them side by side, we shall very easily see what is the nature of the difference between them.

42

b. First let us begin with the word tyrant. I think it is uncertain which language it belongs to and to my mind it would be a waste of time for us to discuss its Greek or Latin origin. But what the ancients called tyranny is very obvious to anyone who has engaged in the more humane sciences with any degree of attention - for those who are called tyrants by both Greek and Latins were men who were in supreme power, confined within no boundaries of law, and subject to no judge. Accordingly in each language, as you know, not only the heroes and the outstanding men, but also the mightiest gods, including Jupiter himself, are called tyrants, and that by men who both think and speak of the gods with reverence.

M. I am fully aware of that, and it makes me wonder all the more how it has come about that for so many centuries it has remained a term of odium and one of the strongest terms of abuse.

b. There certainly has been a change of meaning in the word, as has happened in many other instances. If you consider the nature of the words in itself, there is no intrinsic harm in them. And although some may sound more harsh than others in the listeners ear, yet they have no innate power to excite men's minds to rage, hatred or hilarity, or otherwise to cause pleasure or pain. If a word should have any such effect on us, it usually results not from the word itself, but from its general usage, and the fact of that usage creates an image in our minds. Therefore it may be that a word which among certain men implies honour, does not bear the same meaning to others unless a preliminary explanation be given.

M. I remember something similar happening in the cases of men named Nero and Judas. In the one case the Romans and in the other case the Jews held the respective words as conferring a high degree of distinction and honour when applied to men of eminence. But afterwards, through no fault of the words, but because of the crimes the men committed, the greatest scoundrels would not have their children bear these names, for they are now sunk in infamy

43

b. The same thing has clearly happened to the word tyrant as well. It is quite credible that the first magistrates to be called were excellent men, for the word was once held in such high honour that it was used of the gods. In later years men rendered it so infamous through their evil deeds that people avoided it like the pestilence, and thought it less of a reproach to be called executioner than a tyrant.

M. Perhaps the same thing happened in this case as with the kings at Rome after the expulsion of the Tarquins, and with the dictators after the consulships of M. Antonius and P. Dolabella

b. You are right; but, on the other hand, humble, plebeian names have become illustrious through the worthiness of those who have borne them, such as Camillus, Metellus and Scrofa among the Romans, and Henry, Genseric and Charles among the Germans. You will understand the point better if you set aside the name tyrant and observe how this type of government has retained its original place of honour among illustrious nations, as, for example the Aesymnetae among the Greeks and the dictators among the Romans. Both types were lawful tyrants. They were tyrants because they were above the law, and they were lawful because they were placed in power with the consent of the people.

M. What do I hear? That tyrants can be lawful? I was expecting to hear something very different from you! Now you seem to be completely confusing the differences between kings and tyrants!

44

b. As a matter of fact kings and tyrants seem to have been very much the same among the ancients, and I imagine the meanings of the words varied at different times. The word TYRANT I consider somewhat the older; then when people became disgusted with the word, KINGS took their place - a more polished word for a more benign government. Kings, in turn, degenerated, and the controlling power of laws was applied to set authoritative limits to their unbounded desires. As men sought for new remedies corresponding to the needs of the time and the wishes of the people, they grew tired of the old type of authority, and new remedies were devised.

The discussion which we are pursuing at present concerns two types of prince; in the one case the supreme power lies in the law rather than in the king; in the other we find the worst type of tyranny, in all respects the opposite of monarchy; and we have undertaken a comparison of these.

m. That is so, and I am waiting eagerly for you to go on.

b. We agreed that at the outset a king should render justice to each and every man as the laws prescribe.

m. Yes I remember that.

b. First, then, what name shall we give to one who does not rule by the consent of the people, but seizes power by fraud or by force?

m. A tyrant, I should say.

45

b. There are many other points of difference. These can easily be found in Aristotle's writings, so I will run over them very briefly. A royal authority is in accordance with nature's law, while a tyrannical one is against it; a king holds power with the consent of the people, while a tyrant lacks that consent; in a kingdom, a king ranks as a free man among free men, whilst in a tyranny the ruler is as a lord over slaves; a king has his citizens as his guards, whilst a tyrant has foreign mercenaries to overawe the citizens; the king reigns for the benefit of his people, the tyrant for his own.

M. How about those who have seized power without the consent of the people and yet have remained in authority for so many years that the people have become reconciled to their rule? How little was lacking in Hiero of Syracuse, or nowadays, Cosmo Medici of Florence, to prevent us from saying that they fulfil the functions of a just king, apart from lawful election.

46

b. None the less we cannot leave such men out of our lists of tyrants. It has been nobly stated by a distinguished historian:

"Though one might rule one's country and one's parents by force, and correct their faults, it is nevertheless a barbarous thing to do"

Then again these men seem to me to be like robbers who hope that by a suitable division of what they have wrongfully acquired they will receive high praise for justice, though based on injustice, and liberality, though based on robbery; but they do not gain what they seek. The hatred aroused by one evil deed deprives them of all the gratitude which might have sprung from their apparent benevolence; and their failure to inspire the confidence of the citizens is the greater because they are known to act thus not in the interests of the citizens, but to increase their own power - obviously so that they may enjoy their own pleasure more easily and, by assuaging the hatred of the people for them, strengthen the power of their descendants; this done, they resume their former practices. For the sowing that is done indicates what crop will be reaped. To subject everything to the wish of one man and to transfer to him the power of law-making is nothing more or less than to abrogate all laws. This type of tyrant might indeed be tolerated if he could not be got rid of without danger to the public, just as we put up with certain diseases of the body rather than risk our lives in attempting a problematical cure. But those who openly wield authority not for the benefit of the country, but for their own advantage, who put their own pleasure before the needs of the public, who base their power on the weakness of the citizens and who look upon their position as a source of booty for themselves and not as a trust from God, these men, I say, are not linked to us by any bond of citizenship or humanity, but should be adjudged the enemies to the death of God and Man. Every action of a king should display his regard for the public peace and not for his own benefit; and by as much as kings are elevated above the highest rank reached by the rest of mankind, so should they set themselves to imitate those heavenly bodies which, without awaiting the prayers of men, spread the vital gifts of heat and light for the benefit of the world.

The very titles of honour which we have given to kings, as you will remember, should remind them of how unimpeachable their conduct should be.

M. I seem to remember that they should have the tenderness of a father to the citizens who are entrusted to them, as if they were their children; and they should show the care of a shepherd in looking after their interests; that they should behave like generals in safeguarding them; like leaders in the excellence of their virtues; and like commanders in bidding them to do what would be for their advantage.

47

b. Can a man be called paternal if he treats his citizens like slaves? Or can he be shepherd if he flays his flocks instead of pasturing them? And can he truly be called a pilot if he is bent on jettisoning the cargo and on scuttling the ship in which he himself sails?

M. Most definitely no!

b. And what do you make of a man who prepares his plans to suit his own interest instead of his peoples needs? Who vies with no one in the better qualities, but seeks to surpass the wicked in wickedness, and who leads his people into obvious danger?

M. I certainly would have him neither as guide nor as leader.

b. If then you see anyone who usurps the name of king, who is no better than any citizen and worse than most, who bestows no fatherly love on his people, but treats them with the greatest arrogance, who thinks his subjects are committed to his care not for safe-keeping but for his profit, would you consider such a man to be king in the true sense - even if he goes about flanked by a large body of guards. is decked out in splendour, threatens punishment, wins affections of the mob by giving them bounties, games, ceremonials and whatever else is thought impressive and likely to gain applause? Would you consider such a one, I ask, a king?

M. I must say if I am to be consistent, that he should have no place in civilised society.

b. How would you define "civilised society"?

M. I would describe it as a society held within the bounds you apparently had in mind in your earlier remarks, that is to say, within the barriers of the law. As I see it, those who break these bounds - such as robbers, thieves and adulterers - are punished by the state, and it is held to be just ground of punishment that they have put themselves outwith these bounds.

48

b. What about those who have never wished to enter within these bounds?

M. They would be the enemies of God and Man. I think they should be classed along with wolves or other predatory breed of animals rather than with human beings. A man who encourages such people is asking for his own destruction and that of his friends; the man who kills them off is a benefactor to himself and the whole community. Had i the power to make a law, I would ordain (as the Romans used to do in expiating evil omens) that men of that type should be deported to a desert island or drowned in the sea far from the sight of land, in case their dead bodies should infect living men; and that rewards should be given to those who carried out that law, not merely from public funds but from individual citizens - as commonly happens with those who have killed wolves or bears or caught their young; and if any such monster were born with the voice and face of a man, and, to all appearance, a human being, I would not consider him to be a fit associate. And if anyone were to lose his human character and degenerate into such a monster. and were to mix with other men for the sole purpose of effecting there destruction, such a man, to my mind, should not be called a man at all, but should be ranked along with satyrs, apes and bears, even though in looks, gestures and speech he should appear to be a man.

b. You have now, if I am not mistaken, come to understand what the wisest of the ancients thought a king should be like, and also what a tyrant was like. Do you think that we should now set before us some such model of a tyrant as we did in dealing with the king?

M. Do, it it is not too much to ask.

49

b You have not forgotten, I am sure, what has been said of the Furies by the poets and of unclean spirits by ourselves, that these spirits are the enemies of humanity, which, since they are themselves in perpetual agony, delight in creating torment for men. This is indeed a true picture of a tyranny. But because this picture can be seen only by the mind and not by the senses, i will put another picture for you - one which will be clear not only to your mind, but also to your senses, as though actually before your eyes. Picture a ship tossed by stormy seas, with the neighbouring coasts not only devoid of harbours, but full of the most dangerous enemies; the master at loggerheads with the crew, though he has no hope of safety other than the loyalty of the sailors - nor can even that be relied on, for he is well aware that he entrusts his life to a most barbarous set of men, lacking in all decency, whose support depends upon what money he gives them, and who can be easily led to side against him by anyone offering a larger reward. Such then is the life that tyrants regard as desirable. Abroad, they go in fear of enemies; at home, they dread the citizens - and not the citizens alone, but also the members of their household, their kinsmen, brothers, wives children and parents. So they are always waging or dreading war with their neighbours, civil war with their citizens or a family feud with their own folk; or they reduced to a condition of perpetual fear with no hope of help other can be got by bribery, and even then they cannot risk attempting to bribe good men, whilst evil men are untrustworthy. What happiness can they find in life, I ask you? Dionysius took away from his unmarried daughters the task of shaving his beard since he was afraid to let them bring a razor near his throat. Timoleon slew his brother, Alexander of Pherae was murdered by his wife, and Sp. Cassius by his father. What torments must he endure who has these examples continuously before his eyes! He must think himself a target set up for all humanity to assail. It is not only when he is awake that his conscience troubles him, but when he is asleep he is constantly disturbed by terrifying visions of the living and the dead, and he is plagued by the torches of the Furies. The time which nature has set apart for all living animals to rest and for man to forget his cares is changed for him into hours of horror and torture.

M. Your explanations are certainly most skilful, and they may well be accurate. However, unless I am mistaken, they are not so very much to the point. Those people who have the right to elect kings have also the right to limit their powers by means of whatever laws they chose. But with us, kings are born, not elected, and I have always thought that they inherited along with their kingdom the right to have their will regarded as law. I have not come lightly to this conclusion, and I have weighty authorities behind me in whose company I am not ashamed to err (if indeed I do err). Not to mention anyone else, legal writers assert that by the law of Royalty, which deals with the power of kings, the people have transferred to them all their power, so that the decision of the kings must be regarded as law. From this same law, no doubt, arose the threat made by a certain emperor that by a single edict he could abolish that science of jurisprudence of which jurists were so proud.

50

B. You are wise not to name such bad authorities for grounding so important a statement; for it was C. Caligula who also expressed the wish that the Roman people had only one neck. Now in that emperor there was nothing of a man, far less of a king, except his physical form; so you know what weight can be given to him as an authority. As far as the law of royalty is concerned, of what nature it was, when, by whom, and in what words it was proclaimed, even our legal experts do not explain. The Roman kings never had that power, for there was an appeal from the king to the people. No one has ever considered as law the decree in which L. Flaccus firmly established the tyranny of L. Sylla, at a time when liberty of the Roman people had been suppressed, and their laws were powerless. The intention of the bill was whatever L. Sylla should do would be binding. Surely no free people would ever be so foolish as to allow themselves to be saddled with such a law; or if ever any were so foolish, they would indeed deserve to be the slaves of tyrants and to pay eternally the penalty of their folly. But if there were any such law, we should consider it a warning to us to beware, and not a model to be copied.

M. Your warning is very timely, but it applies to those who have it in their own power to decide what kind of kings they appoint for themselves; it does not apply at all to those of us who do not elect the best king by suffrage, but accept those who chance has offered.

That view of the legal expert seems properly to apply to such of us as gave the ancestors of our kings the right that they and their descendants should have authority over us for all time. I wish that those who were free to consider whom they wished to appoint as king had had the benefit of your warning (I mean our forefathers). Unfortunately your advice comes too late; it does not enable us to put right what is now beyond our power, but only to deplore the stupidity of our ancestors, and to recognise the misery in which we live today. What is left to us who are doomed to servitude but to pay the penalty for the folly of others? Must we not bear our lot with patience in the hope in the hope that it may become lighter? Must we not, too, refrain from untimely agitation lest we provoke to wrath those whose authority we cannot challenge. whose power we cannot lessen, whose unrestrained might we cannot escape? But this law of Royalty, which you are so much against, was not made to win the favour of tyrants, as you want it to be thought. Justinian, that most just of princes, approved of it, and he was not the man to tolerate blatant adulation. The following lines, however, apply to an indolent prince:

"Whom does false honour delight and lying rumours fright but the liar and the evil doer?"

51

b. Justinian was, as our history books tell us, a great man, though some historians maintain that he was monstrously ungrateful to Belisarius. But, granted he was the kind of man you think he was, you must still remember that those who were more or less his contemporaries assert that Tribonian, who was one of the principal compilers of those laws, was by far the most corrupt of men and one who could easily have been persuaded to pander to the whims of the worst of princes. Even good princes are not averse to this type of flattery:

"Those who have no desire to kill anyone would like to have the power to do so,...there is nothing which a man cannot believe of himself when his power is lauded as equal to that of the gods".

But let us return to our princes, to whom you say authority comes through heredity, and not through election. I am speaking solely of our own princes, for if I begin on foreign ones I fear my talk will last longer than we had bargained for.

m. I quite agree with you, Foreign affairs have no great bearing on our discussion.

b. Well then, so that I may advance from basic principals, it is pretty well agreed that princes were chosen as a result of men's believe in their virtue to exercise rule over the rest of us.

m. So our historians tell us.

