

William Barclay

THE writings of William Barclay possess qualities which warrant an attempt to draw them from the dust heap of political controversy. Though he left Scotland in early manhood and, so far as is known, never saw it again, he always retained a loyal enthusiasm for his native country, and in his *De Regno*, published eight years before his death, he lightens the long course of a polemical treatise with a few whimsical memories of his boyhood. Further, his frequent references to Scottish history and tradition give to his work a distinctively national note, though its proper place is to be found in the main stream of European controversy.

The exact date of his birth is unknown. Dempster¹ writes of his death in 1611, 'ultima senectute et penuria,' and Mackenzie² gives the date as 1541, but M. Dubois,³ whose judgment on a question of this kind must be preferred, adopts a later date (1545-7). He was a grandson of Patrick Barclay of Gartly in Aberdeenshire, of whom he writes: 'Quas causas (*i.e.* the rights of kings) illustris Baro à Gartly, Patricius Barclaius, avus meus (qui tum in fide Regis constanter mansit) parenti meo, mihique, parens optimus, cum annum fere octogesimum attingeret, saepe et copiose narrare solitus est.'⁴

Of his father he writes: 'Idem itaque mihi de hoc negotio semper iudicium fuit, quod nunc est, idque a patre, nobilissimo et sapientissimo viro, et multis qui ad eum frequenter conveniebant summis theologis (erat enim non solus doctus, sed doctorum, et praecipue ecclesiasticorum hominum adeo amans, ut a vicinis nobilibus religiosorum mendicantium pater diceretur) re saepius in disputationem vocata accepi, ea aetate quae tenacissimam omnium ad se perductorum memoriam habet.'⁵ It is apparent that his father was an example of the enlightened and ecclesiastically minded

¹ *Historia ecclesiastica*, i. 118.

² *Lives and Characters*, iii. 468.

³ *Mémoires de l'Académie de Stanislas* (Nancy, 1872), Série 4, tom. 4, pp. 58-126.

⁴ *De Regno*, iii. 8.

⁵ *Ibid.* v. 6.

laymen who have always been found in Scotland. In the course of narrating a characteristic anecdote of John Major, Barclay again refers to his father. 'Erat enim,' he writes, 'in illo homine (Major) magna et pene superstitiosa simplicitas, ut a patre accepi, qui illum optime novit, vixitque cum eo familiariter.'¹ From his grandfather and his father he inherited twin traditions of loyalty to the King and to the Roman Church, and he guarded this double inheritance throughout his long life with an honesty of purpose which cost him dear.

He writes of the reverence with which the Pope was regarded in Scotland in his boyhood,² and of his having at an early age heard discussions between eminent theologians and confessors on the respective rights of rulers and subjects,³ and again of youthful study of Major's *summula*.⁴ He must have been reared in an educated, if conservative, atmosphere; but he passed early to the Court, possibly during Mary's visit to the North in 1563, 'in aulam a patruale jam tunc adolescens deductus paulo antequam Regina Darlaeo nuberet.'⁵ To his life at Court he has left two references, which crop up in the course of his *De Regno* and illuminate the page. He describes a deer-stalking expedition organised by the Earl of Athol in 1563 for the entertainment of Queen Mary, at which he (*tunc adolescens*) was present.⁶ The other reminiscence is of a different character. 'Id ipsum,' he writes, 'Ministros vestros Calvinistas crebro intonuisse ipsemet adolescens audivi.'⁷

About 1571 Barclay left Scotland and crossed to France. Mackenzie⁸ writes that he had spent his patrimony at the Court, but the reasons of the step were probably deeper.⁹ The cast of mind which he had inherited may have failed to manifest itself during the years of his early manhood, but it soon directed his conduct when Mary Stuart vanished from his horizon, and he found himself faced by the grim Scotland of the Regencies, no place for a Catholic and a Royalist. 'And having entirely neglected,' writes Mackenzie, 'to improve those natural parts with which he was endued, he applied himself to the Belles Lettres, though he was then in the thirtieth year of his age.'¹⁰ The writer

¹ *De Regno*, vi. 10.

² *De Potestate Papae*, cap. 40.

³ *De Regno*, iv. 7.

⁴ *Ibid.* vi. 10.

⁵ *Ibid.* i. 1.

⁶ *Ibid.* ii.

⁷ *Ibid.* iv. 4.

⁸ *Op. cit.*

⁹ *Remarques sur la vie de Pierre Ayrault*, p. 228, in *Vita Petriæ Rodii*, 1675.

¹⁰ *Op. cit.*

probably exaggerates a period of active practical life into the total neglect of the claims of the intellect, for it is difficult to conceive of a ruined courtier transforming himself in a few years into a scholar of note without some sound foundation of early training, and his studies at Aberdeen University must have left some traces.

In any event his studies in Paris, and subsequently at Bourges under Cujas, Hotman, and other eminent jurists,¹ added to his intellectual equipment a third element, which throughout the greater part of his middle age dominated his religious and political interests. His studies in France made him a civilian in the strong and peculiar sense which marked the period before the Wars of Religion. The study of antiquity, which at the Renaissance produced a doctrinaire Republicanism, at a later stage laid emphasis on the monarchic theories of the later Empire, and it was this later spirit which Barclay imbibed. He had no respect for feudalists or canonists,² the representatives of traditions which were alien to him, and to this extent, as compared with some of his contemporaries, he may be described as a doctrinaire. But his contempt was not founded on ignorance. When in the last two books of his *De Regno* he has to deal with a clerical opponent in the person of Jean Boucher, he displays wide knowledge of canon law, and his studies under Hotman must have left him something of a feudalist. He had a full measure of intellectual independence, and did not hesitate to differ from the great jurists at whose feet he had sat. Thus, in his *De Rebus Creditis*, he gives a critical estimate of Doneau,³ and in his *De Regno* he writes of an opinion of Cujas, 'Vere Cujacius mihi non videtur hic esse Cujacius.'⁴ Further, his criticism of the *Franco-Gallia* of Hotman is sustained and unmeasured.

On the completion of his studies, Barclay was appointed Professor of Law at Pont-à-Mousson, through the influence of his uncle, Father Edmund Hay, an eminent Jesuit. It may be noted that he was thus connected through his mother with the noble

¹ 'Sed mirum profecto est Hotmanum, subtilem alioqui et acutum j. c. quo preceptore xxx circiter abhinc annis in Bituriansi Academia aliquamdiu usus sum' (*De Regno*, vi. 18).

² He describes the feudal law as 'incertae Langobardorum feudales consuetudines, a jurisconsultis quibusdam Mediolanensibus collectae' (*Ibid.* v. 16). On Canon Law, cf. *De Potestate Papae*, cap. 28. The contempt of the sixteenth century jurists for the Canonists is fully expressed in Hotman's *Anti-Tribonian*.

³ Otto, *Thesaurus*, iii. 805.

⁴ *De Regno*, iii. 15.

family of Errol. He was proud of the relationship, and in his *De Regno* takes the family as an illustration, and gives a detailed account of its traditional origin.¹ He attributes the writing of this treatise to the solicitations of his uncle, but he states that its progress was retarded by the onerous duties of his chair. He was at first the only professor in the Faculty of Law, and the Duke of Lorraine requested him to lecture twice a day (*bis die ut profiterer, benigne et humaniter, ut solet omnia, invitavit*).² He was closely associated with the ruling house during his long residence at Pont-à-Mousson, and seems to have experienced to the full the extraordinary fascination which almost all its members, from Mary of Scotland downwards, exercised on their contemporaries. He writes, *e.g.*, of the two murdered brothers, the Duke and the Cardinal, 'quos ego et vivos amabam et tam subita atque acerba morte extinctos non parum dolebam maerebamque,'³ and the only occasion on which his Royalist pen falters is when he has to justify their assassination.