52

b. It is equally well known that many of our kings who proved notoriously cruel in the exercise of their office were called to account: some were sentenced to life imprisonment, and of the others some were exiled and some were put to death; and although the sons or kinsmen of those killed were chosen to succeed them, no criminal proceedings were ever taken against instigators. On the other hand, nowhere on earth was more severe punishment exacted from those who took up arms against good kings. It would be tedious to discuss each individual case, so I offer a few of the latest cases which are freshest in our memory. The nobles punished with great severity the murderers of James I, who left us as heir a boy of six years of age, and put to death with new carefully chosen forms of torture men who had been born into famous families and were remarkable for their wealth and the number of their retainers. Again, who regretted, far less avenged, the death of that cruel and evil man, James III? But in the case of James IV, to incur even the suspicion of guilt was enough to bring punishment by death. And not only were our ancestors dutiful towards good kings but they were also lenient and compassionate towards bad kings. For when Cullen*, on his way to defend himself at his trial, was slain by one of his enemies, his attacker paid the heaviest penalty by order of the Estates. And when Evenus*, condemned to life imprisonment, was murdered in prison by an enemy, the murderer likewise paid the penalty. So although all hated his abominable life they avenged his violent death as if the crime was parricide.

m. My present question is not so much what has happened in the past as under what authority we are ruled.

b. Very well, if he used force to compel the people to obey him, they would be able to throw off that forceful authority of his as soon as they began to feel confident of their strength. For all the laws accepted by kings and people assert, and nature herself proclaims that whatever is done by force can also be undone by force.

m. What if the people have either been deceived or compelled by fear to surrender themselves into slavery? What excuse can be put forward to show that they should not forever stand by what they have once agreed to?

* An early king of Scotland: vide Buchanan's History of Scotland

53

b. *If you bring an action against me in virtue of a contract, what should prevent me from producing those reasons which enable pacts and contracts to be ended? First of all it is well established among all peoples - a principal drawn from nature itself that bargains induced through force and fear are not binding. To those, too, who have suffered loss through fraud the law gives full restitution, particularly in the case of minors and those whom the law considers in need of protection; and of these latter it takes the utmost care. Now what body of men can more justly demand restoration than a complete nation? For an injury to them is not an injury affecting some individual, but reaches far and wide to all the limbs of the body politic.*

m. *I know that this law is brought into operation in private cases - and justly so. But there is no reason for us to argue at length on this point, since it is far more likely (as we are told by historians) that people voluntarily vest supreme power in their kings.*

b. *It is credible, too, that so important a request would never have been granted without some weighty reason.*

m. *I quite agree.*

b. *What reason in particular do you think it was?*

m. *What other could there be than the one we have been discussing? Weariness with ambition, civil commotion, murder and internecine strife, often with the destruction of one party and always with great loss on both sides. Those who obtained supremacy strove to do away with the brothers and almost all their kindred in order to leave the kingdom in a more submissive state for their children. This we hear, is done among the Turks, and we see it happening among the clans in our own island and in Ireland.*

b. *To whom do you think this struggle is more dangerous - people or the princes?*

m. *To the princes, certainly: for the greater part of the people, fearing for their own possessions, usually look on at the struggles between princes and are prepared to do homage to the victors.*

b. *Princes, it would seem, then, wish to found a dynasty for their own sakes rather than for the benefit of the people.*

m. *Probably.*

54

b. In order to be granted something closely affecting the permanent honour, wealth, and safety of their family, it is probable that kings, in return, gave up some part of their rights, and that in order to retain the goodwill and affection of the people more easily and gain their support, they gave some respite in exchange.

m. I believe so.

b. You must surely grant me that it is incredible that peoples would surrender such authority to their kings if they thereby placed themselves in a worse position than before.

m. That is indeed incredible.

b. Nor would kings have sought the office of kingship with such avidity had they known that this would be harmful to their children and no benefit to their people.

m. No indeed.

b. Can you imagine someone in an assembly of free men asking of the king: what if a king should have a son who turns out to be feeble-minded? what if he should be insane? Would you set such a person as guardian over us - one who cannot even look after himself?

m. There would be no need, I should say, to raise this point, for provision is made in our laws to deal with such an eventuality.

b. Well reasoned! Let us now consider this point: if the king had received unlimited power from the people, would that power have been useless, especially for those who wanted to ensure the interests of their family in the future?

m. Why should we think of unlimited power as having no advantage for the future?

55

b. Because nothing tends more towards length of power than that temperate exercise of authority which does not honour the king and is advantageous to the people. The human spirit has something sublime and generous in its nature, so that it seeks to obey no one but a beneficial leader. There is nothing better for the preservation of human society than an exchange of benefits - which goes to show how wise was Theopompus's reply to his wife's complaint that by introducing ephors he had reduced the power of the sovereign, and has left for his children less power than he received. So much the less makes it stronger, he replied.

M. What you say about continuity is very true. For I would point out that the kingdoms of the Scots and the Baltic peoples are by far the most ancient in Europe: and they do not seem to me to have achieved this security by any other means than by exercising moderation in the use of the supreme powers, while at the same time the kingdoms of the French, the English and the Spanish have frequently changed their reigning houses. But I do not know that our kings have been as wise as Theopompus

b. Though the kings may not have used much foresight, do you think the people would have been so stupid as not to have seized the opportunity so conveniently offered to reduce the royal power? Or be so overcome by fear, or blinded by flattery, as to submit themselves to servitude?

56

m. Perhaps not; but suppose they were - as is possible - so blind that they did not see or appreciate what was to their advantage, or if they saw it, were so neglectful of their interest that they did not care; would they not deserve to pay the penalty of their folly?

b. It is unlikely that anything like that took place, since we can see that right up to the present day the reverse has been the practice. For apart from the fact that bad kings have always been brought to book when they set up a tyranny over the citizens, our ancient families still retain some traces of that old custom. Those of us Scots who retained our time-honoured practices to this day elect the chief of our clan and associate with him a council of wise men - and the chief is liable to lose his office if he does not obey this council. Is it likely that those who are so careful in sections of the community would ignore what affects the welfare of the whole nation? And would they willingly surrender themselves into slavery under the man who was to hold as a favour from them the right to be their legitimate king? And after gaining their freedom by their courage, protecting it by arms, and holding it without interruption for so many centuries, would they hand it over without raising a finger in protest and without drawing sword? Quite apart from the punishments so often inflicted for maladministration of the kingdom, the fate which overtook John Baliol shows that our kings never had any right to that supreme power. Almost two hundred and sixty years ago he was deposed by our leading men on account of his having subjected himself and his kingdom to Edward the Englishman, and Robert the First was installed in his place. That custom, unaltered as it has been from the earliest times, proves my point.

m. What custom are you referring to?

57

b. At their public installations our kings solemnly promise the whole people to respect the laws and ceremonies handed down from our forefathers, to maintain our ancient institutions and to administer justice in accordance with our traditions.

The entire ceremonial bears this out, as well as the first entry of the king into the various towns. All this makes it obvious what powers kings received from our ancestors - amounting simply to the same power as is received by those who are elected by the votes of the people and swear obedience to our laws. God propounded this to David and his successors as the condition of ruling, and promised that they should reign just as long as they obeyed his commands. It seems almost certain that that is what happened in the case of our kings - that is to say, our kings accepted from our fathers not all-embracing power but a definite and limited one. To this one must add the confirmation given by the passage of time and the assumption by the people of an everlasting right, a right never impugned by any public decree.

M. But I fear that this limitation would be accepted by few kings in as far as it would restrict their power over these laws to which they have sworn obedience or, as re-asserted by the people.

b. I believe it would be no less difficult to persuade the people to abandon that right which has been handed down from our fathers, confirmed by the practice of generations, and possessed without interruption. Nor need I waste time in guessing the result when I see what has been done. If through the stubborn pertinacity of both sides there is a resort to arms, the victor will impose his will on the losing side; but the victor will continue to do so only until the the loser regains his strength and takes up arms again; and in these civil wars the king is always worsted in the end, though in the meantime the people suffer harm. This is the principal means whereby kingdoms are brought to ruin.

M. I agree

b. I have gone back over these matters again in detail, perhaps more than was absolutely necessary, so that you clearly understand what our long-standing law of government has been. For if I had argued with you as i was fully entitled to do, I might much more easily have made the point I wished to make.

M. Although you have almost convinced me already, I should like all the same to know the nature of that argument.

58

b. *First of all, I should like you to say whether you accept the definition of a law as laid down by jurists who say that a law is what the people approve when asked by him who has the right to ask.*

m. *I accept that.*

b. *We have agreed then, that when the shortcomings of laws become evident, the laws can be amended or abrogated by these same men who originally enacted them.*

m. *Agreed.*

b. *Now you see, I take it, that those who are born to be our kings are created such by our laws and by the will of the people, no less than were those elected kings whom we mentioned in the first place, and that to a people who can propose laws, remedies will not be lacking, not only against force and fraud, but against negligence in submitting to these laws.*

m. *I see that clearly.*

b. *The only difference is that the law regulating kingship among us was made centuries ago, but when a reign is begun it is customary for an old law to be approved rather than a new one passed. Amongst those who have assemblies for the purpose of electing individual kings, the custom was to enact the law, proclaim the king and so constitute the realm.*

m. *That is so.*

59

b. Now let us summarise, if you will, what we have already agreed upon, so that if anything has been rashly approved there will be an opportunity to put it right.

m. I am very agreeable.

b. First, we accept that among the Scots the king was created for the benefit of the people, and, while there is nothing finer under Heaven than a good king, there is nothing more disastrous than a bad one.

m. I agree.

b. We have also agreed that a bad king is called a tyrant.

m. We have indeed.

b. There is not such a crop of good kings that worthy men are always available; nor does fate always offer us a choice of good men out of all who are born into families of kings: we accept a king if not such a man as we would choose, at any rate one who is either approved by general agreement or put forward by chance. So the risk which attends the election of a new king, or the acceptance of one offered by accident of birth, is the reason why we desire a code of law assigning a limit to the power of the kings. And that code ought to be as far as possible the exact picture of the good prince.

m. That, too, we are agreed upon.

60.

b. It now remains for us, I think, to consider the punishment meet for tyrants.

m. That seems to be the one thing remaining.

b. If, then, a king break through all the bounds of law and openly make himself an enemy of the people, what do you think should be done about it?

m. You are placing me in an embarrassing position; for although the reasons you have given seem sound - that we have a legal obligation to support such a king - none-the-less the strength of long continued usage is so great that it has, so far as I am concerned, the full force of law. This believe is so ingrained in men that even if a mistake is made now and then, it is better to put up with it rather than upset the condition of the whole body by striving to treat a disease which has been mitigated by the passage of time. For it is the case with many diseases that it is preferable to endure the pain which they bring rather than seek doubtful remedies; for when we make trial of these, even granted that they succeed in other respects, they nevertheless bring such sever pain in the course of healing that the treatment of the disease is more destructive than the disease itself. Again - and this concern me more - I see that what you call tyranny is a method of governing confirmed by the Divine Word, and what you denounce as the destruction of law God calls the Royal Prerogative. The authority of this outweighs - so far as I am concerned - all the arguments of philosophers. So unless you can solve this difficulty for me all the devices of men will not prevent me from deserting forthwith to the other side.

61

b. *By citing tyranny as an argument for upholding tyranny you have clearly fallen into a common but most grave type of error. How great is the tyranny of custom once it has taken deep root in the minds of men, is something which we in this age have experienced only too often, and of which we are reminded by the example cited by the ancient historian Herodotus. But I see no need to quote examples from bye-gone days; you can think of them yourself. Consider what problems there are - and not unimportant ones - in respect of which you have followed the dictates of reason and discarded long-established usages. So you should have learned by now from our own experiences that there is no path more strewn with dangers than the high road which they bid us follow. I insist that you examine this path; how many disasters, what great calamities will you see there! But since this is clearer than light, as the saying is, I need not take time to prove or to illustrate anything so obvious. Now as to that matter in the Book of Kings which you refer to rather than explain, take great care not to assume that God has conferred on kings the very attributes He detests in the lives of tyrants. To prevent you making that mistake I must first ask you to examine what the people asked of God; then, what reasons they had for this novel request; and, lastly, what response God made to them. First, they seek a king: but what sort of king? A lawful one? But they had one, for Samuel had been set over them by God, whose right it was to do so; and Samuel had judged them lawfully for many years in accordance with the divine laws. But his sons, when they judged the people as Samuel grew old, did many things that were wrong and gave judgements which were contrary to the laws. I still can not see the reason why they should have demanded a change in the constitution rather than just amendment; or have expected God to agree to what they asked, since for a similar reason He had exterminated the whole family of Eli not so very long before. What then did they seek? A king such as the neighbouring peoples had, who would be a judge within his dominions and a warrior abroad.*

These were, in truth, tyrants. For, as Asian peoples are of a more servile turn of mind than Europeans, so they more readily give obedience to tyrants, and so far as I know, there is no historical record of a legitimate monarchy in Asia. Moreover, it is a tyrant and not a king who is described here, as is easily seen from the fact that in Deuteronomy a formula had already been made out for rulers which was not only different from our own, but precisely the reverse; and using that formula Samuel and all the other judges enunciated the law for many years; and when they rejected the formula the Lord declared that they had rejected Him.

M. But God called him a king, not a tyrant.

62

b. He did indeed call him king; for the Lord made it a point to use popular words when he spoke to the people. So he used a popular term, but so that this ambiguous use of it should not deceive anyone, He here explains clearly what was the usage of the word among neighbouring peoples.

M. Though all that is quite true, the words of Paul have a greater effect on us when he calls on us to pray for the safety of princes. He is very far from allowing us to reject authority, and much more so from allowing us to dethrone or execute a prince. And what princes does he commend for our prayers? The most cruel princes ever known - Tiberius, Caligula, Claudius, Nero, who were more or less his contemporaries when he wrote his epistle.

63

b. I feel you are right in giving so much weight to Paul that one sentence of his has predominated over the writings of all philosophers and jurists. But be sure that you consider his motive fully and examine not only his words, but also on what occasion, to whom, and for what reason he wrote. First, let us see what exactly he says. He writes to Titus, ch.III:

"Put them in mind to be subjects to principalities and powers, to obey magistrates and to be ready in all good works".

You see, I think, the limits he sets to one's obedience. Similarly, in Timothy, ch. II, he writes that we should pray for all men, especially for kings and for all that are in authority, in order, he says,

"that we may lead a quiet and peace able life in all godliness and honesty".

Here you see what purpose he gives our prayers - not for the safety of kings but for the tranquillity of the Church. From that it will not be difficult to conceive the form of the prayer. In the Epistle to the Romans he defined a king with almost logical precision.

"To be a minister to whom a sword has been given by the Lord to punish the wicked and to nurse and cherish the good". "For these words were written by Paul," says Chrysostom, "concerning not a tyrant, but a true and lawful magistrate who is the representative on earth of the true God, and resistance to whom is surely resistance to God's ordinance".

But again, if it is necessary to pray for evil princes we are not to assume thereby that their sins are to go unpunished, any more than those of robbers, for whom also we are commanded to pray. And the fact that good princes are to be obeyed does nor mean that bad princes are not to be opposed. When you look for the reason which impelled Paul to write these words, take care that this passage is not used against you. He wrote that message to rebuke the rashness of those who claimed that magistrates had no authority over Christians. For since the power of the magistracy was devised to deal with evil

men and to let us all live equal before the law and so stand among men as an example of divine justice, that power did not apply, they said, to those who were far from the infection of vices and so were a law unto themselves. Paul, then, is not concerned with those who exercise civil authority but with the authority itself, that is, with the actions and duties of those who are set over others; nor with one particular type of government, but with every form of legitimate rule; nor does he quarrel with those who think evil magistrates should be brought under control, but only with those who would reject in every case the authority of a magistrate, and who, reducing Christian liberty to absurdity, maintain that it is wrong that those who have been set free by the son of God and are guided by the Holy Spirit should be subject to the jurisdiction of any human being. In order to correct their error Paul points out that civil authority is not only a good but a sacred thing - indeed an ordinance of God - instituted in order that men should organise themselves into groups and cities so as to gain a knowledge of God's goodness to them and to refrain from inflicting injuries on others. God has ordered those raised to authority to be guardians of His law.

64

b. Now if we acknowledge that laws are good - as they are - and guardians worthy of honour, we cannot but admit that the office of guardian is a good and useful institution. Yet a magistrate inspires terror but in whom? In the good or the bad? By the good he is not to be feared, because he protects them from injury, but into the evil-doer he instils terror. That, however, means nothing to you, who are governed by the Spirit of God. What need, you say, is there for me to be subject to a magistrate, since I am a freedman of God? Nay, rather, to prove you are a freedman of the Lord, you should obey His Laws, for the Spirit of God by which you claim to be ruled is the same as the creator of laws, the approver of magistrates, and the authority for our obedience to them. We shall then easily agree on this point as well - that even in the best states there is need for a magistrate, and that he should be accorded the highest honour. Anyone who does not agree with this we regard as being of an unbalanced mind, despicable and deserving of every kind of punishment, for he openly rejects the Will of God as revealed to us in the Scriptures. As far as Caligula, Nero, Domitian and other tyrants of that type are concerned, you will find nothing in Paul to indicate that they should not suffer the penalty for violating the laws of God and Man; for Paul is discussing the power of magistrates, not of evil men who abuse that power; and if you measure that kind of tyrant by Paul's rule, they will not be magistrates at all. If anyone now maintains that bad princes are also ordained by God, beware of the sophistry of such talk. For God, to apply a hard wedge to a hard knot, as they say, sometimes puts an evil man in charge of the punishment of evil men; but no one in his senses will dare maintain that God is the begetter of human malice; so, too, everyone knows that He is responsible for punishing. A good magistrate also generally appoints an evil man to execute the sentences on convicted criminals. Now this man, though chosen by the magistrate for this particular purpose, does not thereby gain immunity for all crimes, nor does the magistrate wish him to be above the law, but answerable to it.

65

b. I shall not spend further time on this comparison in case flatterers at court complain that I do not speak with sufficient respect of the supreme authority. But, however much they complain, they certainly cannot deny that the function of executioner is part of the public duty - and perhaps of the royal duty, as is borne out by the evidence of kings who, whenever one of their minions is flouted, declare that their majesty and person are involved. Now the punishment of evil-doers, as much as anything, lies at the royal hand. What then about the praetors of cities? Provincial governors? And the consuls themselves? Does Paul tell us to submit ourselves to them? Or does he consider them as private persons? It is usual to call to account for maladministration not only all the lesser magistrates, but also those who rank with kings. I wish that those who imagine that the words of Paul confer so much power on kings, would show on the same authority that kings alone were to be understood under the term "power" in this passage, and that therefore they alone were to be exempt from the punishment laid down by the laws; or alternatively, if, when we talk of powers, we are to include other magistrates as having been instituted by the same authority, God, for the same purpose. I should also like them to show whether all magistrates are declared to be untrammelled by the laws and free from punishment under the laws, or whether the immunity has been granted to the king alone and denied to others who are placed in authority.

M. But Paul means that all are subject to the higher powers.

b. So, at least, he ordains; but it is necessary to understand that the word "power" applies to the other magistrates, unless we are to believe that Paul thought that when there are no kings there is complete anarchy.

M. That I don't believe - nor is it at all likely; I am even more strongly of the opinion since all the learned commentators on this passage agree with the interpretation which you put on it; they, too, feel that this argument of Paul's is against those who maintain that no law-givers or rulers whatever have any jurisdiction over them.

b. What about the point I have been trying to make? Do you not think that Paul's definition covers the most savage of tyrants?

M. I do think so - and why not? Especially since Jeremiah so solicitously, under divine influence, warns the Jews to obey the king of the Assyrians and in no way to reject his authority. From this it has been argued that in the same way other tyrants should be obeyed, no matter how inhuman they might be.

66

b. Let me answer your last point first. It is important to note that the prophet urges obedience not to all tyrants, but to the king of the Assyrians only. If you would like to make a legal principal out of an order given to one person individually, firstly you are well aware - for you have learned it in logic - how absurdly you would be arguing; then again you would be in danger of being attacked with the same weapons by the enemies of tyrannies. Either you must show what is so outstanding in this case as to justify your putting it forward to be followed by everyone everywhere; or, if you cannot do that, it must be admitted that out of all the particular mandates of God, whatever is demanded of some one person must be equally applicable to all. If you once admit this - as you must - you have also to admit that by the command of God Ahab fell; also that by divine command a reward was promised and paid to the slayer. Therefore when you take refuge in the argument that because God, through his prophet, ordered that particular tyrant to be obeyed, all tyrants must be obeyed, they will retort that because Ahab was by God's command killed by the captain of his forces, all tyrants should be slain. I advise you to find some stronger bulwark in Scripture for defending tyrants, or, leaving that alone for the present, to come back to the school of philosophers.

M. I will consider this; but meantime let us return to where we digressed. What Scriptural ground do you offer to justify your contention that one may kill tyrants with impunity?

67

b. First, I submit that the command is clear that we throw out from our midst crimes and criminals without making any exception for rank or station, and nowhere in the Sacred Writings is an exception made to deal with tyrants any more than with private persons; and secondly, that the definition of power given by Paul does not apply at all to tyrants because they use their authority for the fulfilment of their own whims rather than in the interest of the people. Moreover, we should notice very carefully what power Paul attributes to bishops, whose functions he praised in remarkable, yet fitting, terms, for they are in a sense the equivalent of kings so far as the nature of their respective offices permits; for the one group deals, as would doctors, with internal or spiritual ailments, while the other group deals with external or physical diseases; not, however, that he would have either group exempt and free from the oversight of the other but just as bishops are subject to kings in their capacity as citizens, so kings ought to be the admonitions of bishops in regard to spiritual matters. Now these bishops, I maintain no matter how great their magnificence and dignity, can by no law human or divine escape punishment for any evil-doing, and, omitting the lesser orders, the Pope himself, who is held to be, as it were, the bishop of bishops, and who has attained an eminence superior to kings and wishes to be regarded as some kind of god among men, is not regarded by his own Canonists - a class of men most closely bound to him - as exempt from punishment for crime. For they thought it absurd that a god (and they do not hesitate to call him by that name) should be answerable to men, and unjust that the greatest crimes and most diabolical acts should go unpunished, and so they thought out a principle whereby crimes should be punished while leaving the Pope sacrosanct and inviolable. They distinguished in law between the pope, as such, and the man who is functioning as Pope. And while they argue that the Pope, as such, is free from legal process (for they deny that he can make a mistake) yet they admit that the man who is Pope is liable to commit faults and to suffer the punishment for his faults. They have taken their stand on this decision, which is as severe in its application as it is subtle in its mental processes.

68

b. It would take a long time to explain which pontiffs, or, if I may use their mode of expression, which men who carried the pontifical PERSONA, were not compelled, when living, to resign their office but when dead, had their bodies torn from their tombs and flung into the Tiber. But leaving ancient history, take Paul IV, whose memory is still fresh in men's minds. His own Rome has recently testified to the public hatred in which he was held, by a decree of a novel kind. That hatred was so deep-seated that it turned against his relatives, his statues and his portraits that wrath from which he himself had been saved. The distinction which we make between the office and the man who exercises the office should not be regarded by you as subtler than those philosophers use and which commentators have approved of old; even the unlettered mob is not unaware of it, ignorant though it may be of the niceties of dialectics. Workers and artisans do not take it as a black mark against their trade whenever a smith or a baker is punished for theft - rather they are glad that the trade is purged of criminals. If anyone has a contrary feeling, I think he should be afraid of making it appear that what causes his egret is not the slur on his trade so much as the punishment suffered by men with whom he is associated through his complicity in crime. And if, as i see it, kings would not allow themselves to be counselled by scoundrels and sycophants, but would measure their greatness by their good deeds rather than by their immunity from punishment, they would not be worried by the punishment of tyrants or think that the majesty of the king is diminished by the destruction, by whatever means, of such men. They would rather rejoice that their royal rank was cleansed of such foul blemishes, and especially so since kings are commonly enraged - as they are fully entitled to be - at robbers who use the king's name as a cloak for their malefactions.

M. Certainly not without reason; but leave these points alone for the present and take up the other heads you mentioned.

b. Just what heads do you mean?

M. Why, I mean, of course, when and to whom Paul wrote these things; for I should like to know what all this has to do with our present argument.

69

b. In this, too you shall have your way. First, as to the times: Paul wrote these things in the infancy of the new-born Church, when Christians had a duty not only to keep themselves free from crime, but also to avoid giving an opportunity for slander to those who were seeking even unjust grounds for accusing them. Then, too, he wrote to men of different races, in fact to the whole body of the Roman Empire, who now constituted one society. Few of them bore the marks of riches, and almost none were or had been magistrates; not so very many had even the status of citizen, and such as had were mostly foreigners or freedmen; the others were mainly working men or slaves. Among them were some who stretched the concept of the Christian liberty more widely than the simple teaching of the Evangel warranted. The large majority of ordinary people who struggled laboriously for the bare necessities of life were not likely to care much about the constitution of the Republic, the majesty of authority and the lives and functions of kings, as about public tranquillity and personal ease. Nor could they properly claim more for themselves than the right to live quietly under the protection of government. If these people had felt tempted to seize control of any part of the civil government, they would have been thought not merely foolish. but quite insane. Still less would they have come into the open in order to make trouble for those who were guiding the affairs of the state. This untimely folly, an inconvenient expounding of Christian liberty, had to be curbed. What then has Paul written to them? No new precept, undoubtedly, but those already widespread, such as that citizens should obey their rulers, slaves their lords and wives their husbands; nor must we think that the yoke of Christ, no matter how light, should free us from the bonds of duty; but more eagerly than before we should perform all the grades of duty in order that we may through our blameless lives attract the goodwill of all men. Only in this way, Paul thought, would it come about that the

name of God would through us be held in honour among nations and the glory of the Evangel be ever more widespread. In order to achieve this there was a need for public peace, and the preservers of peace were our princes and rulers, even if they were themselves evil men.

70

B. Would you like me to bring a clear picture of this before your eyes? Imagine one of our scholars writing to the Christians under Turkish rule, to men, I may say, who are of small means, of humble spirit, defenceless, few in number and exposed to danger on every side; how, I ask you, could he give advice other than what Paul gave the church at Rome, and Jeremiah to his countrymen exiled in Assyria? The most convincing proof that Paul had in mind the conditions of these men to whom he wrote, and not of all citizens everywhere, is that while he carefully stressed the reciprocal duties of husbands to wives and wives to husbands, of parents to children and children to parents, of servants to masters and masters to servants, as regards the magistrates, although he writes about the nature of their duty, he does not address them by name as he has done in the case of those mentioned earlier. Why are we to think that he gave no precept to kings and other magistrates - especially since their ambitions were much more in need of legal restrictions than were those of private individuals? What other reason could there be than that there were then no kings and magistrates in the church to whom he could write?

But imagine Paul living in those times of ours, in which not only the people, but the princes profess themselves Christians; let us assume that there is at this same time some prince who thinks that human and divine laws should both be subordinated to his desires, who desires that not only his decrees but his very whims should have the force of law; who, as the Evangel has it, "neither fears God our respects men"; who distributes Church revenues among buffoons and mountebanks - to put it in no worse terms; who scoffs at those who are devoted to a purer form of

religion and whom he considers foolish and half-witted. What would Paul have written to the Church about such a prince as this? If he were to be consistent he would say that he would not regard that man as a ruler; he would forbid all Christians to hold any intercourse or conversations or companionship with him, and leave him to be dealt with by the citizens according to the civil laws; he would not think they would be exceeding their duty if they held that one with whom by divine law they could have fellowship was not their king.

71

b. But there will certainly be some one of the menials who, when no honourable escape is available. will have the impudence to say "God, in his anger at peoples sets over them tyrants whom he appoints like executioners to inflict punishment upon them". Supposing that i admit that this is true, it is equally true that God has called poor and almost unknown men from among the lowest ranks of people to avenge the crimes of an arrogant and ruthless tyrant. God (as already said) demands that evil-doers be expelled from our midst without exception of rank, sex, condition or person whatsoever; for kings are no more acceptable to him than beggars. We can therefore truly assert that God, the father of all equally, from whose foreknowledge nothing is hid, and whose power nothing can resist, will leave no crime unpunished. Again, there may be someone who demands an example out of Holy Writ of a king being punished by his citizens; and if I cannot give an example it must be assumed that because we do not read there of any such action it must be regarded as a crime and a disgrace. I can instance from the records of many nations beneficial laws of which there is no example in the Scriptures. For just as public feeling in all nations accepts the principal that what the law commands is right, and conversely that what it forbids is wrong, so it has never been in the memory of man that what is not contained in the laws must never be done. The idea that what has not been enjoined by some existing law,

or made known to us by some precedent, involves a servitude which has never in the past been accepted; nor will nature, ever fertile in new precedents, allow it to be accepted. Therefore if anyone required of me an example out of the pages of the Sacred Volumes to prove the propriety of punishing evil kings, I on my part will demand of him any passage in which such action is censured. But if nothing is to be done without a prior example, how few of our civil institutions and laws will be left to us! The greater part of these are not based on ancient precedent, but are evolved to deal with new and unprecedented crimes as they arise.

72

b. But we have already dealt more fully than was necessary with those who demand precedents. What does it matter that the kings of the Jews were not punished by their subjects? The point has little bearing on our monarchies, for these kings were not originally appointed by the citizens; they were given them by God. Consequently he who was the giver of them was also fully entitled to exact punishment from them. Now we maintain that the people from whom our kings hold whatever right they claim for themselves have greater authority than the kings, and that the multitude has the same right over them as they have over the individuals in the multitude. All the laws of other races who live under legally appointed kings support this view, and all nations who obey kings they have elected have this belief in common, that whatever power is given to anyone by the people can be revoked on just grounds. All states have retained this power. Thus it was that Lentulus, because he conspired with Cataline to overthrow the republic, was compelled to resign his praetorship, and the Decemviri, the founders of the Roman laws, were brought to order although they held the supreme magistracy; some of the Dukes of Venice and Chilparie, Kings of the Franks, laid down the symbols of authority and grew old as private citizens in monasteries; not long ago Christiemus,

King of the Danes, died in prison twenty years after he was forced to abdicate. But even the dictatorship (which is a kind of tyrant) remained under the control of the people. And this law was always upheld, namely, that public benefits bestowed upon the unworthy could be recalled, and their liberties (which the law has always stoutly upheld) could be taken away from the ungrateful freedmen. So far we have spoken of foreign nations so that it should not be thought that we alone asserted an unprecedented right over our kings. But our own peculiar problems can be easily and briefly disposed of.

M. *Indeed? I should very much like to hear about them.*

73

b. *I could name a dozen or more kings who were guilty of crimes and scandalous behaviour and who, as a result, have either been condemned to life-long imprisonment or have avoided the just punishment for their crimes by fleeing into exile or committing suicide. But lest someone should complain that I am raising old and obsolete matters if I recall men like Cullen, Evenus and Ferchard*, I will mention a few events within the memory of our fathers. All the Estates of Parliament in public assembly adjudged James III to have been lawfully slain on account of his appalling cruelty and wicked turpitude towards his people; and they took steps to ensure that in the future none of those who had combined or plotted or contributed money or effort, should suffer for this. After the event they judged that their actions had been right and proper, and there is no doubt that they wished it to be established as a precedent for the future. This is no less valid a precedent the instance when L. Quinctus praised Servilius Ahala before the tribunal for having killed Sp. Maclius in the forum when Maclius was refusing to face the court; and he maintained that Ahala was not polluted with the blood of a citizen but was ennobled by the slaying of a tyrant, and all posterity has agreed with this view. What do you think the man who approved the killing of a citizen who aimed at seizing tyrannical*

power would have done in the case of a tyrant who plied the trade of robber and executioner with the property and lives of citizens? And what of our fellow-countrymen? Do you not think that those who conferred immunity by public decree upon the perpetrators of the deed established a law concerning such a deed if it ever happened again? There is little difference, on the whole, between the judgement on a deed that is done and an ordinance providing for a future event; in each case a judgement is given on the type of action and on the punishment or reward of the doer.