In the course of time Barclay added to his professional appointment the offices of Councillor of State and Master of Requests, and on the death of Pierre Gregoire in 1598 became Dean of the Faculty of Law. But in the midst of his studies, 'insieme insieme attendeva a gli escercizii cavallereschi,'⁴ and in 1581 he married Anne de Malvallier, a young lady of the 'noblesse lorraine.'⁵ Ghilini, in his short notice of Barclay, indicates that the marriage was only accomplished after some difficulties had been overcome, and to these obstacles may be attributed the existence of Letters Patent of James VI. of Scotland, of 1582, attesting the nobility and good birth of the Scottish exile.⁶ He appeared to be passing quietly through the conventional stages in the career of an eminent jurist of his day, but his position became increasingly precarious through growing and mutual hostility between him and the Jesuit Fathers who dominated the University. In 1586 he had sided with Pierre Gregoire in a quarrel regarding the status of the Rector,⁷ and had accompanied the Faculty of Law in its two years' exile from Pont-à-Mousson.⁸ A further cause of alienation was a personal dispute with the Society regarding his brilliant son, the future author of *Argenis*, who had been born in 1582. The

¹ *De Regno*, vi. 16.

² *Ibid.* i. 1.

³ *Ibid.* v. 18.

⁴ Ghilini, *Teatro d'huomini litterati*, ii. 162.

⁵ *Mémoires de l'Académie de Stanislas, ut supra.*

⁶ *Ibid.*

⁷ *De Potestate Papae*, cap. 38.

⁸ *Ibid.*

Jesuits, with their unique *flair* for promising youths, set their affections on the lad and made every effort to gain him for the Society, but Barclay offered a successful resistance.¹

While these two disputes may have been the apparent causes of the step which he took in 1603, the real grounds of his second voluntary exile are deeper. It is not necessary to have recourse to his writings to discover his interesting and well-marked character. The course of his life defines it. His vanity, irascibility, and doctrinaire stiffness were combined with an integrity and a sense of personal responsibility which imparted a moral value to his life no less than to his writings. Rather than yield to influences which were personally distasteful to him and antipathetic to his temperament and intellectual life, he abandoned the rewards of years of laborious activity, and in 1603 left the Duchy which had become his second fatherland. The publication of his *De Regno*, with its fierce attack on Boucher, the Religious Orders and the League must have made his relations with the ruling family and the Jesuits very strained, and probably he was glad to be gone. He retired to Paris, and thence to London, to which James VI. was attracting Catholics by his supposed sympathies with the Church of Rome. The King is said to have welcomed Barclay, but his tempting offers of preferment were conditional on his acceptance of 'the Anglican religion,' and Barclay returned to Paris before the end of the year 1603. By this time he was approaching the confines of old age, and was glad to accept the Professorship of Civil Law in the University of Angers, but even in his reduced circumstances his character asserted itself, and in his acceptance of the position he stipulated that he should have the first place in the Faculty. His reputation warranted the claim. In the *Première conclusion du Conseil de Ville* he is described as 'l'un des grandes personages de ce temps,'² and 'célèbre docteur qui puisse remettre cette Université en sa splendeur';³ but his claim met with strong opposition from his colleagues at the University. There were appeals and counter appeals and much discussion among the notables of the town, but the result was unfavourable to Barclay, who, up to the date of his death, claimed but did not occupy the position of *antecessor primarius*.⁴ Even in his old age he continued to be the ornate Highland gentleman, and saved his

¹ The facts of this dispute have never been fully ascertained, but the account given above is supported by John Barclay's narrative in *Satyricon* (Bk. II.).

² *Mémoires de l'Académie de Stanislas*, App XI.

³ *Ibid.*

⁴ *Ibid.* App. XII.

wounded dignity by a display of magnificence. 'J'ay oui dire,' wrote Menage, 'à mon père, que lors qu'il alloit faire sa leçon, il estoit suivi de son fis et de deux valets, et vestu d'une robe magnifique, avecque une grosse chaine d'or au cou.'¹ He died at Angers on 3rd July, 1608, and was buried in the church of the Cordeliers, which has long since disappeared.²

Of his works, his *De regno et regali potestate* was first published in Paris in 1600.³ His *De rebus creditis et de jurejurando commentarii* was also published during his lifetime, and has found a place in Otto's *Thesaurus*.⁴ His *De Potestate Papae* was published in London in 1609 and at Pont-à-Mousson in the same year, and there are editions of 1610, 1612 and 1617, while two French and two English translations testify to the general interest which it evoked. It has been enshrined in Goldastus' *Monarchia*. In addition to these published works, M. Dubois has collected contemporary references to a number of writings which remained in manuscript and have disappeared.⁵

At first sight Barclay's career, as outlined above, may seem unimportant, and the observation is just if a life which is directed by a succession of unrelated and haphazard events is to be regarded as eventful, but to a sympathetic student of his writings the interest of his life is exceptional. His career was indeed eventful, in respect that it was moulded by and reflected the lasting and pregnant events of a singularly important period in the development of European life and thought. In the growth of his character, which can be clearly traced in his life and writings, there is a continuity which is not simply individual but typical. He represents one of the most weighty interpretations of the life of a period which, as reflected in the lives of lesser men, is obscure and disordered. He grew slowly with his times, and was protected from catastrophe by his hard national character and the invisible barriers which preserve

¹ Menage, *Remarques, ut supra*.

² Barclay has given eloquent expression of his love for the country of his adoption. He refers to France as 'regnum omnium quae terris continentur, meo judicio, pulcherrimum . . . suavissimam illam, et velut Germanam Scotis omnibus patriam,' and again as 'omnis humanitatis et honestatis matrem, literarum et literatorum hominum alumnam, speculum religionis, summam justitiae cultricem, armatorum decus et delicias togatorum.' Cf. *De Regno*, iv. 14.

³ 'Sub signo Temporis et hominis sylvestri.' Republished at Hanover along with the *De Potestate Papae* in 1612 and 1617.

⁴ *Ibid.* iii. 805.

⁵ *Mémoires de l'Académie de Stanislas, ut supra*, (App. XVII. 3).

men of his calling from the rude shocks of war and the uncertain event of diplomacy and affairs. When he met the forces which were throwing Europe into disorder it was, as it were, at the second intention, and he was able to measure and estimate them. He was always a spectator—in his youth a minor figure and in his maturity a trained and well-furnished observer, withdrawn from the scene of action but conscious of any movement of affairs.