M. This view may be accepted as valid by us Scots, but how would foreigners receive it? And you see that it is foreigners I have to satisfy, not by refuting a charge as in court, but by defending a reputation in the eyes of all. I do not mean my own reputation (for there is no breath of suspicion on me) but that of my fellow-countrymen. I am afraid that foreign nations will condemn those very decrees which you regard as affording full protection even more than the crime itself, cruel and vicious as it was. Now if we consider the examples you have given, you know, unless I am mistaken, what is usually said on either side of the ability and judgement of the other. You seem to have explained everything else in terms of natural growth rather than of man-made decrees, so if you have anything to say as regards the equity of this law, I should like you to do so briefly.

* ALL EARLY KINGS OF SCOTLAND: *vide* BUCHANAN'S HISTORY

74

b. Although it may seem unbecoming to plead before foreigners in a defence of a law which from the earliest days of the Scottish kingdom, and throughout so many centuries, has been tried, approved and found necessary for the well being of the people, and not unfair to kings, nor derogatory to them, still, now that it is being attacked as unconstitutional, I will attempt its vindication on your behalf. And just as though I were arguing with those who will cause you rouble, I will ask first what is there in the Scottish Constitution that you find fault with? Is it the purpose behind the law or the law itself? For its aim is to curb the unlawful desires of kings. He who condemns this must likewise condemn all the laws of all nations, for these are framed to that same end. Or do you object to the law on the grounds that the king should be above all laws? We shall see what benefit there is in that - and I need not say much in order to prove that it does not benefit the people. For if we are right in the earlier part of our conversation to compare the king with the doctor, then just as it does not benefit the people for the doctor to be allowed to kill with impunity anyone he pleases, so it is not for the good of the people that a general licence be given to kings to override all men. In the people, to whom belongs the supreme power, lies the enactment of laws; we have no reason to take them to task if, just as they wish to have a good king over them, they wish the law to be over a king who falls short of their ideal. But if this curtails the powers of a king too much, let us see whether the people might do something about it and proclaim an assembly to repeal the law, an assembly to take place not on the third market day but on the fortieth day, as our custom demands for the calling of a national assembly. Meantime, so that we can continue this discussion between ourselves, tell me, do you think a person who sets an insane man at liberty considers the interest of the insane?

m. Not in the least.

b. What if a man yields to the entreaties of some one so sick of a fever as to be all but insane, and gives him a cooling draught? Do you think he deserves well of the patient?

M. But I am speaking of sane kings, and I deny that there is need of laws for sane kings or of medicine for healthy men. But you wish all kings to be thought bad so that you may impose laws on them all.

75

b. By no means all kings; but neither do I think that people as a whole are bad, though the law speaks to them all with one voice. Evil doers fear that voice, but good citizens know that it does not affect them. Similarly good kings have no reason to feel humiliated by this law, while bad kings, if they were wise, would be grateful to the legislator who established a law that forbade them to do what he realised would not be in their own interest. If ever these kings return to their senses they will at once appreciate that law, precisely as sick men when restored to health express their thanks to the physician whom they hated when they were sick because he would not give into their demands. But if kings persist in their insanity, anyone who panders to them is to be reckoned really their enemy. Of such are those flatterers who, in encouraging the faults of kings by fawning upon them, make the disease worse; and finally, in most cases, king and courtier alike fall headlong to destruction.

M. I certainly cannot deny that such princes have both in the past and at the present time, required to be constrained by the fetters of law. No monster is more violent or deadly than a man when once (as poets tell us) he has degenerated into a beast.

76

b. You would express yourself much more strongly if you considered how manifold a creature is man and how various are the monsters from which he is made up. The poets of old saw this quite clearly and expressed it very elegantly when they tell how Prometheus took something from every living thing to make a man. It would be an unending task to attempt to describe the nature of all the ogres, but certainly two can be clearly seen in man - anger and lust. Do laws do, or seek to do, anything other than make these monsters obey reason, or control them by the fetters of their commands when they fail to submit to reason? The man therefore who sets a king - or anyone else you like - free from these fetters does not merely release that one man, he lets loose against reason two most cruel monsters, the enemies of reason, and supplies them with arms to shatter the barriers of the law. It seems to me that Aristotle spoke rightly and truly when he said "He who obeys the law obeys God and the law; he who obeys the king obeys a man and a brute".

M. Though these arguments appear to have been expressed elegantly enough, I think we have allowed two errors to creep in. The first is that what we have just said does not seem to harmonise with what we previously said. The second is that although what we said may be consistent, we do not seem to have made any progress towards the main issue of our argument. We agreed earlier that the same voice should speak for the king and the law; now we make the king subject to the law. If we concede that this is absolutely true, what have we gained thereby? For who shall arraign a king who has become a tyrant? I cannot believe that a law without a backing of force is powerful enough in itself to coerce a king who has become forgetful of his duties, or to bring him to trial against his will.

77

b. I do not think that you have fully considered what we have been saying about the powers of a king. For if you think it over you will see that the two matters you have just mentioned do not contradict each other. But in order to clarify the point, first answer me this: When a magistrate or a clerk dictates an edict for a herald to proclaim, is the one voice the voice of both, I mean the clerk and the herald?

m. The same, without a doubt.

b. Which seems the more important?

m. Whoever dictates the words.

b. What is the position when the king is the author of the edict?

m. More important than either.

b. Now let us compare the king, the law and the people. The king and the law have the same voice. Which has authority from the other - the king from the law or the law from the king?

m. The king from the law.

b. How do you arrive at this conclusion?

m. Because the law was required to control the king, and not the king to control the law. From the law he takes his power as king; without the law he is a tyrant.

b. The law accordingly is stronger than the king and might be called the guide and controller of his desires and actions.

m. That has already been conceded.

b. Then what about this - is the voice of the people one and the same with the voice of the law?

m. It is.

b. Which is more powerful, the people or the law?

m. I consider the people - when they act in concert.

b. Why do you think so?

m. Because the people are, as it were, the parent, certainly the author, of the law, for they can make and repeal the law when they so decide.

78

b. Now since the law is stronger than the king and the people stronger than the law, we must see whether there is anyone to whom we can make the king answerable. Let us examine this point further: you will agree that things which were created for the sake of something else are less important than that which caused them to be made.

m. Could you make your meaning clearer please.

b. Try to follow me. It is not the case that the rein has been invented for the sake of the horse?

m. For the sake of the horse, of course.

b. What about saddles, trappings, and spurs?

m. For the same reason.

b. But if there were no horse, there would be no use for these things,

m. None at all.

b. The horse then is more important than all those other things?

m. How could it be otherwise?

b. What about the horse - what use can be found for it?

m. Very many uses, and primarily to assist towards victory in war.

b. Then we consider victory as more important than horses, arms and other accoutrements with which we equip ourselves for war?

m. Certainly it is more important than all these.

B. In creating a king, what do men reckon the most important consideration?

m. I imagine it is the advantage of the people.

b. If there were no nation would there be any need for a king?

m. Certainly not.

b. The people then take precedence over the king.

m. Unquestionably.

b. If they take precedence they must be of greater importance. So when the king is summoned to face trial, the less important is arraigned before the more important.

M. But when are we likely to have this desirable situation when everyone is agreed upon what is right?

b. It is hardly possible to foresee such an event. There is no need to wait for it, for as a rule there is no law that is really fair to everyone and there is, as a rule, no man who is in such public favour that he has no enemies or detractors. It must suffice that the law is advantageous to the majority of the people and that the majority approves of the candidate for office. So if the greater part of the nation can ordain a law and appoint a magistrate, what is to prevent the people themselves from passing judgement on a magistrate and setting judges over him? Or if the tribunes of a Roman people and the ephors of the Lacedaemonians were necessary to moderate the use of authority, why should it seem wrong for a free people to provide itself in this or in some other way with the means of restraining the harshness of tyranny?

M. Now I think I can more or less see what the power of a people is, but it is difficult to decide what it wants to do, or will put up with. For the most part the people like to stick to old ways and customs and are opposed to change - which is all the more remarkable in view of the constant variations which take place in food, clothes, buildings and every kind of furnishings.

79

b. You must not think that I have said this because I wish any innovation to be made in this matter, but in order to show that it is a very old practice for a king to plead his cause before the judges - a thing you seem to regard as almost incredible and not merely novel. To say nothing of how often that sort of thing has been done by our ancestors - as I have already to some extent described and as you can readily see from history - have you never heard of persons disputing about a kingdom and bringing their quarrel before arbiters?

M. I have heard that this was sometimes done by the Persians.

b. And our own writers tell us that the same thing was done by Grim* and by Malcolm II. But in case you argue that this sort of arrangement was made by the contestants with mutual consent, let us take a look at our ordinary judges.

M. I think you will be just as successful in this as a fisherman who tries to catch a whale in his net.

B. What makes you think that?

M. Because every arrest, compulsitor or punishment is made by the stronger against the weaker. Before which judges will you order a king to appear? Before those over whom he himself has the supreme power of judgement? Could he not control them with one word - Veto, I forbid it?

B. Is it not possible that there is a still greater power which stands as far above kings as kings above individual citizens?

M. I should like to hear it.

B. This power, if you remember, we have agreed lies vested in the people.

M. Yes, but in the people as a whole, or in the majority? I make you an even greater concession and say in those to whom the people or the majority of them have transferred that power.

B. You have said it clearly and do well to save me the trouble.

M. But you cannot overlook the fact that the greater number of the people are corrupted either by fear, or bribes, or the hope of largesse or privileges, so that they prefer their personal comfort and desires to the public weal and integrity; there are few who are not influenced by such attractions. "Good people are rare; they scarcely outnumber the gates of the Thebes or the mouths of the Nile." The rest of that filthy crowd, bloated with blood and booty, are ready to sell their own liberty and envy that of others. I will pass over, too, those who hold that a king - even a bad king - is sacrosanct. I pass over, too, those who know what is right and proper but choose a dull inertia in preference to the perils of honour, who leave their minds blank to accept what fate imposes, and who follow the fortunes of their party rather than their principals.

These people, as you know, add up to the multitude.

80

b. *A large number indeed, I grant you, but not the largest. The evil that tyrants do affects many, while the benefits pertain to only a few. The cupidity of the mob is insatiable, and like a fire it burns more fiercely as more and more fuel is added. What is taken by force from the many feeds the hunger of the few, but does not satisfy their lust. Then again the loyalty of such men is frail and "stands or falls with fortune". Even if these men should remain steadfast, they would still not deserve to be regarded as real citizens. For they would be violators of the established state of human society - or at least betrayers of it - insufferable conduct not to be tolerated in a king, and still less in private individuals. Who, then are to be regarded as citizens? Those who obey the law, maintain the social order, prefer to face toil and every danger for the safety of their fellows rather than through cowardliness grow old in dishonourable ease. There are others, too, who through fear and the desire to guard their own interests, hesitate to face danger on their own, yet their spirits react nobly to the splendour of an outstanding deed and the beauty of valour; and though they have not the talents for leadership they will have no hesitation in acting as loyal citizens. Therefore if supporters are to be appraised by dignity and not by number, not only the better but the greater part stand on the side of liberty, honour and security. Even if the common people were to disagree it would not affect our present argument. What we want to know is not what will be done but what ought to be done. Now let us come to the ordinary judicature.*

M. *That is what I have long been waiting for.*

81

b. *If a private person complains that his farm. or some part of his land, has been illegally seized by the king, what do you suggest he should do? Should he let the land go since he will not be able to find a judge with jurisdiction over the king?*

M. *Not at all; he will ask the king's procurator to answer his complaint, not the king himself*

B. *Now just what do you mean by that? To me there appears to be no difference between the king's answering personally or through his advocate - in either case the litigation involves the king himself, not the advocate, and to the king will fall any profit or loss arising from the outcome of the trial. In short, he himself is the party to the action, that is, he is the one whose interests are involved. Now i ask you to consider wether it is not absurd, but also unjust, that judgement can be given against the king in respect of some trifling farm, lights or eavesdrop, while he cannot be made answerable to charges of parricide, poisoning or treason; in lesser things the king undergoes the pains of law, but in major crimes he is permitted every licence with complete immunity. In this case the ancient saying would appear to be true: "Laws are like spiders' webs: they hold the flies and let the larger animals through". There is no justice in the indignant complaint of those who say that it is nether honourable nor fair that judgement should be given in a matter concerning the king by a man of lower rank, when they see that in a case dealing with money or land this practice is already accepted; and when men of the highest rank, second only to the king, stand trial before judges who are their equals neither in riches, rank or renown - judges who are not much above the common people and further removed from the litigants than are men of the highest rank from the king. But if we once admit that no one can be called before a judge who is his inferior in rank, it would follow that persons of lower rank would have to await the king's pleasure and leisure to have a nobleman brought to justice.*

82

b. *What if the accusation is not merely unjust, but also false? No one who comes before a judge comes before an inferior, especially since that order has been so honoured by God himself that he has called its members not only kings but gods, and has conferred on them, as far as it can be done, something like his own dignity. Thus the Roman Pontiffs who condescendingly allowed kings to kiss their feet, who sent their mules as a mark of honour as a mark of honour to meet them on their way, who trampled on the necks of emperors, yet obeyed a summons to appear before the judges and, on their order, surrendered their office. John XXII took to flight, but was bought back and thrown into prison; he procured his freedom with difficulty after paying a fine; he made obeisance to his successor as Pope, and by doing so approved the judge's sentence. And what about the Synod of Basle? Did it not establish and sanction by the common consent of all ranks the law that the pontiff should be subject to the control of a council of priests? From the records of the councils you can learn the reasons which led those fathers to do what they did. I cannot see, then, why kings should think their dignity impaired if they answer to the law, since they admit that although the Pope's majesty is so much more superior to theirs as completely to overshadow them, yet the pontiff did not think it unbecoming to descend from his much exalted throne in order to plead his cause before the College of Cardinals. You see how false their complaint is that they lose face if they appear before a tribunal of of their social inferiors. The condemnation or discharge is not the judgement of some Titus or Sempronius or Stichus, but a deliverance of the law; and that kings obey the law such eminent emperors as Theodosius and Valentian consider an honourable state of affairs. Let me give you their exact words, which are worthy to be remembered in every age:*

"That the prince confesses himself bound by the law is a pronouncement worthy of the majesty of any ruler; and in truth it is nobler than a power itself to submit one's imperial position to the laws, and let all men know by this declaration that we will suffer no breach of it". The most excellent princes have both believed and ordained this - as have also the worst of them. For Nero, equipped after the fashion of a lyre player, is aid not only to have observed their gestures and movements, but to have stood in mingled hope and fear, anxious for victory while awaiting judgement. For although he know he was to be declared the winner, he thought nevertheless how much more honourable the victory would be if it were won in a proper contest and not because the judges wished to curry favour. Close attention to the rules did not, he thought, contribute to a lessening of his authority, but to the splendour of his victory.

M. I realise now that it was not mere immoderate talk, as I thought at first, that was behind your desire to bring kings within the law; for it rests not so much on the speculation of philosophers as on the authority of kings, emperors and church councils. But when you say it is not a man, but a law, which delivers judgement, I do not quite follow you.

83

b. Bear in mind a little what we have already said. Did we not say that the king and the law have one and the same voice?

m. We did

b. What about the scribe or the herald who enunciates the law?

m. The same thing!

b. What about the judge who by his decree protects the law?

m. The same thing again.

b. Now which has authority from the other, the judge from the law or the law from the judge?

m. The judge from the law.

b. So the essence of the verdict belongs to the law, and all that belongs to the judge is the verbal announcement.

m. That would seem to be the case.

b. Say rather that nothing can be surer, for the verdicts of judges are valid only if they are in accordance with the law; otherwise they are overturned.

m. Nothing can be more true.

b. You see, then, that the judge derives his authority from the law and not the law from the judge.

m. I see that

b. And the humble condition of the enunciator does not lower the dignity of the law, but the dignity of the law remains constant, irrespective of whether king, judge or herald gives it voice.

m. I agree entirely.

b. The law therefore, once established, is the voice first of the king himself and then of others.

m. That is so.

b. So that when a king stands condemned by a judge he is in reality condemned by the law.

m. Clearly that is so.

b. If by the law, he is condemned by his own voice, if the law and the king have the same voice.

m. By his own voice, it seems, no less than if he were bound by letters written in his own hand.

84

b. Why then are we so much concerned about the matter of the judge, since the judgement is that of the law, that is, of the king himself? Now let us discuss a matter which has just occurred to me. When a king sits as a judge in any cause, should he not discard his PERSONAE of brother, father, friend and enemy, and retain solely the PERSONA of a judge?

m. He should indeed.

b. And remember only that character which is proper to the action?

m. Can you be a little more explicit on this point?

- b. *Listen then. If someone secretly appropriates something belonging to someone else, what do we say he is doing?*
- m. *He is stealing, I should say.*
- b. *What name consequently do we apply to him?*
- m. *A thief, obviously.*
- b. *What term do we use when a man lives with another man's wife?*
- m. *Adultery*
- b. *And what name do we give the man?*
- m. *An adulterer.*
- b. *What about the man who judges?*
- m. *He is called a judge.*
- b. *Everyone else can have the correct name applied to him in the same way according to the action which he is performing at the time.*
- m. *He can.*
- b. *Accordingly when the king takes his seat on the judicial bench he will divest himself of everything except his PERSONA as a judge.*
- m. *He will certainly do so; and will most of all divest himself of those roles which can, in the course of judgement, harm one of the parties to the dispute.*
- b. *Yes, he, too, should divest himself of all the characters he may have other than that of defender, for these do not concern the judge.*
- m. *We can call him the defender.*
- b. *Would it not be fair if he too, were to divest himself of every character except that of defender, so as not possibly to affect the judgement?*
- m. *Yes, he, too, should divest himself of all characters he may have other than that of defender, for these do not concern the judge, since God does not wish that poverty should in any way influence the judgement.*
- b. *If, then, anyone who is both a painter and a grammarian has an action in court bearing on the art of painting against someone who is a painter but not a grammarian, his knowledge of grammar should not benefit him in this case?*
- m. *Not at all.*
- b. *Nor anything about the art of painting if the dispute is about grammar?*
- m. *Neither in this case.*

85

b. *In a lawsuit the judge recognises one name only, that of the crime of which the defender stands accused by his opponent.*

m. *Just that one.*

b. *What if a king has to answer a charge of parricide? Does the name "king" have any relevance for the judge?*

m. *None but that of a murderer, for the dispute is about parricide, not about the kingdom.*

b. *What if two parricides are brought to trial, one a king and one a pauper? Will they be tried on equal terms?*

m. *Perfectly equal - and the words of Lucan seem to me to be as true as they are elegant: "By the waters of the Rhine Caesar was my leader, but here he is my comrade". Crime makes equal those whom it stains.*

b. *Quite true. The judge's duty is to make a finding on parricide, not on kingship or poverty. But if the question should be which of the two should be king, or whether Hiero be king or tyrant, or if something else should arise which properly relates to the function of a king, then the judgement should relate to kingship; just as in the case of a painter, if the issue is whether he has any knowledge of the art of painting*

m. *Suppose now that the king is unwilling to come to trial and cannot be forced to do so, what is to happen?*

b. *This is usually the case with all criminals, no thief or poisoner is willing to come before a judge. But you know, I think, what the law permits - one may kill a thief at night in any circumstances and by day in self-defence. But if he can be brought to trial only by force, you recall what usually happens then. Robbers too strong to be dealt with under the law are pursued by an armed force. There is scarcely any other cause of war that is propounded among peoples and kings than injuries which can not be dealt with by ordinary law, but require arbitrament of the sword.*

m. *These are the usual reasons for making war against foreigners. But it is different when one takes up arms against one's own king, to whom obedience due in respect*

of a most sacred oath of loyalty.

b. We are indeed under an oath in presence of our leading men that they will administer the law with fairness and justice.

m. That is so.

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b. There is then mutual contract between the king and the people.

m. So it would appear.

b. Whoever first repudiates any contract or violates its terms has thereby cancelled the matter agreed on and contracted, has he not?

m. Certainly he has cancelled the bargain.

b. The bond which binds the king and the people being therefore broken, he has forfeited any particle of legal right which might pertain to him from the contract he has upset.

m. Clearly he has the same right and the same freedom.

b. Now if the king does something to upset the social order, the preservation of which was the reason for appointing him king, what name does he receive?

m. Tyrant, I should say.

b. Now a tyrant not only does not hold lawful power over the people but is even their enemy.

m. He is indeed an enemy.

b. War against an enemy is justified if it arises out of great and intolerable injuries.

m. War would certainly be justified in such circumstances.

b. What about a war raised against one who is an enemy of the whole human race, that is to say a tyrant?

m. It would be the most just of all wars.

b. Once a war has been undertaken against an enemy in some just cause it is the right not only of the people but even of individuals to slay that enemy?

m. I must admit that it true.

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b. Now, a tyrant being a public enemy with whom every fair minded man is at unending war, what can be done with him? Cannot any individual out of the whole mass of mankind proceed against him to the ultimate penalty of arms?

M. I know that nearly all nations have been of that opinion. Thebe has generally been praised for slaying her husband, Timoleon his brother and Cassius his son. So, too, Fulvius is praised because he killed his son who was taking the field with Cataline, and Brutus dealt similarly with his sons and kinsmen when he learned that they were plotting to restore the tyrant. The citizens of many Greek cities offered rewards for the killing of tyrants, and moreover conferred honours on the killers; for (as has already been said) they considered that there existed no link of humanity between them and tyrants in general. But why do I cite individual instances of approval of this when I can bring forward the testimony of the whole world? Who has not felt that Domitius Corbulo was gravely at fault in neglecting the safety of the human race in not hurling Nero from power when he could have done with ease? And it was not only the Romans who blamed him. The very worst of men, no matter how their minds have been blinded by savage cruelty, are not so free from this general hatred of tyrants that it does not break out in them even against their will and compel them to stand in numb stupefaction before the image of truth and uprightness. When the most cruel tyrant, C. Caligula, was killed, his - men as cruel as himself - were thrown into a state of confusion and demanded that the authors of the outrage be executed; they kept on shouting "Who killed the emperor?" Valerius Asiaticus, a man of consular rank, from a conspicuous place where he could be seen and heard, shouted "Would that it were I who had killed him!" Thunderstruck at this reply, these men who were devoid of decency ceased their cry.

Such is the power of honour that the slightest appearance of it quietens the violent tumult of men's minds, abates their wild fury and makes madness bow, willingly or not, to the majesty of reason. Nor do they feel otherwise who fill the heavens with the clamours of earth. This can clearly be seen by noting that those who condemn what is done today, praise and approve the same things, and deeds which seem even more atrocious, when they are told in the pages of ancient history - from which it is obvious that they are more concerned with indulging their personal inclinations rather than with averting any public danger. But what better testimony do we need of what tyrants deserve than the sight of what troubles their conscience? From tyranny comes the tyrants ever present fear of all men - and particularly of straightforward men; for they see the sword which they have in constant use against others poised over their own necks, and by the hatred they have for all men, they measure the hatred men have for them. Good men on the other hand, fearing no man, often place themselves in danger through measuring the goodwill of others towards them not by the evil nature of men, but by what they have themselves done for others.

SS

b. You think it is true, then, that tyrants are to be classed as beasts, and that their lives of violence are more contrary to nature than poverty, sickness, death and all the other evils which befall men in the natural course of things?

M. Indeed, when I consider the weight of your arguments I cannot deny the truth of it all. But when I consider further the dangers and disadvantages which follow hard upon what you propound, my mind somehow begins to falter somewhat like a horse when bridled and is tempted to an easy course away from that excessively stoical conception of right towards expediency. For if it is lawful for anyone to slay a tyrant, see how you open the door to wickedness for evil men, in what danger you place good men, what licence you allow the bad and how you let

universal confusion loose amongst us! Who will ever fail to use this pretext of honour to cloak his crime when he kills a good king, or at least one who is not very bad? Or suppose one of the good citizens makes an unsuccessful attempt to kill a prince who deserves every punishment - or even a successful one - must not a state of confusion necessarily follow? For the evil men, furious at losing their leader, would rise in arms, while some of the good would hesitate to approve the deed, and even all who do approve may not rally to defend the founder of their liberty against the wicked faction. Will most of this latter not try to justify their hesitancy by dilating on their love of peace and by blackening the character of others instead of confessing their own cowardice? This tendency to lean towards their personal advantage, this seeking for an excuse for deserting the cause of the people, as well as pure and simple fear, generally breaks the spirit, or, if it does not break, it certainly weakens it and makes men look for tranquillity - even if it be somewhat insecure - in preference to the uncertain hope of real liberty.

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b. If you recall to mind what we have just been saying, your fears can easily be dispelled. For we have said that some tyrants have been approved by popular vote, and, because they have directed the affairs of state with due consideration, they have been accorded the name of kings. No one would have my approval if they attacked any of these, or even one who had gained power through force or fraud, provided that he applied to the task of governing the moderation of an ordinary citizen. Among these latter we may place Vespasian, Titus and Pertinax among the Romans, Alexander among the Greeks and Hiero at Syracuse. They, although they assumed authority by force of arms, governed with justice and equity, and are accordingly worthy to be reckoned as true kings. Moreover I am explaining what can or ought to be legally done in this kind of case, but I am not asserting what should be done

in any particular case. In the one instance it is enough to note the facts and to discuss them clearly; in the second, in undertaking a plan of action, great prudence must be used in bringing it into operation, and courage in carrying it out. Since the success or failure of such plans depends on time, place, and persons, and other relevant factors, if anyone should rashly attempt to overthrow a government, I should not be blamed for his error any more than a doctor who has properly prescribed the remedies for diseases should be blamed because someone has given these remedies to patients at the wrong time.

M. One thing seems to me to be lacking in order to bring our discussion to a conclusion. If you can deal with it I shall feel you have done me a crowning favour, and that is, can you tell me what is the judgement of the Church on tyrants?

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b. You can find it for yourself at any time in the First Epistle of Paul to the Corinthians, where the apostle forbade them to share at all in the society and conversations of those who are openly wicked and scandalous. If Christians could be persuaded to put this rule into practice, sinners would have to die of hunger, cold and exposure, unless they came to their senses.

M. That certainly is a heavy sentence, but I doubt whether the people who are accustomed to yield so much to the magistrates everywhere will think that kings, too, should come under this rule.

b. There is no doubt that the original ecclesiastical writers, without exception, took Paul's message as including kings. For Ambrose excluded the emperor Theodosius from the Christian congregation and Theodosius obeyed the bishop. Nor, so far as I know, has the action of any bishop been more highly praised in antiquity, or the modesty of any emperor more greatly commended. What difference is there in this kind of case between being expelled from the Christian brotherhood and being

deprived of the use of fire and water? This last is the heaviest decree which can be passed by magistrates against those who refuses to obey their commands. The former punishment is that of the churchmen. In each case the penalty for contempt of authority is death, but the one orders the destruction of the body, the other orders the destruction of the whole man. Does then the Church (which holds that much lighter crimes should be punished with death) not think deserving of death the man whom, living, she expels from the body of the Faithful, and whom, dead, she relegates to the company of the Damned?

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b. I seem now to have said enough to justify what we Scots have done; and if my arguments will not satisfy some foreigners, I ask that they should consider how unfairly they are treating us. For since there are many rich and powerful nations spread over Europe, each with its own laws, it is pure arrogance for them to lay down their own rules of government as being applicable to all other nations. The Swiss have a republic; Germany - a nominal empire - has a constitutional king; Some of the States in Germany are, I hear, ruled by an aristocracy; the Venetians have a system of government which is a mixture of all these forms; Muscovy rejoices in a tyranny. We are only a small kingdom, but for two thousand years we have stood free of any foreign yoke; from our earliest days we have created lawful kings; our laws affect our citizens and strangers impartially - and the passage of time has shown these laws to be invaluable, for we have preserved our kingdom rather through the observance of our laws than by force of arms. What is the meaning, tell me, of this iniquity of theirs in wanting us to repeal or ignore laws tested over so many centuries? Is it not the height of impudence for those who can hardly maintain their own domestic authority to try and destroy the order and stability of a foreign country? Are not our institutions as useful to our neighbours as to ourselves? What can contribute to peace between nations better than

the control of kings? For it is usually as a result of their uncontrolled desires that most unjust wars are rashly begun, wickedly carried on and shamefully ended. What indeed can be more unfortunate for any state than to have neighbours whose laws are unjust, for too often the evils spreads apace? Why is it that they are annoyed only with us, when so many nations around them use various laws and institutions and none use exactly the same ones? And why do they now attack us when we have made no innovation, but have merely preserved out time-honoured laws? We are not the only nation with this type of consitutional law; we were not the first to evolve it and we are not now operating it for the first time. Our laws do not please some people; but perhaps their own laws do not please them either! We do not try to meddle with the domestic arrangements of other nations. Let them leave us with our own, tried and tested through so many years! Do we disturb their councils? In what way do we annoy them?

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But you are a seditious people, they say - to which I might at once reply, what does it matter to them? If it is so, it is our risk, our danger. I might enumerate quite a few insurrections which have been by no means disadvantageous to states and kingdoms; but I shall not use that line of defence. I affirm that there is no race less given to sedition than ours. I affirm that there is none more restrained amid seditions. There have been many disputes about our laws, about the right to hold authority and the methods of administration, but our sovereignty has always remained unharmed. The struggles have not involved, as they do with most peoples, the destruction of the common people or hatred of princes, but patriotism and the desire to protect our laws. How often within our own memory have our countrymen stood in line of battle face to face, only to break up without a wound, with out harm and even with little or no reviling? How often have private disputes been thrown aside in the

public interest? How often has the report of the approach of the enemy put an end to domestic feuds? How often has the well being of the people checked private quarrels! In our civil disturbances we have been as fortunate as we have been moderate, for as a rule the side which had the greater justice was the more successful. And as our civil quarrels have always been handled with moderation, we have always found it possible to unite in the face of danger. These arguments which occur to me at present should be sufficient to repel the rumours spread by our detractors, to refute the more obstinate, and to satisfy all reasonable men. I have not thought it worth while to consider the laws which other nations adopted. Our own practice I have reviewed briefly, though at greater length than I had intended, or than the question really demanded. I undertook the task purely for you, and if you are satisfied, so am I.