It must not be concluded, however, that Barclay was simply a colourless reflector of events. A short recapitulation of the leading phases of his career will serve to indicate that from his youth he kept traditions and qualities which reacted on and winnowed the many-coloured life of his age. He had a touchstone with which he tried events and men. As has been indicated, he was the product of a *milieu* which was at once catholic, royalist and in a sense moderate. In his boyhood he seems to have imbibed a spirit which had a real, if somewhat remote, kinship with that of the Caroline divines, the spirit of a remote Catholic community cut off from the main stream of Church life, but, perhaps, on that account more in touch with the ultimate realities which produce sanity and quiet conviction. At the court of Queen Mary he played a minor part in a scene in which a woman wasted her gallantry and charm in a vain attempt to meet impersonal forces with personal weapons. He met, further, the most unpleasing manifestations of the new religious movement, with which he was temperamentally out of sympathy. When he passed to France he had witnessed, at an age at which the mind is most open to lasting impressions, an exaggerated instance of the struggle between the past and the future which was taking place in modified degrees throughout Europe. The course which he followed indicates the judgment which he had formed. He conceived that events were being swayed by forces which were beyond the reach of unreflecting actors, and when he passed to France he gave himself wholeheartedly to the realm of thought. His association with the Jesuit University of Pont-à-Mousson marks a revulsion from the spiritual atmosphere of Calvinistic Scotland, but his ardent study of Civil Law was a more conscious and deliberate step. His contemporaries note that he brought to his legal studies a mind well versed in *belles lettres*, and his zeal for jurisprudence cannot be attributed to a desire on his part simply to educate an untrained mind. He gave himself to the study of Law in the search for

some solid foundation for his opposition to the destructive forces which he had seen at work in Scotland, and was destined to observe in a wider field. His study of imperial legislation was illuminated by the course of contemporary events in France. He had left a 'mad world' only to enter a madder.

In 1570 Elizabeth had been deposed by papal bull, and in 1572 occurred the Massacre of St. Bartholomew, to be followed by the Fourth Religious War in France. In 1574 died Charles IX., in the midst of the Fifth Religious War, and Henry III. passed from the throne of Poland to that of France. In 1576 appeared Bodin's *Six livres de la République* and Gentillet's *Discours*, and three years later followed Holtman's *Franco-Gallia*, the *Vindiciae contra tyrannos*, and George Buchanan's *De jure regni*. It may appear strange to include the publication of polemical and theoretical writings among the events of the period, but in France the struggle was ultimately one between contrasted theories, obscured and distorted by personal rivalries and ambitions.

Sixteenth-century France was a battlefield not only in the region of politics and outward events, but also in that of jurisprudence. It was to this study that Barclay devoted himself, and in this field he first observed the struggle which was going on concurrently in legal theory and in practical politics. To a man of his meditative habit, it was natural to get behind the realm of fact and devote himself to that of theory, and, as has been indicated, his past experience encouraged this bent. It was, further, possible for him to do so without losing touch with reality, for the eminent jurists of the day were, with the exception of Cujas, political thinkers, and, according to their lights, patriots as well as jurists.¹ Their political sympathies directed the course of their legal speculations and *vice versa*. To indicate the scope of this consideration, some reference must be made to the development of French legal studies during the period.

Following on the rivalry between customary law and Roman law, which gradually subsided as the monarchy became more and more the source of legislation, came a new development in the history of the latter, consisting of an elevation of the subject from the region of practice to that of theory. The result was a conflict between the two schools—the conservative and classical school of Bartolus and his followers on the one hand and the humanist and historical school of Cujas and Doneau on the other. When Barclay turned his attention to legal studies, the former,

¹ Cf. Viguié, *Théories Politiques Libérales* (Paris, 1879), pp. 9 *et seq.*

which commented, refined and elaborated an isolated mass of jurisprudence, had taken refuge among practitioners, and the latter had triumphed by the aid of history and *belles lettres*. The new historical study of Roman law soon brought to light its intimate connection with definite political theory.

This political aspect had revealed itself even in the medieval period. In 1312 Philip the Fair, in the course of his struggle with the Pope, made use of an earlier papal prohibition for his own ends, and prohibited the study of civil law at the University of Paris. His object was to suppress the theory of the pre-eminence of the Holy Roman Empire, which was in favour in the law schools of Bologna. Even in Barclay's day the Ordinance of Blois of 1579 renewed the prohibition, probably at this time directed against the Huguenot sympathies of some of the most eminent civilians, and Cujas had to obtain the sanction of the Parliament before he could teach in the capital. But, except in this ultra-clerical centre, the situation had changed, and it was recognised that the legislation of Imperial Rome could offer valuable assistance to the rapidly developing theories of royal power. The king of the modern centralised state stepped into the shoes of the Roman Emperor. There was, however, a liberal and democratic school of French jurists which drew its inspiration from the legal genius of Republican Rome. This school, which found its most illustrious representative in Francis Hotman, was historical in its point of view to a marked degree, and in the *Franco-Gallia* the feudal customs which Barclay despised are employed to demonstrate the democratic constitution which is claimed by the author as the inalienable heritage of the French people. The representatives of both schools who engaged in political controversy found it impossible to confine themselves to their own field, and the religious element in the constitutional struggle between the centralising forces of the growing monarchy and the privileges of the nobility and the towns asserted itself, particularly on the Huguenot side, by appeals to the authority of the Old Testament as a political gospel. When, however, during the critical years of the struggle the cause of democracy became identified with the religious authority of the League, the Catholic pamphleteers seized the weapons which their opponents had formerly employed, and used the arguments from Old Testament history, the force of which they had at one time denied.

Barclay's position as a theoretical jurist lay between the extremes represented by the Bartolists and the democratic wing

of the Humanists. He quotes with approval such leaders of the former school as Baldus and Cuneo, and he sought to apply to the modern state the juristic conceptions of the later Roman Empire; but, on the other hand, his strong historical sense and keen political interests drew him to the Humanist and historical side.

It was indeed 'a mad world,' and the merit of Barclay lies in the fact that he kept a clear course through it. He had no part in the *volte face* of the League, and he retained his Catholic faith throughout, but it would be a great mistake to exaggerate the import of his consistency. His political writings, polemical treatises as they are, are in no sense *livres de circonstance*. They were not produced, like the *Vindiciae* or the *Franco-Gallia*, in the white heat of a crisis. His *De Regno*, in particular, was the fruit of years of observation of events, but it was written slowly and piecemeal, and is more of the nature of an historical commentary like Machiavelli's *Discorsi* than of a theoretical treatise. While it was probably commenced soon after his arrival at Pont-à-Mousson in 1577, it was not published until 1600. The result is that its pages reflect the judgment of a contemplative and considering mind on a series of strange developments as they transpire. In preparing his work finally for the press, Barclay probably revised the earlier portion, but it still retains the character of a contemporary judgment. The interest of the volume is accordingly personal rather than theoretical. Barclay's earliest work may be described as the adventures of an interesting mind among great events, if one may be permitted to modify the memorable phrase of a contemporary critic.

The *De Regno* is divided into six books, and is furnished with a dedication to Henri IV. At the beginning Barclay describes the circumstances in which it was commenced, laid aside, taken up again, and at last completed, the immediate cause of its publication being the writings of Boucher, who sought to confer the sanction of the Church on theories which until his time had been considered the peculiar mark of heretics. The first two books deal with Buchanan's *De jure regni*, and are accordingly presented in the form of a dialogue. The speakers are Barclay himself and his friend Boutellerier, tutor in the Lorraine household, and there are many picturesque and intimate touches in the description of the surroundings in which the conversations took place. The opening pages are full of dry humour, and offer a pleasing contrast to the bare skeleton upon which Buchanan weaves his

dialectical web, but the light note soon gives place to the monotonous stroke of political argument.