M. So far as i am concerned, I am amply satisfied, and if I can satisfy others in the same way I shall feel that I have gained great profit from this conversation, and have also been relieved of the greatest vexation of spirit.

HISTORICAL BACKGROUND

TO

DE JURE REGNIO APUD SCOTOS

LIKE ALL OUR EARLY HISTORIANS, Buchanan, stressed the success which attended the Scots in their efforts to maintain their independence. In A.D. 84 the Romans, claiming to have been victorious at the battle of Mons Graupius, commenced their retreat to the line Solway-Tyne, where in A.D.122 the Emperor Hadrian erected the wall which bears his name and which marked the northern boundary of the Empire. On the departure of the Roman armies in the year 410, England was again overrun. this time by the Jutes, Angles and Saxons, who in fact replaced the Romans as the governing class. The Angles pressed northwards and organised the kingdom of Deira, enclosing the territory between Humber and Tees; pressing still further, they claimed to have set up another Anglic kingdom, Bernicia, between the Tees and the Forth; they continued their way north until in 683, at Dunnichenm or Nechtan's Mere, in Angus, their king was killed, their armies destroyed, and they were flung back beyond the Tweed. Whether there ever was an Anglic kingdom is extremely doubtful - the bulk of available evidence points the other way - but the question is of minor importance, as the area has ever since been an integral part of Scotland, sharing king, religion, and law with the regions north of Forth. Then came the Danish invasion of England, carving out the Danelaw which comprised the northern half of the country and setting three of their leaders in turn upon the throne of All England. Canute, the most famous of these three, sent his generals to invade Scotland, but at Carham-upon-Tweed, in 1018 their armies were shattered, and Canute himself never claimed

that Scotland formed part of his dominions.

In 1066 there occurred an event which has had a momentous effect upon England: William the Norman landed in Sussex and at the Battle of Hastings he slew Harold, the last Englishman to wear the crown of England until George V in 1917 made himself, QUOAD England, technically an Englishman again. Between these two dates England had as kings a succession of Normans, Frenchmen, Welshmen, Scots and Germans This is an important point to bear in mind while reading DE JURE.

When England had become reconciled to having the Normans as her new ruling class, the Anglo-Normans attempted the task of adding Scotland to their dominions. The struggle was long, but at Bannockburn in 1314 the Scots inflicted a disastrous defeat upon the English. From then onwards the Scotland of Buchanan remained independent.

From all of this two fundamental facts emerge, facts which readers of DE JURE must keep constantly in mind: first, that in law a Scotsman could (and still can) do anything which is not specifically forbidden; and, second, the King of Scots is himself a Scot, PRIMUS INTER PARES (first among equals) and so is subject to the law. (By way of contrast, the King of England is legally above the English people and not subject to the law.)

From the earliest times Empire-builders have sought to justify their aggressions by alleging that their motive is the benevolent one of bringing civilisation to their victims. From this it has followed that the habits and customs, their way of life, of these victims has been denigrated and scoffed at. In particular we must remember this when we consider what the Romans say about Celtic civilisation and what the Anglo-Normans say about the Scots.

In spite of what has been done by Hubert in his researches into Celtic civilisation in general, as well as by many local and minor investigations by less well-known scholars, we still know far too little about those people who shared the languages and the cultural complex known as Celtic.

Still, we recognize certain broad principals which underlay their way of life. Scotland was one of those territories forming part of the Celtic sphere of influence, and by her military victories she not only preserved her territory intact, but also retained much of the Celtic outlook on life.

Hubert tells us that the Celts were lacking in the sense of statehood,* but are important in history because of their respect for and concern with the individual. This attitude of mind is clearly shown throughout DE JURE REGNI, where there is little or no respect for authority as such, but much respect for the wielder of authority as long as his actions are justified by his merit. When we see the wars which for centuries have been the curse of Europe - wars which have been due to an overdeveloped sense of nationality - we may well wonder whether the Celts were not fundamentally right.

Anyone who reads the details of the struggles in Scotland will note how the Scots practised the "scorched earth" policy, preferring freedom with hunger rather than subjection with plenty. It is not surprising, then, to learn that the Celts did not recognise the legal right of abstract ownership, but ranked the right of the possessor as of primary importance. A man, they held, could not own what he could not control, e.g. running water, wild animals. This assumption colours the view of poaching (i.e. taking a fish or a wild animal for one's pot and not for commercial purposes) still held by the Scots countryman, who refuses to regard poaching as theft. Today the right of the possessor is again to the fore under the modern title of "security of tenure".

Chattel slavery was no Celtic institution; such slaves as they had were captives of war or debtors paying off their debts. When Celts settled in a new district they absorbed the natives, and in a generation or two the groups became completely integrated.

* This comment is true only if we remember that the Celts regarded a nation as a people organised for defence; under the feudal system a nation was a people organised not only for defence but also for attack. It was this feudal conception that the Celts felt difficult to accept.

Their political rights were exercised through the small unit, sufficiently small to make the vote of the individual of some importance. The present-day "democratic" usage of the phrase "the majority must prevail" was applied by the Celts only in extreme cases, for, "the will of the majority must prevail" is separated only by a hair's breadth from "stamp out the opposition" - a danger which is too little appreciated in twentieth century practice.

The small units combined to deal with questions too large in scope for the small unit to tackle, yet the individual Celt never lost sight of his right and his power to differ. A community in which man is permitted to sacrifice himself voluntarily for the welfare of the group is more highly civilised than one in which he is forced to die for his country. Our generals to-day tell us that one volunteer soldier is worth ten conscripts. So the Celts voluntarily grouped themselves under a chosen general to defend their country, and the military history of Scotland vindicates them. A strong central government under a warrior king has a great weakness that if and when the king is killed, the conqueror becomes king with or without the consent of the people. The history of England is full of such instances.

As Scotland coalesced into a nation, the citizens never lost their belief in the supreme importance of the individual. In the wars of self-defence the fighting was done by the manhood of the nation. Fellow-Celts from Ireland and other friends might come in contingents to assist, but the fighting force remained overwhelmingly Scottish. So it was, too, in the evolution of the national political machinery. For long the supreme direction (not power or control) remained with the shadowy Council of the Seven Earls, composed of the leading men of the districts formed by the cohering of the original units. Beginning in the northern section of the country, new earldoms sprang up, calling for more than seven earls for the council, but even so, the name, Council of the Seven Earl, was retained. Of these earls, one was appointed primus, or high-king, and, ultimately, simply king.

We read of these early kings having a co-king, and even while still alive, being succeeded by another; so we can assume that these earl kings were appointed, in legal parlance, AD VITAM AUT CULPAM, that is, for so long as they did their job satisfactorily; dynastic struggles were non-existent, or virtually so.

In 843 Kenneth MacAlpine united the Picts and the Scots into one nation. The tale that he exterminated the Picts by a sudden attack can be disregarded. There is no indication in existing records of such a holocaust, and it is incredible that the men who had fought Rome to a standstill, who had overthrown the Angles and who were yet to repel the might of the Norse and the Anglo-Normans, were destroyed by Kenneth's comparative handful of men. The fact probably is that Scotland was ready for a more stable central representative. Rome, in the later days of the republic, selected her consuls out of a rapidly narrowing circle of noble families and was politically ready for the change into an empire, if not for the particular men who became emperors. The same narrowing movement in the choice of president we can see occurring in the United States of America to-day. This assumption that Scotland was ready for a king is borne out by the continued lack of dynastic quarrels (if we exclude the incident - about which we know little - which brought Macbeth to the throne on the death of Duncan, and the action of Malcolm Canmore, Duncan's son, in seeking English assistance in recovering his father's throne).

It is clear that the kings of Scots were native born and remained in power with the consent of the people.

this last is put beyond a doubt by the words in the Declaration of Independence, contained in the letter * dated at Arbroath, 6th. April 1320 and addressed to the Pope:

"The divine Providence, that legal succession which we will constantly maintain and our due and unanimous consent, have made him our Chief and King. To him, in defence of our liberty, we are bound to adhere, as well of right as by reason of his deserts; and to him we will in all things adhere, for through him salvation has been wrought to all our people

But should he abandon our cause or aim at reducing us or our kingdom under the dominion of the English, we will instantly endeavour to expel him as a common enemy, the subverter of our rights and his own, and we will choose another king to rule and protect us""We fight not for glory, wealth or honours but for that liberty which no virtuous man shall survive."

.....

Though Scotland had now accepted a king, his power remained very limited, even up to Buchanan's day. Students of the Scottish Constitution have neglected to ascertain the function the growing constitution had to perform, and to note the difference between that function and the objects which the English Constitution sought to attain. The English people were now a conquered people and the task of the English Constitution was to enable the English to free themselves from the Norman yoke, which they have done with the passing of centuries by the expedient of absorbing them.

The Scots, however, had no conquerors to get rid of, apart from invaders who were repelled by the sword. Scotland's need was therefore to devise a means of controlling her governor's, and the sovereignty never passed out of the hands of the people not, at least, until the failure of the Jacobite rising in 1745.

The method of control adopted was to have several ways of voicing the will of the people through the king, the Privy Council, the Great Council (a term which included both the formal Parliament and the less formal Convention), the Church, and in later days, the Justiciary. The Great Council, particularly in its more usual aspects of the Convention of Estates, requires some further investigation. In general, it was composed of those whom we should today call the Members of Parliament and the Officers of State. But the function of members of the Scots Parliament bore no resemblance to those of the English.*

** The same principal underlay the Roman practice of appointing two consuls of equal power.*

The Scots expected their local chief (or headman of the parish) to look after their interests in county matters and to see that a suitable person went to Parliament to represent them. On the formal summoning of Parliament the representatives were nominated at the head burgh of the shire. There were no contested elections until towards the end of the 17th. century. When Parliament sate, it remained in being usually for only a few days, somewhat resembling the annual general meeting of a company, with the directors and a few shareholders present in person or by proxy, most shareholders not bothering to come. But just as every shareholder has a right to attend, so every Scot had a right to attend if he so wished. The exercise of this right makes legalists assert that the Parliament of 1560 which established the reformed religion, was irregular. Yet nothing can be clearer than the fact that the reformed religion was thereby established.

If something important turned up requiring immediate attention, all the representatives within call were sent for, and this informal sitting became a great, or general, council or a convention of the Estates - only the name varied. The legality of what they did depended entirely on whether their resolutions or enactments reflected the will of the people.

Similarly, and especially in the early days, a resolution of a Church Council carried much weight, while the king on occasions acted the part of dictator, apparently with the full support of the people.

All these bodies used the word "Act" (restricted in England to Parliamentary findings). So we have Acts of the Privy Council, Acts of Convention, Acts of Parliament, Acts of Assembly and the judicial Acts of Sederunt and of Adjournal; and whilst in general these various acts pertained to the relevant spheres of activity, they often overlapped.

All this would seem to suggest a state of chaos, but the keynote which preserved order was the simple fact that the real power - the power of the sword and of taxation - rested with the people.

If there was fighting to be done, the people unsheathed the sword; when money was needed, the people gave voluntarily. King, Council and Parliament all lacked executive officers to enforce their orders; King's command and Acts of Parliament were equally, on occasion, ignored.

It is customary to think of the Scots as a wild turbulent people forever fighting and plundering among themselves.* Such a type of citizen could never have coalesced into those aries which flung back so many redoubtable invaders, or have produced the scholars and missionaries who played such a part in restoring Christianity to England and the Continent. Such researchers as have made a close study of the Scots, and particularly of the Highlanders, by repute the wildest and fiercest, emphasise what peace loving people these highlanders really were. Scotland had nothing to compare with the miseries England endured during the wars of Stephen, of the Barons, of the Roses, and in general the dynastic struggles which tormented that country. What clan feuds there were arose when James I, illegally detained a captive in England for over 16 years, returned to Scotland full of determination to reduce the nobles and the people to the feudal order that he has seen and approved in the England of Henry V. In 1424 his first Parliament dutifully passed an act to re-model itself on its English counterpart; the Scots ignored the act and our native parliament remained intact. The same James sought an alliance with the people to curb the power of the nobles, but the alliance was unhappy. James looked to the people to help him keep the nobles subject to the crown as in England, whereas the people expected the king to assist them in keeping their chiefs under control - in accordance with the words of the Gaelic saying, "Greater than the chief are the clansmen".

*Arnold Toynbee, in "A Study of History" (1.237) remarks that the Scottish Highlanders were among the last of the "white barbarians."

The outstanding fact that emerges from all this is that the lawgivers had to depend not on force, but on the willing acceptance of their guidance by the people at large. In the words of Sir Archibald Alison*

"The early precocity of Scotland in legislative wisdom and the extraordinary provisions made by its native parliament in remote periods, not only for the well-being of the people, but for the coercion alike of regal tyranny and aristocratic oppression, and the instruction, relief and security of the poorer classes, is one of the most remarkable facts in the history of modern Europe and one deserving of the special attention of historians and statesman both in that and the neighbouring country".

We now pass to some examples of that legislation.

SHORT SELECTION OF ACTS WHICH SUGGEST
THAT BUCHANAN'S 'DE JURE' WAS POSITIVE
LAW IN SCOTLAND

(the spelling has been modernised where necessary)

MATTERS AFFECTING THE WHOLE PEOPLE

In the year 1201 the Pope, Innocent !!!, despatched the Cardinal John de Salerno as Legate A LATERE to Scotland. John held at Perth a meeting representative of the Scots Church; a resolution was passed there which Boece, in his Chronicles (Book XIII, ch. 8) tells us was ratified by the king, William the Lion, in the following terms:

It was commanded by King William that Saturday shall be held holiday from XII hours forth at noon; which shall be shown to the people by sound of bell; and no profane labours to be exercised from that time forth till Monday; and the people to persevere only in divine service. Great punishment was ordained for them that were found rebelling thereto.

This, if true, would appear to be a commendable attempt to establish a five-and-a-half day working week. The use of one word "people" indicates that serfdom was negligible.

It has been objected that we have no authority for

this supposed ordinance other than Boece and that it was so much out of character with the times that it cannot be accepted as genuine. On the other hand it is obviously not the kind of bombastic claim that one might expect any writer to invent; moreover, the Act of Parliament, 1469, ordained all labour to cease at 4p.m. on Saturday, and in 1598 we have the act setting up a five-day working week, quoted.

The following quotation forms the second part of the Act 1424 c. 45 and provides for legal aid for the poor in words which remained the basis of Scots practice from that date until 1947, when the Legal Aid (Scotland) Act went on the Statute Book.

And if there be any poor creature who lacks either the intelligence or the money to follow up his cause, the King, for the Love of God, shall ordain the judge before whom the cause should be determined to procure and get a dependable and wise advocate to follow such poor creature's cause; and if such causes be successful, the wrong-doer shall compensate both the party wronged and the advocate's costs and fee; and if the judge refuses to do the law fairly as is before said, the party complaining shall have recourse to the king, who shall see such judges rigorously punished that it shall be an example to all others.

In spite of claims by many historians that Scotland had been feudalised by the end of the twelfth century, it is certain that the feudalism was of only a superficial nature, applying mainly to the king and nobles among themselves; the people at large had adopted little or none of the feudal social caste and privilege, as this Act 1425 c.48 shows:

It is ordained by the king, by consent and deliverance of the three Estates, that all and sundry the King's lieges of the realm live and be governed under the King's law and statutes of the realm alone, and under no particular nor special privilege, nor by no laws of other countries nor realms.

The break-up of the Holy Roman Empire led to the setting-up of the feudal system. This latter stressed the superiority of the rights of the landlord, or owner,

over those of the tenant, or occupier, to such an extent that the purchaser of an estate could clear off all the tenants without warning. The inevitable reaction set in, and Scotland was the first nation in Europe to come down on the side of the tenant. The Act 1449 c.18 proceeds:

Item: It is ordained for the safety and favour of the poor people that labour the ground that they and all others that have taken or shall take lands in time to come from lords and have terms and years thereof, shall remain with their leases until the issue of their terms, what hands what ever these lands come to, for the same mail (rent) as they took them for.

A further hardship in feudalism was that the tenant's goods and cattle were liable to be seized for the lord's debts. Parliament dealt with this position by the Act 1469 c.36:

Item: To avoid the great hardship and destruction of the King's commons, mailers and inhabitants of the lords lands through the force of the brieve of distress - that where any sums are obtained by virtue of the said brieve upon the lord, owner of the ground, that the goods and cattle of the poor men inhabitants of the ground are taken and distrained for the lord's debts where the mailles extend not to the amount of the debt, it is advised and ordained in this present parliament that from henceforth the poor tenants shall not be distrained for the lord's debts further than his terms mailles extend to...

Feudalism is built up on the fundamental belief that all power is vested in the owner of the land; the king, being the supreme owner, allowing to his nobles a somewhat inferior degree of ownership, and they, again, allowing their vassals a still lesser degree - and so on. So slow was this idea in percolating through all sections of the Scottish people that the report of the Napier Commission in 1884 on the state of the Highlands, comments in its opening paragraph on how widespread was the belief among the people that the land belonged to them and not the landlords.

Bearing in mind the enactment of 1201, previously quoted, the following Act of Convention of 1598 is of great social interest, setting aside as it does,

Monday in each week as a day for physical recreation so as to negative the excuse for abusing the Sabbath:

Our Sovereign Lord and Estates presently convened, considering one of the greatest causes which has procured God's Judgement from time to time to fall upon this Realm in any time bygone has been the profanation of the Sabbath day, which should be only bestowed and employed in God's service and not otherwise, where by the contrary the same has been abused by the whole lieges of this Realm by hunting and using of games and pastimes upon the said day, pretending a lawful excuse for them in said matter that no day in the week was granted to them for their relief from their labour except the said Sabbath, which, upon necessity they were forced to break and abuse. For Remedy whereof, and that the whole lieges within this Realm may the better observe and keep the Sabbath and bestow the same whole day as well before noon as after noon to God's service, OUR SOVEREIGN and ESTATES foresaid have found it meet and expedient that in all time hereafter there be one day of every week upon the which day there shall no Court within this Realm sit, neither civil nor criminal, Neither shall there any Court be held nor fenced, Neither any subjects within this Realm shall be forced to compear and answer before the said Judges, but they to be exempt that day from any proceedings against them; SUCHLIKE, and in the same manner as the same were the Sabbath day, in fact discharging all officers of arms or sheriffs in that part of all using of any denunciation upon the same day. Which day by our Sovereign Lord and Estates is appointed to be Monday every week like as the same day the whole servants within the country shall be exempt from all service or labour to their masters, And the same day shall be only bestowed and employed by them in using and handling of their armour and in lawful games and pastimes procuring hability of body whereby all person's minds and bodies may be recreated, And they may the more willingly bestow the whole Sabbath day in God's service having that day for relaxation from their labours, And the whole rest of the week available upon their own vocations;

Discharging always the whole lieges from unlawful and unnecessary games, Certifying them that be found to contravene the same that they shall be punished with all rigour; And likewise ordains the masters of all colleges and schools within this Realm to permit and give liberty to their students and scholars to exercise them in lawful games and pastimes above written every Monday after twelve hours, And that they nowise be compelled or forced to return the said day to the school again; And this printed Act to begin and have effect the - day of August next to come, being the first Monday of the said month; And our Sovereign Lord and Estates Declare that in time of harvest yearly upon the said Monday every week all cottars and farmers who are astricted and bound to reap their masters corn, shall be exempt from their said master's service that day To the effect they may employ the same in reaping and winning of their own corn, which of before by reason of the hard dealing of their masters, they were forced to do upon the Sabbath and break the said day, which should have been consecrated to God's service; And that Letters of Publication be directed hereupon Sic SUBSCRIBITUR JAMES REX.

This Act was passed by the Convention of the nobility and estates held at Holyroodhouse the penultimate of June, 1598.

Hubert, in his monumental work on the Celts says that they "are important in history by the value of the individual and the development of personality". As late as 1621 the Scots Parliament passed the following Act, c 33, protecting the rights of individuals against private Acts of Parliament:

For as much as in this present session of Parliament there are many ratifications and acts in favour of particular persons passed, wherein diverse and new clauses are insert which may be prejudicial to particular parties' rights, and derogative unto many and sundry laws lawfully made and established of before, albeit the meaning of the estates be at this time as it was ever in all proceeding parliaments, that by no Act of Ratification or Act granted unto any particular person, any party should be hurt or prejudged;

For remeid whereof it is statute and ordained that no Ratifications and Act made in favour of particular persons be always understood SALVO JURE CUJUSLIBET.

(RESERVING THE RIGHTS OF ALL OTHERS).

THE ECONOMY OF THE COUNTRY

The Scottish national economy was based on the belief that the more goods exported from a country, the poorer it became, and the more goods imported, the richer. Exports, accordingly, were taxed and, broadly speaking, imports were allowed in free. There are numerous acts relating to this, but the following examples must suffice:

Act 1424 c 15, Item: *It is statute and ordained that no man have out of the realm gold nor silver, unless he pays forty pennies of each pound of customs to the king, under the pain of loss of all gold and silver that is found with him, and ten pounds to the king for the unlaw.*

Act 1424 c 21. Item: *Also for that many things pass out of the realm without customs, it is ordained and decreed that of all cattle, horses and sheep had out of the realm, there be paid to the king twelve pennies for custom of each pound of the price of the said goods and of all herring that are taken within the realm, that is to say, of each thousand of fresh herring sold, of the seller one penny, and of each last herring, taken by Scotsman barrelled, four shillings of each last, taken by strangers six shillings, and of each thousand red herrings, made in the realm, four pennies.*

Act 1554 c 40. Item: *For in-bringing of victuals it is ordained that strangers that bring in victuals be favourably treated and thankfully paid for their victuals, and that there be no new custom taken of them, and that there be no more victuals taken to the king's part but only as much as will serve his household; and, rightly also, if Scottish merchants bring in victuals out of England, that they be favourable treated as said is.*

It is clear that Parliament was looking at the nation as a whole and not legislating for the benefit of some sections, such as the merchants or the manufacturers. This is borne out by the following measure against hoarding. The Act 1452 c 40 runs:

Item: Hereafter it is statute and ordained that no man hold victual in gurnal (store) to a dearth, and that no man hold victual more than will serve him and his family for one quarter of a year, and that they present all that they have more to the market within nine days after to be sold under the pain of escheat (forfeit) thereof. For the searching of the which thing, there is deputed searchers in Edinburgh and Leith certain persons.

This interesting fiscal practice was brought to an end by James VI by an act of Parliament dated 19th December 1597 (confirming an act of the previous May); the Act 1597 c 255 follows:

For as much as it is understood to the King's Majesty, his nobility, council and estates presently convened, that the subjects of all foreign nations which bring and transport any kind of cloth or wares or merchandise from any foreign country to their own native country, have been in use, and there still continues, in the payment of certain customs or other exaction therefor chiefly at the time of their arrival and in-coming within the same, and almost few or none of the subjects of any realm exempted therefrom (the subjects of the country only excepted) who by reason of an alleged by-past immunity claim the privilege of exemption. Albeit it cannot be denied that his majesty is a free prince of a sovereign power having as great liberties and prerogatives by the laws of this realm and privilege of his crown and diadem as any other king or prince or potentate whatsoever, and therefore ought to have the like custom and exaction for entertaining of his princely estate of all cloth and other wares and merchandise to be brought within this realm by his highness's subjects at all times hereafter, for the which purpose his Majesty with the advice of his said nobility, council and estates has thought meet, concluded and ordained that all cloth and other merchandise whatsoever to be brought within

this realm from all foreign nations shall pay the custom following at the time of their arrival and entry therein all times coming, that is to say.....)here follows a detailed tariff).

RESTRICTIONS ON THE ROYAL POWERS

The reader will remember that Buchanan dismisses as unworthy of serious consideration the ruler who holds sway by conquest. The following statement is a worthy successor to the letter of Arbroath, quoted later. The Parliament held at Perth, 18th February, 1369, ruled:

The Justiciar, sheriff, or other officer of the king is not to execute any warranty contrary to the statutes and the common law, even though it be under the great, or privy seal, or the signet.

In 1320, six years after her shattering defeat at Bannockburn, England still refused to acknowledge the independence of Scotland and the right of Robert the Bruce to the title King of Scots, and in the refusal she had the backing of Pope John XXII. Irritated by the attitude of the Vatican, the Scots addressed to his Holiness the celebrated letter known as the Letter of Arbroath or the declaration of Independence. This letter has a direct bearing on the relationship of king and people, and indeed completely proves Buchanan's contention that, in Scotland at least, the king exists for the well-being of the people. (The letter itself is given in most histories of Scotland and need not be repeated here in full.) After telling of the miseries and evils inflicted upon Scotland by Edward I of England, the letter proceeds:

Through favour of Him who woundeth and maketh whole, we have been freed from so great and innumerable calamities by the valour of our Lord and Sovereign Robert. He, like another Joshua or Judas Maccabeus, gladly endured toils, distress, the extremity of want and every peril to rescue his people and inheritance out of the hands of the enemy. The Divine Providence, that legal succession which we will constantly maintain, and our due and unanimous consent have made him our chief and king. To him, in defence of our liberty, we are bound to adhere, as well of right as by reason of his deserts;

and to him we will in all things adhere, for through him salvation has been wrought to all our people. But should he abandon our cause or aim at reducing us or our kingdom under the dominion of the English, we will instantly strive to expel him as a common enemy, the subverter of our rights and his own, and we will choose another king to rule and protect us; for while there exists a hundred of us we will never submit to England. We fight not for glory, riches or honours, but for that liberty which no true man can survive....

LAW PROPERLY ADMINISTERED AND UNDERSTOOD
BY THE PEOPLE

On the Norman conquest of England in 1066, the Anglo-Saxon laws and law-courts were virtually abolished, and in their place feudal law and law-courts took shape. In due course the Royal Courts of Justice were established in London for the regularisation of the feudal law, and along with them the Inns of Court grew up to provide skilled lawyers to plead in these royal courts. Outside London there were practically no lawyers trained in the new Law of England, either as judges or pleaders, other than the feudal magnates themselves. In Scotland the position was different; the native law remained intact, with law-courts, trained judges and advocates throughout the country. The nomenclature varied, but the most usual appellation for the local judge was judge-ordinary*, and for the pleader, fore-speaker, advocate or procurator. That the courts were distributed over the realm is evident from the Act 1424 c 45: In regard to bills of complaint which do not fall to be determined by Parliament for various reasons affecting the commonweal of the Realm, it is ordained that bills of complaint be executed and determined by the judges and officers of the court to which they pertain by law, wether Justice, Chamberlain, Sheriffs, Baillies of Burghs, Baronies or spiritual judges it it effeirs (pertains) to them. To which judges all and sundry the king shall give straight command, as well within regalities as outwith, under all pain and charge that may follow, that as well to the poor as to the rich, without fraud or guile, they do full law and justice

* A judge-ordinary had a local jurisdiction, whilst a lord-ordinary had a nation-wide power. Our judges of the Court today retain the title of Lord-Ordinary.

(The Act continues to set up legal aid for the poor)

The Scots parliament itself held no undue legal eminence, and it is axiomatic that its Acts could either expire through desuetude or simply be not accepted by the people. (The outstanding example of the latter is the Act 1427 c 101, which aimed at restricting membership of Parliament and in general making it a replica of the English parliament. The Act was simply ignored.) In some countries ignorance of the law was of no avail to an accused, even when such ignorance was justifiable. The Scots parliament took steps to ensure that everyone should be informed of all statutes and ordinances.

The Act 1425 c 67 proceeds:

Item: The king with the consent of his Three Estates of the Realm has ordained that all statutes and ordinances of this parliament and of the two parliaments preceding be registered in the king's register and given to the Sheriffs, which statutes and ordinances each sheriff to be held to publish openly in the chief place in his sherrifdom and other notable places, and also to give copies of them both to prelates, barons and burgh, of his baillery upon the expense of the askers; and that each sheriff be compelled to keep the tenor of this act under pain of deprivation of his office: and that each sheriff give open bidding to the people of his baillery both to land and burgh, to keep and fulfil all statutes and ordinances made in the said three parliaments under the pain contained in the acts of them so that none have cause to pretend or allege ignorance.

The development in the public mind of the idea of Law as an art and a science - as distinct from the feudal conception of law as primarily a disciplinary system - is evidenced in the celebrated Act 1494 c 54:

Item: It is statute and ordained through all the realm that all barons and freeholders that are of substance put their eldest sons and heirs to the schools from they be six or nine years of age, and to remain at the grammar schools till they be competently founded and have perfect latin. And thereafter to remain three years at the school of art(i.e.Arts) and law so that they may have knowledge and understanding of the laws;

through the which justice may remain universally through all the realm; so that they who are sheriffs or judge-ordinary under the King's Highness may have knowledge to do justice; that the poor people should have no need to seek our Sovereign Lord's Principal Auditor for every small injury; and what baron or freeholder of substance that keeps not his son at the schools as said is, having no lawful excuse but fails herein from knowledge may be got thereof he shall pay to the king the sum of twenty pounds.

The scots have always clung, perhaps more tenaciously than any other European nation, to the idea that the fundamental function of a university is to civilise its students as well as to give them a professional training. When the degree of Bachelor of Laws (LL.B.) was established in the Scottish universities it was stipulated that the entrant upon the course must have already received the degree of Master of Arts or its equivalent. (The same stipulation holds good in the case of the degrees of Bachelor of Divinity and Bachelor of Education.) The stipulation as regards the LL.B. was removed in 1960, on the ground that the work done in the Arts classes, such as Latin, Greek, modern languages, mathematics and the like was being done in the ordinary schools. There was much opposition to the change, for, it was argued, the universities seemed to have lost sight of the fact that while knowledge of Latin etc., was a mark of culture in the eighteenth century, the same did not hold true in the twentieth, and that the change necessary was to re-cast the M.A. course to make it a mark of twentieth century culture.

Incidentally, it may be remarked that the act infers that there were school readily available. Schools had been set up in a great many towns long before this time; three universities had been established, St. Andrews (1412). Glasgow (1451) and Aberdeen (1495); Edinburgh's was to be founded (1583); a second Marischal's was to follow in Aberdeen (1593) (it continued its separate existence until it was united with King's in 1860); and attempts, though unsuccessful, were made to set up others in Peterhead and Kilmarnock.

In Buchanan's day Scotland shared with the Netherlands the reputation of being the country best equipped with scholastic establishments.