Utility is the basis of human society. *Utilitas* cannot be distinguished from *honestas*. Laws are the sure safeguard of human society and are derived from the precepts of nature, but many unjust laws are to be found which have arisen not from the workshop of nature but from the bilge water (*sentina*) of evil desires. When the custom of abrogating, changing, and amending laws is considered, it is apparent that they must have come to be recognised as not being necessarily in accordance with nature, that changing times bring changing conditions, and that it is necessary to change laws also. Not the will of the legislator but the equity of the laws themselves must be looked to. In legislating regarding the respective rights of king and people, the precepts of nature must be obeyed. Accordingly, whatever has been introduced into this field not by reason but by the corrupt *mores* of the people, first through error but afterwards by the force of custom, must not be used to the prejudice of kings in the exercise of their *jus*. Reference is made to Buchanan's comparison, which, of course, he inherited from antiquity, of the state to a sick body and the ruler to a doctor. From this simile Buchanan has concluded that kings have no authority in the making or interpretation of laws, and that the king is subjected to the law and the law to the people. If the people, tired of single rule, claims for itself the Insignia of Empire, the result is that in seeking to escape the tyranny of one it falls a victim to the tyranny of many. No revolution has ever benefited the commonwealth : *bonis saepe mali raro meliores succedant*.

The origin of royal power is the need of organisation and protection in unruly times. Buchanan's view that such a need no longer exists is denied. The changes which have taken place are unequal as regards people, nobles, and the king. The nobles have become turbulent and unruly. The kings remain where they were, though without doubt they have established their position and gained means of preserving their power which they had not at first. Such means were not required when the *mores* of the people were intact, but with the growth of corruption and ambition they became necessary. The shortcomings of contemporary rulers are due to defects of *voluntas* and not of *facultas*. There is a distinction between the *vires regni* and the *persona* of the ruler. An example of the methods of unscrupulous men who grasp power under a pretence of humility is to be found in

the leaders of the Scottish Reformation. It is absurd to suggest that the judgment of the multitude is sounder than that of an individual. Experience has demonstrated the weakness and folly of popular rule. Barclay's interlocutor suggests that Buchanan does not seek to substitute another form of government for kingship, but merely to make the many councillors of the one. Barclay replies that the result is the same. His friend refers to *tot senatus et curiae tot provinciarum rectores, tot belli duces, tot celebres denique omnium ordinum conventus*. Barclay replies that these are useful so long as they obey and simply exercise delegated powers, acting only as councillors, and he expresses regret that such advice is not more readily taken. The First Book closes with an ironical account of Buchanan's conception of the kingly office reduced to that of an Arbiter or Dean.

In the Second Book Barclay treats of Buchanan's account of the selection of Saul, and indicates that he has taken the description of a tyrant for that of a king. God, in giving the Israelites kings and ordering His Prophets to anoint them, did not intend to give them tyrants. In most writings the names *rex* and *tyrannus* are interchangeable, but a king with a lawful title, however evil, was never designated a tyrant in the Scriptures, and the slayer of such never escaped punishment. It is absurd to suggest that the kings from whom Christ was descended were tyrants. If Buchanan's conception of kingship be accepted, Moses was a king, which is absurd. According to Buchanan, *reges vocantur omnes qui ex legum praescriptio jus dicunt*, but *regiam, hoc est liberam et legibus solutam potestatem, ab imperio magistratum, quod legibus servit, omnes uno ore distinguunt*. Barclay refers to the author of the *Vindiciae* as *deliriorum Buchananani vafer interpretis*. Buchanan's definition would apply to prophets and patriarchs, who made no claim to kingship. Samuel and the judges had no attributes of kingship, and consulted God as delegates of his authority when difficulties arose. Then follows a dull discussion of the words of Samuel regarding Saul. Moses declared what a king ought to do, Samuel what he could do. The *potestas* of kings would not have been described as *jus* unless it had been lawful, and when Samuel referred to the *jus* of the early Jewish kings he treated them, not as tyrants, but as legitimate rulers.

According to Buchanan the two restraints on kings were laws and councillors. The latter having been dealt with, Barclay now turns to the former. The earliest form of government was kingship, and all other forms mark a declension from it. In

Athens Solon alone, and in Rome the *Decemviri*, established the laws. Laws were established by kings, not for the purpose of limiting themselves, but with the object of regulating the people. Not only *ratio* and *judicium*, but also *innata quaedam in homine propensio*, recommend the kingly form of government, which reflects the Divine Government of the world. Kingship is based on the *jus gentium* and the *jus naturale*. The impossibility of the king exercising all his functions in person was the cause of laws which are *velut monitrice quadam domestica et regiae vocis ac voluntatis interprete concessa, quae in omnes regni partes diffusa, regis ubique praesentiam potestatemque repraesentaret*. If laws were made according to Buchanan's theory, as checks on royal power, the conclusion would be necessary that the more the laws the worse the ruler. History proves that this is false. It is impossible to conceive of the kingly office without the idea of complete freedom and independence of control. The phrase of Baldus *principem esse legem animatam in regno suo* is quoted with approval. After some analysis of Scottish History, the Second Book ends with an emphatic assertion of the rights of kings as interpreters of laws.¹

In the Third Book Barclay abandons the dialogue form and turns to the *Vindiciae*, the author of which is obviously, in his opinion, a heretic. Monarchy as a form of government is not an institution of human counsel, but the creation of the eternal wisdom. He whom God designs as ruler must receive the consent of the people. Accordingly, until kings chosen by God have been accepted by the people, they have only the hope of rule, *id est secundum spem regem dici posse*. In the constitution of a king God is the Author, while the people is an instrument or secondary cause. The people can never deprive a king of his sceptre. Once he has been accepted and inaugurated, no *jus* is left to the people. The *facultas* of electing a king must be clearly distinguished from that of constituting one. The former power is very rare; the latter is more common. The power to elect is thrust out by hereditary right and the *jus gentium*. When God selected a king He did not treat him as a unit. He granted the right of succession to his issue. This right is based on the *jus gentium*, and is confirmed by the Mosaic Law. The people have

¹ It is apparent that Buchanan inspired in Barclay that grudging respect which he seems to have excited in the breasts of those with whom he had to deal. Barclay refers to him as *ventri et veneri obediens*, but this was merely an argumentative aside at this date. His considered judgment of Buchanan is found in a passage in the Second Book, which begins 'Mira mehercule et misera res est.'

the right to decide between rival claimants to an hereditary kingship. In such an interregnum this power reverts to the people. Evil kings cannot be removed or controlled by the people. The transfer of power to officials does not mean that the rights of the people have been lost, but the *Lex Regia* involved the transfer of all the powers of the people as a unit. The rights of kings are based on the *jus naturae*. In every crisis the Romans had recourse to a Dictator, and the Emperors inherited the conception. The attitude of St. Ambrose to the Roman Emperor is a model for all time. He inculcated passive resistance, and declared that however greatly he was wronged by the Emperor, there was no earthly tribunal to which he could appeal, and a king who abuses his *jus* can only be punished by God. The conduct of Saul is closely examined, and the attitude of Samuel and David to him is held up as an example. The precepts of the Old Testament are universally binding. The conduct of David to Saul is *non perfectionis tantum sed necessarii officii exemplum*. This *antiqua Davidis theologia* corrects and condemns the insane theosophy of the times. It is to be noted that David was one of the *optimates*, and yet he claimed no rights against the king on that ground.

Barclay now turns to the discussion of the command 'Render unto Caesar,' etc. What when the command of a king conflicts with that of God? In obedience to the king obedience to God is reserved, and a good man can conduct himself so as to perform his duty to both. A reference to the miseries of France is followed by an emphatic exposition of the doctrine of non-resistance. It is a severe saying, but the people has neither the right of defence nor revenge against the king, though a certain amount of reverent opposition is permissible if the whole people is at one. No distinction can be drawn between good kings and bad, since there is no one in earth to whom an appeal can be made from the king; the cause must be committed to the wisdom of God omnipotent, who is King of Kings and the Judge of Judges. *Per multas tribulationes oportet nos intrare in regnum Dei*. Barclay quotes Tertullian, Origen, Augustine, Ambrose, Gregory of Tours, and others in support of this theory, and refers to the association of heresy and democratic views. Alas, the Lutheran and Calvinistic pest has begun to invade the Catholic Church—a clear reference to the activities of the League. Officials of the commonwealth have no mandate to correct evil-doing kings. If this were so, the greater the number of delegates appointed by a king the greater the number

of persons entitled to restrain and criticise him. An eulogy of Ninian Winzent, described as *Flagellus Sectariorum*, is followed by a fierce attack on Jean Boucher, who first had introduced the hated democratic virus into the Church of God. Barclay turns from him with relief to the high imperial doctrine of one School of the Roman Lawyers, and quotes the well-known maxims in which the prince is described as freed from the law, and in fact as the embodiment of law. The phrase does not mean only that the king is not bound by his own laws. It has a much wider reach. Before the people transferred its rights to the king, it was only bound by the laws which it cared to impose upon itself, and the king enjoys the same freedom, the transfer to him having been absolute and complete. Laws have a *vis directiva* and a *vis coactiva*. The prince may recognise the first but not the second. The king may abdicate or submit to an enemy of the State, and in either event the subjects are free from their tie to him. Reference is made to the History of James the Fifth of Scotland and to Balliol and Edward the First of England.

At the opening of the Fourth Book, Barclay again refers to the heretical taint of the author of *Vindiciae*, and likens him to Machiavelli. The proposition that a ruler must not be obeyed when he orders the doing of something against the Law of God is admitted, but it does not follow that by giving such an order the ruler frees his subject from his oath of allegiance. The simile of superior and vassal which is found so often in the *Vindiciae* is not a fair one; the feudal system is a travesty of the relations between God and the king. The vassal is not deprived of his feu without a trial, but the king can have no earthly judge. The latter is, no doubt, the delegate of God, but it does not follow that the people can invade the divine jurisdiction and exercise powers which are not theirs. There may be a contract between God and the king, but deprivation does not follow on a breach thereof—*ipso jure* or *ipso facto*. God is the only judge of kings, and cannot be deprived of His prerogative. The covenant between David and Israel was not conditional, and was a type for the future. The Pope as Vicar of Christ is the judge of kings, and when they are guilty of wrongs he can condemn them before his Spiritual Tribunal and punish them with excommunication. Refusal on the part of a subject to do evil commanded by a prince is different from rebellion and active hostility. The Protestants follow the sect to which their prince belongs, and change their religious views according to his inclination. The fury of the *Vindiciae* is due to the fear that

Catholics may take a leaf out of their book and compel their subjects to return to the true Church. Such measures if adopted would be based on divine jurisdiction, but heretical princes have no jurisdiction to force their subjects into religious communities to which they never belonged.

The second question dealt with in the *Vindiciae*, i.e. the extent and manner of resistance to rulers who seek to abrogate the Law of God and to destroy the Church, presents no real difficulty to Barclay. The Christian soldiers of Julian the Apostate and the innumerable cases of passive resistance under the Arian Emperors offer an example to be universally followed. No instance can be found of the rebellion of Christians against their prince even on account of hostility to the Church. Reference is made to the submission of the Scottish monks to King James, and to the martyrs under Henry the Eighth who urged obedience to the king on the scaffold. The political theories of the Calvinists are based upon a perverted interpretation of Scripture, and upon a pretended contract between God and the king, and then between God, the king, and the people. Such a contract does not sanction any rights of the people against the king. The relations between God, the king, and the people does not resemble the parties to a guarantee with joint and several liability; and even if the simile be accepted, it does not support his opponent's argument in respect that in law the guarantor who has done his duty has no recourse against the defaulter without an appeal to a judge, and the king has no earthly judge. Moreover, God and the people are not parties to the same bond; their relations to the king are quite distinct.

Turning to the third question of the *Vindiciae*, i.e. the limits of the right to resist a ruler who is destroying the commonwealth, and the grounds and method of exercise of such a right, Barclay contends that the definition of a tyrant is improper. A properly constituted king can never become a tyrant, and an alien king who seizes foreign territory is not a tyrant, but a public enemy. Moreover, the transfer of the people's rights in favour of the king is final, and no rights are reserved. A ward who receives a tutor, and a wife who receives a husband, are not superior to the authority received. The powers of the French parliaments and of the great officers of state are simply delegated by royalty. References are made to Bodin and Hotman, and the importance of the royal prerogative of pardon are insisted upon. Luther was responsible for the peasants' revolt, and the idea of democracy

set forth in the *Vindiciae* would inevitably develop into anarchy. The whole book is tainted with the poison of heresy. Barclay quotes the dictum of the Roman Jurists regarding prostitutes and their absence of moral responsibility, and adds, *Est enim haeresis prostitutio quaedam spiritualis*. Then follows some good dialectical play on the use made by the author of the *Vindiciae* of the people as a unit and the individual, of the magnates as a class, and the magistrates as representing the people, the confusion of these divers conceptions and the inconsistent use to which they are put resulting in hopeless confusion. The *optimates* are the creations of royal power, and the laws which the king imposes were not delivered to him originally by the people. He is not fulfilling a mandate of the people; he is exercising a divine office as the interpreter of God to the people. *At nobis de regno et monarchia sermo est*, Barclay concludes, *in quibus populus imperium et jus omne suum a se abdicavit, atque in principem transtulit ita ut omnis imperii exors est, ac proinde jus nullum animadvertendi neque in optimates universe, neque in singulos; Rege id totum sibi vindicante, habeat*.

In the Fifth Book Barclay turns to Jean Boucher and his *De Justa Henrici III. Abdicatione Francorum Regno*. Boucher, who, along with the other pamphleteers of the League, had poured the democratic poison into the catholic body, was the real object of Barclay's attack. The Calvinistic and Lutheran uncleanness had entered the Holy Place, and from this point to the end of the treatise the argument has a sweeping pungency which lifts it out of the dry regions of political controversy. Barclay appears to have been a personal friend of Boucher, and expresses regret that he should feel it his duty to attack him. Throughout this and the succeeding book he emphasises his antagonist's clerical state, refers frequently to the rights and duties of clerics, and quotes the canonists against him. Assuming that the ultimate power rests with the people, there is no evidence that there was any general consensus of the nation requiring Henry's abdication. Rulers are at the mercy of calumny and slander, and an account is given of the relations between Queen Mary of Scotland and the Regent Moray, full of strong antipathy to the latter. Following on the assassination of Henry the Third, Boucher's pamphlets have an air of cold-baked funeral meats and orations. In his attack on Henry the Third, Boucher had the audacity to anticipate the judgment of the Pope; but even excommunication launched by the latter would not authorise subjects to rebel. Barclay writes with strong disapproval of those who foment rebellion on the pretext of religion,

and refers to the vanity of the attempt to sustain the Catholic faith in Scotland and England with fleets and troops, with papal treasury and Spanish arms. The passage is a plain expression of disapproval of the League and the Jesuit policy. The king is *legibus solutus qua vi coactiva*, and Barclay recalls the distinction between the coactive and directive force of laws, and then comes the phrase which became so famous in future controversies, *Tibi soli peccavi*. At this point Barclay touches on the power of the Pope in temporal matters, and gives the key to his future controversy with Cardinal Bellarmine. All kings are subject, no less than private Christians, to the spiritual jurisdiction of the Pope, who is the Vicar of Christ, but no jurisdiction in temporal matters is involved. From this point onwards Barclay is content to refer Boucher to his replies to the author of the *Vindiciae*, and taunts him with his clumsy use of the arguments of that treatise.