According to J.A.Froude, the English historian, "No nation in Europe can look back with a more just pride on their past than the Scots, and no young Scotsman ought to grow up ignorant of what the past has been"....(He then quotes from the Letter of Arbroath and the Acts of 1494, and continues)"....the two fountains out of which the Scottish nationality has evolved itself".

At a time when persons accused of treason in Tudor England were deprived of the assistance of counsel and sometimes even of the right to lead evidence in defence, contemporary Scots accused of the same crime were given the right to have such counsel as they wished. The Act 1587 c 38, sets this out very clearly:

Item: that no advocate nor prolocutor be nowise stopped to compeir, defend and reason for any person accused in Parliament for treason or otherwise, but that whatsoever party accused shall have full liberty to provide himself of advocates and prolocutors in competent number to defend his life, honour and land against whatsoever accusation, seeing the intending thereof should not prejudge the party of all lawful defences as if it were confessed that the accusations were true, annulling all acts made to the contrary hereof before.

The following Act, 1587 c 51, stipulates that all persons accused of any crime whatsoever shall have their advocates and procurators and all lawful defence. It runs:

Our Sovereign Lord, considering the wrongs alleged sustained by divers noble-men and others, lieges of this realm being accused of treason, by soliciting, boasting and menacing of the assize, after they were enclosed, the accusers and other persons their favourers having liberty to the said assize and to produce to them such writs and witnesses and other probation as they pleased to verifie the crime outwith the presence of the parties accused whereby the just defence of their lives, lands and honours was taken away, Therefore our said Sovereign Lord

with advice and consent of the Estates of this present parliament has statute, declared and ordained that in all times coming the whole accusation, reasoning, writs, witnesses and other probation and instruction whatsoever of the crime shall be alleged, reasoned and deduced to the assize in presence of the party accused in face of judgement and not otherwise; and that all and whatsoever lieges of this realm, accused of treason or for whatsoever crime shall have their advocates and procurators to use all the lawful defences whom the judge shall compel to procure for them; in case of their refusal, that the suit of the accuser be not taken PRO CONFESSO (as confessed) and the party accused prejudged in any sort before he be convicted by lawful trial. And to the effect the said advocates and procurators may the more freely and willingly do their office in the premises, our said Sovereign Lord with advice and consent foresaid annuls, cuts down and rescinds all and whatsoever Acts of parliament and other statutes made by him or any of his predecessors of before, in contrair hereof.

Though our history books tell us that France, by the Edict of Nantes in 1598, was the first country in Europe to establish religious toleration, some writers claim that the honour belongs to Scotland in virtue of the following enactment; it does not say so in so many words, but when we bear in mind that during the whole period of the Reformation Scotland produced only nine martyrs in all, while England has as many every week for thirty years, and that the quarrelling over the monastic and other clerical spoils was comparatively free from bloodshed, we must admit that the claim is quite strong. Queen Mary, a Catholic, accepted Protestant nobles as her advisers. The Act reads as follows:

EDINBURGH, 10TH DECEMBER, 1561.

The which day for as much as the Queen's majesty, by the advices of the Lords of her secret Council, foreseeing the imminent troubles which which apparently were to arise among the Lieges of this Realm for matters of religion; to stay the same and to avoid all incommodities that might thereupon ensue,

intercommuned with a part of the Clergy and state ecclesiastical, with whom then reasoning being had, it was thought good and expedient by Her Highness that a General Assembly should be appointed the Fifteenth of December instant whereto the rest of the states might have repaired, and by advice of the whole, a reasonable overture made for staying of apparent trouble and quieting of the whole Realm. Which convention being by her majesty appointed and sundry days of Council kept and the said ecclesiastical estate oft times required that the said order might be taken, and overture made for staying of the trouble and quieting of the country. Last of all, in presence of the Queen's Majesty and Lords of Council foresaid and others of the nobility of this Realm, compeared John Archbishop of St. Andrews, Patrick, Bishop of Moray, Henry, Bishop of Ross and Robert, Bishop of Dunkeld; and for themselves respectively offered unto the Queen's Majesty to be content of two parts of the rents of their benefices and the fourth part to be employed as her Majesty thought expedient. And, because the certainty thereof was not known nor yet what sums of money would sustain the ministry and ministers of God's Word within this Realm, neither yet how much was necessary to support the Queen's Majesty above her own rents for the common affairs of the Country; failing whereof the third part of the said fruits or more till it shall be sufficient to the effect foresaid to be taken up yearly, in time coming, till a general order be taken therein, so much thereof to be employed to the Queen's Majesty for the entertaining and setting forward of the common affairs of the country and so much thereof to the ministers and sustenation of the ministry as may reasonably sustain the same, at the sight and discretion of the Queen's majesty and Council foresaid; and the excrescence and superplus to be assigned to the old possessors. And, to the effect that the rents and yearly avail of the whole rental of the benefices of this Realm be produced before her Grace and Lords foresaid at the times underwritten, that is to say, of the benefices on this side of the Mount the Twenty Fourth of of January next to come, and beyond the Mount,

the Tenth of February, next thereafter; and ordinary letters to be directed to the Sheriffs in that part to pass, charge and require all and sundry archbishops, bishops, commendators, abbots, priors, on this side of the Mount, personally, if they can be apprehended; and failing thereof at the said archbishop's, bishop's, commendators', abbots', priors' dwelling-places, cathedrals, kirks or abbeys and all archdeacons, deans, chanters, sub-chanters, provosts, parsons, vicars and other beneficed men whatsoever, their chamberlans or factors, personally or at their dwelling-places or at the Parish Kirk where they should remain, to exhibit and produce before the Queen's Majesty and Lords foresaid the said Twenty Fourth day of January, next to come, a formal and sufficient roll and memorial, what may be sufficient and reasonable to sustain the ministry and whole ministries of the Realm, that her Majesty and Lords of Council foresaid, may take orders therein as accords; and, further, that the Queen's Majesty and Lords of Council foresaid, may ripely and digestly weigh and consider what necessary support is required to be taken yearly of the fruits of the said benefices, beside her Grace's own yearly rent, to entertain and set forward the common affairs of this Realm against the said Twenty Fourth day of January next to come, that then it may be proceeded in the aid matter. all parties satisfied, and the whole country and lieges thereof set at quietness.

COMMENTARY

Some YEARS before DE JURE REGNI appeared in print, manuscript copies appeared all over Europe and, in general, brought praise and congratulations to the writer. Archibald hamilton, however, a quondam colleague of Buchanan at St. Leonard's College, St. Andrews, published an essay "DE CONFUSIONE CALVINIANAE SECTAE APUD SCOTOS ECCLESIAE NOMEN RIDICULE USURPANTIS DIALOGUS' in which he attacked Buchanan's work; but though Hamilton was more abusive than logical, his work was in turn attacked by Thomas Smeaton in another pamphlet entitled "SMETONI AD VINDICATUM HAMILTONII APOSTATAE DIALOGUM ORTHODOXAE RESPONSA'.

The appearance of DE JURE REGNI in print led to another flood of congratulatory letters from all over Europe, and some four reprints or new editions followed within about two years. Treaties purporting to refute Buchanan's principals were written by Adam Blackwood of Dunfermline and Norman Wright of Paisley. and later, another by William Barclay entitled "DE REGNO AT REGALI POTESTATE ADVERSUS BUCHANANUM BOUCHERIUM ET RELIQUOS MONARCHOMACHOS'. More important, however, was the action of the Scots Parliament when in May, 1584, it condemned the book and commanded all possessors of copies to bring them to the Lord Secretary to be purged of their offensive passages. But even this had no effect on its circulation, and early in the following century there appeared editions in English. It became well known in England and was used to justify the Parliamentarians in the Civil War. John Milton borrowed wholesale from Buchanan in his great propaganda work the "Defence of the English People". In June, 1660 on the very eve of the Restoration of Charles II, the Scots Privy Council ordered a search to be made for copies, and in 1664 and 1668 similar steps were taken. In 1683 the University of Oxford included DE JURE REGNI in the list of obnoxious works to be publicly burned by the Marshall. From then onwards Buchanan's work slipped into an oblivion so profound that even the leading

political thinkers and theorists passed it by, probably either through ignorance or because of the difficulty of obtaining copies; yet as late as 1906 DE JURE REGNI was quoted as an authority in the class-rooms of Berlin University.*

In the Stair Society's publication on the "Sources of Scottish Law," the book is referred to as a major classic, but it still remains almost unknown in the academic world.

.....

Buchanan's treatise was inspired by the desire to vindicate the deposition of Mary Queen of Scots. Her husband, Henry, Lord Darnley, had been murdered at Kirk o' Field, just outside the boundaries of Edinburgh, on 9th February, 1567; and on 15th May following she married the Earl of Bothwell. Believing in the complicity of both Mary and Bothwell in the murder, the Protestant lords forced her to sign an abdication in favour of her son, the infant James and imprisoned her in Loch Leven Castle. Escaping in May, 1568, she raised a body of supporters, but was defeated at the battle of Langside; whereupon she fled to England, where Queen Elisabeth retained her in custody until her execution in the Castle of Fotheringay in February, 1689.

Buchanan proceeds on the argument that men by nature tend to band themselves into societies, and that each of these societies requires what is now called a head of state, and what Buchanan calls a king, although he points out that it is of no consequence whether the name be king, duke, prince, leader or anything else. This king is in early days elected by the people; later he may be elected or assume office in some other way, but in every case he holds office on at least the tacit acceptance of the people. Where Magna Carta, for example, speaks of "LIBERI", "freemen", Buchanan speaks simply of men, thereby following the practice of the Scots Parliament and of such documents as the letter of Arbroath.

The next point which he makes is also of fundamental importance to the serious student of politics, and that is as to what the duties of a king should be. These are principally the wholesale purging of corrupt morals and the general supervision of what we would call the various constitutional bodies, and his conduct is based on the maxim that he stands towards the people as a good father stands towards his children.

* See Professor MacKechnie's article in "George Buchanan: Glasgow Quartercentary Studies, P. 225.

He sees that the constitution of a state should function upon three lines ----- The executive or, as we would say, the government, who administer the laws; the judges, who determine in specific cases whether there has been a breach of the law; and the legislative power.

In practice the administration of the law is carried on by the king's ministers, and law-suits fall within the province of the judges. Buchanan is more vague in regard to the making of the laws, and on this point his uncertainty is justified. He had before him the examples of the Senate, which had legislated in Rome; the Parliament, which was developing the real power of legislation in England; as well as various dictatorships which had grown up in several places. He was fully aware how in Scotland effective laws had originated in Church Councils, Conventions and parliaments of the Estates as well as directly from the king. That the power of a convention was very real was evident to him if only from the fact that the abolition of the Mass and of the Roman Church, as well as the establishment of the reformed religion, had all been carried out by the Convention of 1560. He realised the difference between legal sovereignty, vested in the king and his parliament, and political sovereignty, vested in the people, and to make the latter effective he visualised something in the nature of a referendum. His picture of the legislative machinery was accordingly something like this: the king proposed a measure which seemed to him, in his capacity of skilled politico-physician, necessary for the public weal; parliament approved, and the people let it become effective. It may be that he hesitated to put on paper for the benefit of the Europe of the day, how this machinery operated in Scotland, for Europe - and particularly the crowned heads - was fully persuaded that a king who is worthy of the name had much more power to compel obedience to his commands than a senate or parliament. But the reader will remember that in the outline we have been given the history of Scotland, the power of drawing the sword as well as the raising of taxes remained vested in the common people.

Thus, we repeat, in Scotland the people had the real power of accepting or rejecting the recommendations of king, parliament, convention or church assembly.

Clearly Buchanan's mind was working along these lines, and it may be that he believed that the common people in most European states had neither the tradition nor the education and understanding to put such a system into operation. Hence, most likely, sprang his deliberate vagueness on the legislative functioning.

Professor MacKechnie, in the article already mentioned, notes that Buchanan says not a word as to the rights and powers of the Scottish Church - rather a remarkable fact in a country and in an age when ecclesiastical questions were regarded as of the greatest importance, both in theory and in practice. It may be as MacKechnie remarks, that Buchanan's experience at the hands of the Inquisition drove him to the conclusion that the Church had its own place in society and that it should be kept apart from politics; or it may be that Buchanan conceived, as indeed he did, that politicians had a specialist job which could be carried out only by people trained for it, and that Churchmen were no more fitted to govern a country than anyone else. This indeed was the feeling throughout Scotland, as expressed by Andrew Melville when he told King James that "there are two kingdoms in Scotland: there is King James, the head of this commonwealth and there is Christ Jesus the king of the church whose subject James VI is, and of whose kingdom he is not a king nor a head but a member.*"

Except for the brief period during the Civil War of the century following, when ministers of the Church attained the power of governing - to the detriment of the country - Church and State have been kept separate, and the king or queen on accession takes an oath to protect and maintain the Presbyterian Church of Scotland.

To summarise, Buchanan's king, aided by his councillors, wielded the political power in such a way as to allow the people to function as individuals or as groups, taking cognisance mainly of the latter and

* McCrie's *Life of Andrew Melville*, p 181

allowing the judges to attend to individuals, though the latter had ultimate appeal to the king himself. None the less the king could, in a moment of crisis, assume the power of a dictator, but, like a surgeon performing an emergency operation, had to throw himself on the mercy of his people for a plea of justification. To complete the picture, however, it is necessary to emphasise that the three Estates of the Scottish Realm were continually active within their respective spheres: the First Estate, composed of the Lords Spiritual, were occupied not only with ecclesiastical affairs, but with education and the intellectual interests of the nation; the Second Estate, composed of the Lords Temporal, including the Commissioners of Shires, were concerned with agriculture and rural life and industry; while the Third Estate, the burgesses, protected and developed urban industry and trade in general. It was largely this last body who maintained international trade and contacts, and established Staples, or entry ports, in foreign countries through which they could export and import such goods as they considered necessary. All three Estates functioned with the minimum of political interference other than what they asked for, and the great function of the politicians was to keep these three in balance for the overall good of the country. In this connection it may be remembered that the general scheme of trade was to tax exports, so as not to weaken the country's economy, and to allow imports in free, as tending to enrich the commonweal. This scheme was altered by James VI in 1597 on the questionable plea that Scotland had to follow the lead of other countries.

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Text-books on Constitutional Law endeavour to discover where the supreme authority lies in the State and the orthodox writer finds it in a central person or body, such as a king, president, Parliament or such like; this central authority makes laws and enforces them, if need be, by the baton of the police and the bayonet of the soldier. But Buchanan gives us the view of a State where the baton and the bayonet remain in the hands of the people, with a central authority whose sole sanction is

Wisdom. When James VI and I boasted that he could rule Scotland with his pen he was thinking not of dragoons but of the tremendous prestige which the Scottish Crown then enjoyed in Scotland.

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Buchanan's critics, friendly and otherwise, have not dealt with his work other than by treating it as another Utopia, and ideal difficult to put into practice. There are, they say with truth, very few points which had not been raised by former thinkers, such as the early Greek philosophers; and others, they aver, had been better dealt with by contemporary writers or even by later political theorists. But some things, such as the Separation of the Powers, Buchanan perceived long before Montesquieu was born, although it is usual to give credit to Montesquieu. He was also the first to see the difference between legal and political sovereignty, and his theory of the Original Contract as the basis of the rights and duties belonging to king and subjects was later to be developed by Rousseau; and so on. Perhaps the most questionable of his contentions was the right of any private citizen to put a tyrant to death - though it was a line of thought shared with the Jesuits. But his real value to succeeding generations was in his drawing these various theories together and making on coherent picture of a kingdom at peace.