In the Sixth and last Book there is a good deal of repetition of arguments and reference to Scottish and French history. Much space is occupied with a discussion of the character of Henry the Third, the murdered king, and Barclay has difficulty in justifying the murder of the Duke of Guise and his Cardinal brother. He repeats that the Pope has no jurisdiction in temporal matters save in the case of ecclesiastics and those who are subject to his temporal rule. As the book draws to its close it ceases to concern itself with argument, and the author's eloquence carries him with a rush to his conclusion. The final chapter is a remarkable piece of sustained invective which rises to the level of real eloquence. He denounces the baneful activities of the religious orders, given wholly to the cause of the League, and holds Boucher and his associates responsible for the crime of Jacques Clément.¹

Even the foregoing rough sketch will demonstrate that the *De Regno* is in no sense a philosophical or even a theoretical treatise. It displays little of the keen argumentative force which makes the *Vindiciae* even now absorbing, and the reader is aware of a lack of cohesion and a change in the author's point of view on more than one question dealt with. Thus, in some passages he accepts the contractual theory of the origin of kingship, though modified, no doubt, by the sweeping scope of the transaction embodied in the *Lex Regia*, while in others he represents the kingly office as the creation of the *jus naturae* and of the Divine

¹ It must be noted that Barclay writes in severe terms of the *Politiques*, with whom in some respects he might be conceived to have had some sympathy. Cf. *De Regno*, iv. 24.

Will. Its value is historical. It is above all a critical analysis on the light of practical experience of two treatises which owed their force to their power of abstraction and arbitrary generalisation, and in his criticism of Buchanan and Duplessis-Mornay Barclay slowly but surely defines his own position. As has been stated he was the enthusiastic guardian of traditions of loyalty to the Church of Rome and to the Crown. When he deals with Buchanan in the first two books of the *De Regno*, he finds these two ideals united in opposition to an heretical democracy, and he has no difficulty in identifying them. To his mind the democratic *virus* is a necessary concomitant of heresy, and even in his criticism of the *Vindiciae* he insists in maintaining the identification. But the dilemma which awaits him can be foreseen by the reader possessed of an historical knowledge of the gathering forces which surrounded Barclay as he wrote. In Scotland, as Barclay remembered it, the legitimate ruler had been a devout Catholic, and it was not difficult to face Buchanan in that field, but when he finds it necessary to refer to the ecclesiastical activities of the heretical German princes with their theory of *cujus regio ejus religio*, one can hear the breakers ahead. Heresy and democracy can no longer be identified. The experiences of his early youth enabled him to apply the limited and precise data of Scottish history in support of his argument, but when he turned in the latter stages of his treatise to the rich and confused life of contemporary France, he was faced with a difficult problem. He found in the League democracy allied with orthodoxy and opposed by a king who was apparently in open conflict with the Church of Rome. This dilemma explains the bitterness of Barclay's attack on Boucher. He found that his foes were those of his own household.

Up to the date of the publication of the *De Regno* in 1600, Barclay was content to meet the political activities of the League and the Jesuits with an emphatic reiteration of the Divine Right of Kingship; but in the latter part of that treatise there are to be found indications of a critical attitude to the policy of Sixtus V. The last years of his life were devoted to a controversy with Cardinal Bellarmine, in which his attitude as a political theorist received its final definition.¹ The publication of his posthumous

¹ Bellarmine replied to Barclay's *De Potestate Papae* in his *Tractatus de Potestate Summi Pontificis in rebus temporalibus*: cf. *Opera omnia* (ed. Naples, 1859), v. 259. Reference may also be made to *Die Selbstbiographie des Cardinals Bellarmin*, Döllinger and Reusch (1887), and *De Jacobo I. Angliæ Rege cum Bellarmino disputante*, De la Servièrè (1900).

work, *De Potestate Papae*, cast a clear light on much that appeared conflicting and obscure in his *De Regno*, and gave the key to his slow development and final position. The import of this treatise can only be gathered after some consideration has been given to the political theories of the early Jesuits and in particular to those of Cardinal Bellarmine with which it professes to deal.

The principal characteristic of the latter part of the sixteenth century was the transference of attention from the old religious view of the European world as a spiritual unity, which found its interpretation in the claims of the supreme Pontiff. According to this view, the existence of spiritual and secular rulers involved no division in the political world: they were both officers of the same all-embracing government, and the pre-eminence of the former was due to their more lofty and noble aim. But as the modern secular state emerged into view, the attention and devotion of men were drawn away from the old religious view of the world and turned to these new governmental units. In these circumstances the Papacy found itself faced with the problem of reconciling its age-long claims with the demands of an alien creation, the secular state. 'The influence which religious motives formerly possessed was beginning to be exercised by political opinions.'¹ The gravity of the situation was increased and emphasised by the presence of Queen Elizabeth and Henri of Navarre, at the head of growing secular powers. The new-found loyalty to the Crown was apparently irreconcilable with the old devotion to the Church.

In these circumstances the position of the early Jesuits was clearly defined. In May, 1596, Father Parsons wrote to Father Creighton, a Scottish Jesuit, 'And so what I have often said in your presence (and what I remember our beloved Allen to have done also) I now once more repeat: the one thing and the first of all that I look for in our future ruler is that he be a true Catholic; let him be of what nation, race, or language he will; and if he be not this, or be doubtful, I will regard neither his country nor his person, nor any kind of hereditary claim which I cannot admit against the cause of God, although otherwise most valid.'² A year earlier Father Creswell, another Jesuit, had written to Philip of Spain: 'I find myself, by His divine grace, so free from personal and natural bias in the matter, that if I heard that the entire

¹ Acton, *History of Liberty*, p. 188.

² Taunton, *Jesuits in England*, 185.

destruction of England were for the greater glory of God and the welfare of Christianity, I should be glad of its being done.'¹

These somewhat extravagant outbursts of Jesuit zeal must not be taken literally. They are the crude and blunt application of the theory of the origin and rights of royal power, which found clear and systematic exposition at the hands of Bellarmine. His political writings take their place without effort or straining in the stream of consecutive and homogeneous doctrine which stretches from St. Thomas Aquinas to Leo XIII. His contributions to political science were perforce of a polemical character, and the foundation which he laid on his *Controversies* sustained an elaborate superstructure which was raised through the years of his maturity in face of the Lutherans, the French regalists, the Republic of Venice, and our King James. The two points on which the attack and the defence were concentrated were the origin and sanction of royal power and the authority of the Pope in secular matters.

Speaking generally, the wide and far-reaching claims of the modern state may be said to date from the Lutheran reaction after the Peasant revolt in Germany. This reaction sought to confer on the civil ruler powers which were to be exercised both in the sphere of politics and in that of organised religion. This exaltation of royal power found an echo in England and France. The issues were confused, and the scope of the struggle ranged from the attempt in France to eliminate the religious factor from the qualifications of the ruler to the extreme secular theory which found expression in the maxim, 'cujus regio, ejus religio.' This new world of independent secular states offered a striking contrast to the old world of Europe, culminating in the Papacy. It was the function of the Papacy to be almost against itself, the creator of a new political system. The Papacy transferred to the wide field of Europe the policy of counter-poise and balance which for centuries it had employed with success in the Italian peninsula. The Papacy and the Venetian Republic in a less degree were the protagonists of the modern European system of the balance of power. The veiled yet ruthless struggle between Philip II. of Spain and Sixtus V. was a struggle for the freedom of Europe on the part of the latter. In the face of the menace of Spanish power the latter reiterated the old claim of the Papacy to intervene directly and summarily in every phase of European life. He does not appear to have realised the expediency of a restatement of the papal claims in terms applicable to the new world which was rising

¹ Taunton, *Jesuits in England*, 195.

around him. Bellarmine, who attempted to formulate a new theory, was not regarded with favour by Sixtus, and the volume of his *Controversies*, in which he enunciated his theory of the indirect power of the Popes, was placed on the Index.

This theory was novel rather from the assumptions and admissions which underlay it than for any striking feature in its presentation. It envisaged the world as perpetually subject to the Divine governance, and as an entity void of meaning without recognition of the fact that the ultimate aim and supreme purpose of man could not be accomplished there. It was based on the unqualified recognition of the claims of the Catholic Church, endowed with Pentecostal gifts and finding its earthly head in the Bishop of Rome, the successor of Peter and the Vicar of Christ. This theory recognised that the primary purpose of the Church and the Papacy was spiritual, and that there were departments of life in which they were not directly concerned. It recognised that the old unity of the world with the ecclesiastical and civil rulers as officers of one organism had disappeared. It recognised the existence of the secular state with secular aims and interests, leading a self-sufficient life of its own, and alongside it placed the *societas perfecta* of the Catholic Church. The secular state is the creature of natural law and its ruler rests his mandate on the *jus gentium*; the Church is the custodian of divine law, and its head exercises functions entrusted to him by Christ. The field of the former is the body and mind of man; the field of the latter is his spirit. As the two are closely united, the Church has the right and the duty, when occasion arises, to intervene to control and direct the secular ruler who represents the secular side of human interests and activities. But such intervention is not exercised by the Pope directly: he does not exercise discipline over secular rulers in the manner in which he controls bishops and other ecclesiastical dignitaries. His power of discipline as applied to kings and princes is indirect and consequential. It is based on the necessary interpretation and application of his spiritual mandate. When the welfare of souls is concerned, he is bound to intervene in matters which are primarily secular.

This theory of the indirect power of the Pope in secular matters was closely linked with the theory of Bellarmine on the origin of royal power. The Jesuit theory finds the origin of Kingship in a contract, but it has little resemblance to that of Rousseau, with which it has often been confused. The Frenchman's state of nature has no existence in the theory of the Jesuits who, following Aristotle and

St. Thomas Aquinas, regard political power or the political instinct as one of the indispensable ingredients in the divine composition of man. Political power is given immediately to men in common, and not to individuals. In the words of Bellarmine ; *Sublato jure positivo, non est major ratio cur ex multis aequalibus unus potius quam alius dominetur.* This political power is transferred to individuals, whom we call kings, by the multitude endowed with it by God. The transfer is effected by a tacit contract of a triangular or tripartite character, between God, the people and the king. In transferring to their ruler their political power the people transfer at the same time a share of the recognition of that divine governance of which they are conscious. The Pope receives his power directly from God ; the King receives his indirectly and through the people.

To grasp the true import and value of this theory which may, perhaps, fairly be called democratic, it must be kept in view that the modern states which were coming to birth in Bellarmine's lifetime were autocratic, and involved the complete overthrow of the feudal system. The sixteenth century ruler was forming with the creatures of his own creation a new world, alien to the old commonwealth, and stamping out what remained of the old decentralised, provincial and communal life. He threatened to become, and actually, in most cases, became the sole manifestation of national life. The Jesuit theory of royal power, which found its most adequate expression at the hands of Bellarmine, sought to get behind this imposing façade by laying emphasis on the rights of the multitude on which it rested. These rights had been transferred, no doubt, but the transfer had been effected on a religious basis which had imposed on the ruler the supreme duty of refraining from interference with the religious duties of his subjects. Such interference in a realm which must remain perpetually inviolate, invalidated the tripartite bond which united him with his subjects and with God. Such interference would necessarily invoke the reserved powers of the Pope, God's vice-regent upon earth, who would intervene in virtue of that indirect power in secular matters, which, as we have seen, was based on his spiritual prerogatives.

It is interesting to note that, like Boucher in another field, Bellarmine in elaborating his theory of the Papal right of intervention owed much to the *Vindiciae*. The fourth question discussed in that treatise concerned the right of neighbouring princes to intervene where subjects were oppressed by a tyrant on account

of their religion. The author had in view the activities of the German Protestant rulers in the French Wars of Religion. 'Nimirum,' he wrote, 'ubi Dei gloria, ubi Christi regnum agitur, nulli limites, nulli fines, nulli cancelli, piorum principum zelum arcere debent.' The same conception was used by the Jesuit Cardinal twenty-five years later for a very different end.

Barclay's criticism of Bellarmine was trenchant and sweeping. In the fragmentary form in which it has reached us it seems to justify the conclusion that he had cast aside the contractual basis and the machinery of the *Lex Regia*, which can be traced in the *De Regno*, and had determined to treat royal power as the immediate creation of the Divine Will. The main line of the argument may be outlined as follows :

Two views of Papal power are prevalent: (1) the Canonists' view of direct universal power; (2) the Divines' view of indirect power. Both are wrong, but the Canonists' view is preferable. Some Divines have adopted (Bozius) the Canonists' view and attack Bellarmine. The spiritual and temporal powers are distinct; Bozius's view of the subordination of the latter is denied. Barclay denies 'that the Pope hath any right or jurisdiction temporale over any lay person, of what condition or order, and rank so ever they be; unless he shall purchase the same by civile and lawfule means.' He does not include secular kings within the temporal jurisdiction. 'On the Prince's part, what can be spoken with more indignitie and injustice, than that they professing the faith of Christ, should be pressed with a harder yoke, than any private man among the multitude.' Laymen and princes lose nothing of their lay privileges in entering the Church. He quotes with strong disapproval the bull against Queen Elizabeth, and Boniface's treatment of Philip the Fair. The abuse of Excommunication is emphasised. The Deputy or Vicar of God cannot take away from the Prince, without the express command of God, that authority which he has received from God himself. This indirect power is not a necessary or inseparable consequence of the spiritual power of the Pope. The spiritual power can exist without it. Bellarmine's argument that powers which could not be exercised in the times of the Roman Emperors should be exercised now is unsound. The present age is ripe and thirsting for wholesome martyrdoms. The Church of the time of Constantine and Julian was by no means powerless, yet it remained obedient *qua* temporal matters. Kings being set over the Law are reserved for the examination of God. He denies

that modern Popes can exercise with success powers incompetent to the Popes of the early Church. Their position is not really stronger, in that their actings still bring misfortune to the Church—severe criticism of Hildebrand. He quotes Boucher with disgust. He then turns to the theory of indirect power. Its indirectness does not affect the extent of the power, but only makes it consequential in origin. He states that he had heard from the Jesuits that Bellarmine was near censure at the hands of Sixtus V. : ‘Let him doe what he will, but he shall never bring to passe that I ever forsake the Catholike, Apostolike, and Romish faith, wherein I have lived from a child to this great age ; or dye in another profession of faith, than that which was prescribed by Pius IV.’ While admitting the distinction of the powers, civil and ecclesiastical, working in one organisation, Bellarmine subordinates one to the other in respect of loftier end. Barclay insists in keeping them always distinct. ‘So also the Kingly or Politike power resting on its proper strength, subsisteth alwaies by herself ; and although she receive great light from the Pontifical and spirituale power, to live well and happily, yet is not changed at all her *ovsia* or essence, neither by hir approach, nor by his departure, nor diminished nor increased, much less is she subject to hir when she comes to her.’

In Barclay’s view, if the exercise of the temporal power in some way hinders the spiritual, the former must yield but only to spiritual punishments, ‘to the divine judgment and revenge.’ The foundation of Barclay’s argument is the denial that inferiority of end involves an inferiority or dependence of the power directed to that end. ‘For God as he hath committed spiritual power to the Pope and the other priests, so also hath he given the civile by an everlasting dispensation to the King and the Magistrates, which be under him. There is no power but of God.’ Bellarmine’s second ground is the idea of the Church as a *societas perfecta*. ‘The *ecclesia* like the commonweale ought to be perfect and in itselife sufficient in order to her end. For such are all commonweales, rightly founded ; therefore ought she to have all power necessary to attain her end.’ Barclay notes that this view involves a denial of Bellarmine’s former theory that laity and clergy do not make two commonwealths but one. Further the power to dispose of temporal matters is not necessary to a spiritual end. If these views were true, the converse might be maintained. Barclay sums up his own views as follows : ‘In the same manner two soveraigne Magistrates of

the Christian Commonwealth, the King and the Pope, doe receive from the Common King and Lord of all, the great God of Heaven and Earth, a divers power each perfect in his kind and governe the people by different jurisdictions and offices.' He observes that it is absurd to maintain that the spiritual can interfere with other jurisdictions for her own protection, since they are both parts of one jurisdiction, and if they were not, the spiritual being entirely such, could only use spiritual weapons.

He then turns to Bellarmine's third argument, that it is not lawful for Christians to tolerate an infidel king if he seek to pervert his subjects. The Pope is the judge of whether he does this. Barclay's reply is a denial of the unlawfulness of passive obedience and an assertion of the rights of nations even when they do wrong. He has no hesitation in condemning the doctrine of St. Thomas on the subject. A bad king must be tolerated just as a bad Pope; toleration does not necessarily involve peril to religion. He denies Bellarmine's next argument, that a people may be separated from an unworthy king just as husband may be from a wife. The cases are not similar. Bellarmine's next argument is, 'When Kings and Princes come to the Church to be made Christians, they are received with a covenant, either express or secret, that they should subject their sceptres to Christ, and promise that they will observe and defend the faith of Christ, yet under the penalty of losing their kingdom. *Ergo*. When they prove Heritikes or hurt religion they may be judged by the Church, and withal be deposed from their government, neither shall any injury be done them, if they be deposed.' Barclay admits the premises but he denies the conclusion. The only punisher of kings is God. He firmly maintains that the Pope has no need of temporal power, since neither the incarnate Christ nor Peter had such. He denies the power of the Pope to absolve subjects from the oath of allegiance. 'The submission and obedience due to Kings and Princes and all Magistrates and superiors is grounded upon the law of nature and of God, being confirmed by both the Testaments.' 'How can it be that the Pope may take from the creditor against his will an obligation taken to him by the best law that may be, I mean by the law naturale divine and humane.' Whether the Pope can or cannot dispense with an oath taken by a religious person, is not clear, but, assuming that he can, it does not follow that he can dispense with the oath

of allegiance, which, of course, involves the rights of a third party. Moreover, the oath of allegiance is only an accessory to the principal obligation which is based on natural law, and is not affected by the cancellation of the accessory oath. If it be maintained that the Pope's *plenitudo potestas* extends even to the principal obligation, the reply is that this is contrary to repeated Scriptural commands to honour the king. It is a question of a temporal nature in which there is no judge above the king but God. The whole question depends on the admitted rule that the Pope cannot dispense with the clear command of God. 'We ought not to marvel a whit if the Divine commandments of fearing and honouring the king, are so deeply impressed in the minds of many subjects, that they give no place to contrary precepts, but rather employ all their care that there be no obedience at all given to the adverse edicts of the Pope either absolatory or prohibitory. It hath been oft tould me by great Personages, and those good men that the divine Precept of honouring Kings, was of so great force with them, and had taken as deepe roote in their mindes, that they did persuade themselves, that by no Bulles or contrary Indulgence could they be discharged of the scruple or weight of conscience and purchase security in the inner man, viz., their soules, that they should not perform and execute so clear and manifest a commandment of Naturall and Divine law, nor yield the obedience promised and due to their Prince.'

Barclay deals at length with the analogy of marriage employed by the Canonists. He then returns to his main argument that the Pope cannot dispense with Law Divine and Naturale. Barclay identifies these two codes. The civil and spiritual powers are distinct and the chief of one cannot rule the chief of the other. Now the so-called indirect power of the Pope is indirect only in its origin and not in its scope. It is a play on words. Prayers and tears are the only recourse of the Pope against bad kings who are simply aggravated by excommunication. The immunity of clergy is a grace granted by secular rulers and not an invasion by the spiritual of the temporal. The orders of the Councils that clerics should not have recourse to secular courts was based on the desire to save the reputation of the clergy. Clerics are, in fact, as subject to civil jurisdiction as laics are. In giving judicial privileges the Prince does not free the Church from his Principality. The loss of patrimonial rights, consequent on excommunication, is a creation of the civil power,

and accordingly the Pope cannot deprive excommunicated princes of their temporal powers.

The foregoing summary sufficiently indicates the development of Barclay's political views revealed in the *De Potestate Papae*. He left the treatise an incomplete fragment, but the *torso* enables an attentive reader to define the limits of his speculations. His religious interests appear, at first sight, to have been gradually subordinated to his regalist sympathies, and political discussion in the seventeenth century passed into the hands of laymen whose training unfitted them to appreciate the interesting quality of Barclay's ecclesiastical position. Thus Locke referred to him as 'that great assertor of the power and sacredness of kings,' and 'that great advocate of monarchical power.' (Cf. *Civil Government*, cap. xix.) Yet his opposition to certain developments of Papal claims links him on to a chain of ecclesiastical theory which is not less interesting than the development of the doctrine of the Divine Right of Kings, and had he been identified with a national movement, like that of Gallicanism, he would have bulked larger in the pages of history. On the other hand, his cosmopolitan point of view, the result of his position as a *deraciné* and an exile, gives his exposition of the theory of the Divine Right of Kings, peculiar importance and value. The origin of this theory has been traced by students to national opposition to Roman claims, but Barclay evolved it in the first instance from royalist opposition to turbulent nobles and a Protestant democracy, and only later applied it to circumstances similar to those in which it was developed in other hands. In this respect his contribution to political philosophy was unique, and justifies an attempt to draw his dignified and austere figure from the unmerited obscurity into which he has fallen.

DAVID BAIRD SMITH.